



**METRO**

**COMMITTEE FOR CITIZEN INVOLVEMENT**

*Mission:* TO ASSIST IN DEVELOPMENT, IMPLEMENTATION AND EVALUATION OF CITIZEN INVOLVEMENT ACTIVITIES AT METRO

December 12, 2001

Lisa Naito, Chair, Metro Policy Advisory Committee  
 David Bragdon, Presiding Officer, Metro Council  
 600 NE Grand Ave  
 Portland, OR 97232

Dear Chair Naito and Presiding Officer Bragdon:

I serve as the chair of the Metro Committee for Citizen Involvement (MCCI). The Metro Charter charges us with advising Metro's officers on issues relating to communication between citizens and their regional government. We have been monitoring the discussion regarding proposed changes to Title 8 of the Urban Growth Management Functional Plan. This letter relates to Ordinance No 01-925B dated December 5, 2001.

We are pleased with many of the additions and revisions in that they spell out ways for citizens to interact with Metro as it assesses compliance with its functional plans. In particular, section 880 creates a regular public report on compliance. It allows citizens to testify and raise issues where cities or counties have not actively moved to come into compliance. Other sections of this proposed ordinance allow citizens to be involved in determining exceptions and in the granting of time extensions.

We are also pleased that section 890 was added back into this draft. This keeps the Citizen Involvement Process language that currently resides in section 850 of the adopted Functional Plan.

Section 850(D) seems confusing, however. It allows cities, counties or persons who received a copy of a extension order issued by the council under section 850(C) to seek a review of that decision by filing an application at Metro. Would the proper review of a Metro Council's order be a process setup by Department of Land Conservation and Development (DLCD) rather than through a form filed at Metro?

We are somewhat troubled by the process in section 830(A) for reviewing proposed comprehensive plan or land use regulations. In order for a citizen to seek review of the Executive Officer's decision to the Metro Policy Advisory Committee (MPAC) or the



Metro Council, a citizen must have qualify under section 820(B), yet there is no language in section 820(B) that states how a citizen can qualify.

The process in section 820 does not allow for any citizen input. This process appears to be a staff-driven issue. Please consider the following scenario: The city staff prepares a package of zoning code amendments and submits it to Metro for compliance review. This section requires that the amendment must be submitted prior to adoption. The submittal could be any time before adoption, which could occur before any public discussion or even local notification of the proposed amendment. The executive could then find the proposed language to be in compliance with the functional plan before any public notice was ever made at the local level or by Metro. Section 830 only allows a review of an Executive Officer's decision of non-compliance. There is no process to allow a citizen, or even the Metro Council, to review the decision, and section 880 stops a citizen or the council from raising the issue later. The only avenue for review by citizens or the Metro Council is to file an appeal with the Land Use Board of Appeals (LUBA) as stated in section 810(F). Yet LUBA appeals are beyond the reach of most citizens because they are costly and require a lawyer.

Decisions on compliance are very important decisions, and citizens should have a way to be involved with the Regional Government. This problem could be resolved by adding the following sentences to section 820(A): "The Executive Officer shall not complete the review of the proposed amendment for compliance with the functional plan until citizens affected by the proposed amendment have received a measure 56 notice. The Measure 56 notice shall also state, 'Metro will be reviewing the proposed amendment for compliance with the functional plan and interested citizens may make comment on the application to the Executive Officer and may request a copy of the Executive Officers decision. Failure to comment or request a copy of the decision will limit your ability to seek further review of the decision at Metro. A decision finding the proposal is in compliance with the functional plan cannot be appealed to the Metro Council or any other Metro body.'"

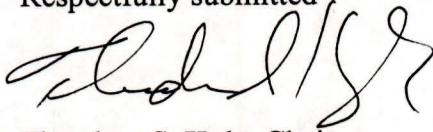
Section 830 and 840 do not allow a citizen to seek review of a decision on compliance for an amendment under section 820. Since the review is before local hearings or adoption by the local body, how can a citizen raise any concerns to its regional government? If changes are made through a local adoption hearing process, will this necessitate another compliance decision? If so, who would make that decision? What if the changes were so substantial that the final adopted language was no longer in compliance? How can a citizen raise these concerns if section 880 stops the discussion?

We believe that compliance review is a critical process and that the Metro Council should be able to review any decision made by the Executive Officer. Listening to citizens one of the most important jobs the Metro Council performs. It should have a way to hear from all interested parties if there is a concern about a compliance decision. This proposed change to Title 8 does not allow for an open compliance decision process.



Please reconsider the compliance review process and make it a full and open process so citizens can be heard by their regional government. We urge you to hold over action on this ordinance until this key public policy can be fully discussed.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'Theodore S. Kyle', with a stylized flourish at the end.

Theodore S. Kyle, Chair  
Metro Committee for Citizen Involvement



McLain

Amendment #1

Amendment No. 1

Ordinance No. 01-925B, Exhibit A

**Early Notice of Applicable Functional Plan Requirements**

Amend section 3.07.810 to read as follows:

3.07.810 Compliance with the Functional Plan

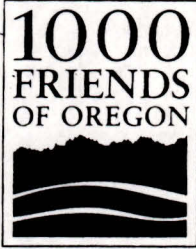
- A. The purpose of this section is to establish a process for determining whether city or county comprehensive plans and land use regulations comply with requirements of the Urban Growth Management Functional Plan. The Council intends the process to be efficient and cost-effective and to provide an opportunity for the Metro Council to interpret the requirements of its functional plan. Where the terms "compliance" and "comply" appear in this title, the terms shall have the meaning given to "substantial compliance" in 3.07.1010(rrr).
- B. Cities and counties shall amend their comprehensive plans and land use regulations to comply with the functional plan within two years after its acknowledgement by the Land Conservation and Development Commission, or after such other date specified in the functional plan. The Executive Officer shall notify cities and counties of the compliance date.
- C. Notwithstanding subsection A of this section, cities and counties shall amend their comprehensive plans and land use regulations to comply with sections 3.07.310 to 3.07.340 of Title 3 of the Urban Growth Management Functional Plan by January 31, 2000.
- D. Cities and counties that amend their comprehensive plans or land use regulations after the effective date of the functional plan shall make the amendments in compliance with the functional plan. The Executive Officer shall notify cities and counties of the effective date.
- E. Cities and counties whose comprehensive plans and land use regulations do not yet comply with a functional plan requirement [of the functional plan] adopted or amended prior to December 12, 1997, shall make land use decisions consistent with that requirement. If the functional plan requirement was adopted or amended by the Metro Council after December 12, 1997, cities and counties whose comprehensive plans and land use regulations do not yet comply with the requirement shall, after one year following acknowledgement of the [functional plan by the Land Conservation and Development Commission] requirement, make land use decisions consistent with that requirement [of the functional plan]. For those requirements adopted or amended after December 12, 1997, [t] the Executive Officer shall notify cities and counties of the [acknowledgement] date upon which functional plan requirements become applicable to land use decisions at least 120 days before that date. The notice shall specify which functional plan requirements become applicable to land use decisions in each city and county. For the purposes of this subsection, "land use decision" shall have the meaning of that term as defined in ORS 197.015(10).
- F. An amendment to a city or county comprehensive plan or land use regulation shall be deemed to comply with the functional plan if no appeal to the Land Use



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Board of Appeals is made within the 21-day period set forth in ORS 197.830(9). If an appeal is made and the amendment is affirmed, the amendment shall be deemed to comply with the functional plan upon the final decision on appeal. Once the amendment is deemed to comply with the functional plan, the functional plan shall no longer apply to land use decisions made in conformance with the amendment.

- G. An amendment to a city or county comprehensive plan or land use regulation shall be deemed to comply with the functional plan as provided in subsection F only if the city or county provided notice to the Executive Officer as required by section 3.07.870(A).





534 SW Third Avenue, Suite 300 • Portland, OR 97204 • (503) 497-1000 • fax (503) 223-0073 • www.friends.org  
Southern Oregon Office • 33 North Central Avenue, Rm. 429 • Medford, OR 97501 • (541) 245-4535 • fax (541) 776-0443  
Willamette Valley Office • 388 State Street, Suite 604 • Salem, OR 97301 • (503) 371-7261 • fax (503) 371-7596  
Lane County Office • 120 West Broadway • Eugene, OR 97401 • (541) 431-7059 • fax (541) 431-7078

*McLean*

*Amendment #2*

December 13, 2001

Metro Council  
600 NE Grand Avenue  
Portland, OR 97232

Re: Ordinance No. 01-925B

Dear Council Members:

1000 Friends of Oregon supports Ordinance No. 01-925B, with one recommended change. In section 3.07.890, we request that you add back the language that is currently shown as deleted. That language reads as follows:

"Metro shall facilitate citizen involvement in compliance review. Metro shall provide widespread public notice of Metro review of city and county comprehensive plans and land use regulations for compliance with functional plan requirements. Metro shall maintain a list of person who request notice of reviews and copies of requests and orders and shall send requested documents ad provided in this chapter. "

Without this language, the code will contain no provision that requires public notice of matters relating to functional plan compliance, extensions, exemptions, and amendments. While the proposed language provides that citizens may communicate to Metro about functional plan matters, they have no way knowing when those matters are before Metro or the substance of those matters. It is a hollow right to communicate if no information is provided. We wonder if input has been solicited on this section from your citizen involvement committee.

With this amendment, we support the proposed ordinance. Thank you for consideration of our views.

Sincerely,

*Mary Kyle McCurdy*

Mary Kyle McCurdy  
Staff Attorney  
Urban Program





METRO

December 13, 2001

The Honorable David Bragdon  
Presiding Officer, Metro Council  
600 NE Grand Avenue  
Portland, OR 97232-2736

Dear Presiding Officer Bragdon:

At the Metro Policy Advisory Committee (MPAC) meeting held on December 12, the committee took the following action.

It was moved by Doug Neeley and seconded by Dan Saltzman that MPAC recommend adoption of Resolution 01-314A, for the purpose of establishing criteria to define, identify and approve a draft map of "significant" riparian areas and "regional" riparian areas. This includes option 6B; which is the option of the Basin Approach on Map #1, including all primary and secondary functional criteria. The motion passed unanimously.

Further, the committee is interested in including upland areas in the ESEE analysis and program development, and will have a recommendation in January, 2002.


Also, the committee took action to recommend adoption of Ordinance 01-929, for the purpose of amending the regional framework plan ordinance no. 97-715B, and Metro Code sections 3.01.010, 3.01.025, 3.01.030, 3.01.035, 3.01.040, 3.01.045, 3.01.050, 3.01.055, 3.01.060, 3.01.065 and 3.07.1120 and repealing Metro Code sections 3.01.037 and 3.01.075 to revise the scope and the criteria for quasi-judicial amendments to the urban growth boundary.

It was moved by Judi Hammerstad and seconded by Dan Saltzman that "land trades" be added back into minor adjustments. The motion passed unanimously.

It was moved by Dan Saltzman and seconded by Judie Hammerstad that the ordinance as amended be recommended for adoption by the Metro Council. The motion passed unanimously.

A copy of the MPAC minutes from December 12, 2001 will be submitted to the clerk of the council for inclusion in the record of the December 13, 2001 Metro Council Meeting. If there are any questions, do not hesitate to contact me.

Sincerely,

  
Cathy Kirchner  
Administrative Assistant  
MPAC Staff Support



Amendment No. 1  
Ordinance No. 01-929, Exhibit C  
**Delegation of Local Government Position**  
December 13, 2001

Amend section 3.01.025 to read as follows:

3.01.025 Major Amendment Procedures

- (a) A city, a county, a special district or a property owner may file an application for a major amendment to the UGB on a form provided for that purpose. The Executive Officer will accept applications for major amendments between February 1 and March 15 of each calendar year except [those] that calendar year[s] in which the Metro Council is [conducting] completing its five-year analysis of buildable land supply under ORS 197.299(1). After receipt of a complete application, the Executive Officer will set the matter for a public hearing and provide notice to the public in the manner set forth in sections 3.01.050 and 3.01.055.
- (b) The Executive Officer will determine whether the application is complete and notify the applicant of its determination within seven working days after the filing of an application. If the application is not complete, the applicant shall revise it to be complete within 14 days of notice of incompleteness from the Executive Officer. The Executive Officer will dismiss an application and return application fees if it does not receive a complete application within 14 days of its notice.
- (c) Upon a request by a Metro councilor and a finding of good cause, the Metro Council may, by a two-thirds vote of the full Council, waive the filing deadline for an application.
- (d) Except for that calendar year[s] in which the Metro Council is [conducting] completing its five-year analysis of buildable land supply, the Executive Officer shall give notice of the March 15 deadline for acceptance of applications for major amendments not less than 120 calendar days before the deadline and again 90 calendar days before the deadline in a newspaper of general circulation in the district and in writing to each city and county in the district. A copy of the notice shall be mailed not less than 90 calendar days before the deadline to anyone who has requested notification. The notice shall explain the consequences of failure to file before the deadline and shall specify the Metro representative from whom additional information may be obtained.
- (e) The Executive Officer shall submit a report and recommendation on the application to the hearings officer not less than 21 calendar days before the hearing. The Executive Officer shall send a copy of the report and recommendation simultaneously to the applicant and others who have requested copies. Any subsequent report by the Executive Officer to be used at the hearing shall be available at least seven days prior to the hearing.



- (f) An applicant shall provide a list of names and addresses of property owners for notification purposes, consistent with section 3.01.055, when submitting an application. The list shall be certified in one of the following ways:
- (1) By a title company as a true and accurate list of property owners as of a specified date; or
  - (2) By a county assessor, or designate, pledging that the list is a true and accurate list of property owners as of a specified date; or
  - (3) By the applicant affirming that the list is a true and accurate list as of a specified date.
- (g) An applicant may request postponement of the hearing to consider the application within 90 days after filing of the application. The Executive Officer may postpone the hearing for no more than 90 days. If the Executive Officer receives no request for rescheduling within 90 days after the request for postponement, the application shall be considered withdrawn and the Executive Officer shall return the portion of the fee deposit not required for costs assessed pursuant to 3.01.045.
- (h) Position of City or County:
- (1) Except as provided in [subsection] paragraph (4) of this section, an application shall not be considered complete unless it includes a written statement by the governing body of each city or county with land use jurisdiction over the area included in the application that:
    - (A) Recommends approval of the application;
    - (B) Recommends denial of the application; or
    - (C) Makes no recommendation on the application.
  - (2) Except as provided in paragraph (4) of this subsection, an application shall not be considered complete unless it includes a written statement by any special district that has an agreement with the governing body of any city or county with land use jurisdiction over the area included in the application to provide an urban service to the area that:
    - (A) Recommends approval of the application;
    - (B) Recommends denial of the application; or
    - (C) Makes no recommendation on the application.
  - (3) If a city, county or special district holds a public hearing to consider an application, it shall:



- (A) Provide notice of such hearing to the Executive Officer and any city or county whose municipal boundary or urban planning area boundary abuts the area; and
  - (B) Provide the Executive Officer with a list of the names and addresses of persons testifying at the hearing and copies of any exhibits or written testimony submitted for the hearing.
- (4) Upon request by an applicant, the Executive Officer shall waive the requirements of subsections (1) and (2) of this section if the applicant shows that the local government has a policy not to comment on such applications or that a request for comment was filed with the local government or special district at least 120 calendar days before the request and the local government or special district has not yet adopted a position on the application. The governing body of a local government may delegate the decisions described in paragraphs (1) and (2) of this subsection to its staff.
- (i) Applications involving land outside district boundary:
  - (1) An application to expand the UGB to include land outside the district shall not be accepted unless accompanied by a copy of a petition for annexation to the district.
  - (2) A city or county may approve a plan or zone change to implement the proposed amendment prior to a change in the district UGB if:
    - (A) The Executive Officer receives notice of the local action;
    - (B) The local action is contingent upon subsequent action by the Metro Council to amend its UGB; and
    - (C) The local action to amend the local plan or zoning map becomes effective only if the Metro Council amends the UGB consistent with the local action.
  - (3) If the Metro Council approves the application, the local government shall amend its plan or map within one year to be consistent with the amendment.
- (j) The proposed amendment to the UGB shall include the entire right-of-way of an adjacent street to ensure that public facilities and services can be provided to the subject property by the appropriate local government or service district in a timely and efficient manner.





# Home Builders Association of Metropolitan Portland

*"Striving for Affordability, Balance and Choice"*

December 13, 2001

The Honorable David Bragdon  
Metro Council  
600 NE Grand Ave.  
Portland, OR 97232

**RE: Draft Ordinance 01-929 Revise Scope and Criteria for Quasi-Judicial Amendments to the Urban Growth Boundary**

Dear Presiding Officer Bragdon and Councilors:

Our organization strongly opposes the above referenced draft ordinance, which would, if adopted, make significant changes to the Metro code concerning procedures and standards for expansion of the urban growth boundary.

Perhaps the most significant amendment contained within the ordinance is a move to completely abolish any method for quasi-judicial expansions having to do with housing. If adopted, the only possible method for such expansions would be through the legislative review that occurs every five years.

Mr. Benner's memo of November 19<sup>th</sup> justifies this change on the premise that "given Metro's statutory responsibility to ensure that the UGB has a 20-year supply of buildable land at the completion of each five-year review, there is generally no need to add land between five-year cycles."

Such an assumption would only be true, however, if one believes not only that every Metro Council will do a perfect job in its analyses every five years—being 100% correct in all population and economic projections, anticipating all possible circumstances and factors that might impact supply and demand, and designating all the right parcels for any expansions—but also that LUBA and the appellate courts will agree on every point in every case, and will never remand or reverse any future Metro UGB decision.

If one does not subscribe to the above theory of Metro being an omniscient all-knowing entity, then there must be an alternative process to allow possible expansions as a backup for unanticipated circumstances, decisions that are overruled by the courts, or—perhaps most importantly—to allow for unique and imaginative housing development proposals. Why would Metro adopt a policy that completely closes the door on property owners and entrepreneurs to make the case—completely at their own risk and expense—that other lands, facts, or situations might be reasonable?



Unfortunately, there is no caselaw by Oregon courts specifically addressing the authority of Metro or other local governing bodies to refuse consideration of quasi-judicial land use applications. This absence of judicial direction is undoubtedly because for a quarter century such an idea has never occurred to any local government. Metro would become the first jurisdiction to bar access by individual applicants to the decision making process; it will unquestionably be a radical departure from accepted practice and from the common understanding of the system by all participants, including the Oregon legislature.

The legislature has specifically recognized the authority of local governments to decline to act on applications only for a specific category of legislative amendments, i.e., those which are not necessary to address the requirements of a new or amended goal, rule or statute [ORS 197.620(2)]. The clear import of this language is that the legislature has not authorized Metro or other local governments to decline action on applications that are (a) necessary to address such requirements, or (b) are quasi-judicial and therefore not legislative.

The Oregon legislature has created standards and procedures for post-acknowledgement plan amendments (PAPAs) outside of periodic review, including exceptions and expansions of urban growth boundaries. Under the Due Process clauses of the Fifth and Fourteenth Amendments to the United States Constitution, property owners have due process property and liberty interests in timely access to these procedures as well as to the application of the standards. They are therefore entitled to have the applicable standards applied in a quasi-judicial proceeding.

One of the crucial elements that are "due" in a "due" process proceeding is timeliness. Justice delayed is justice denied, and courts throughout the land have long found implicit in due process a requirement that such decisions not be unreasonably or arbitrarily delayed, much less altogether denied.

Entirely apart from constitutional considerations, the requirement of meaningful and timely availability of these procedures is implicit, if not explicit, in the framework of state statutes, goals, and rules within which Metro carries out its land use responsibilities.

A determination by Metro to deprive Metro property owners and residents of access to standards and procedures provided by state law throughout the rest of the state arbitrarily denies Metro property owners and residents of privileges available under state law to those in the rest of the state, in violation of the Equal Protection Clause of the 14th Amendment to the United States Constitution and in violation of the equal privileges and immunities clause of Article I, Section 20 of the Oregon Constitution.

The Oregon Legislature has also legislatively determined that Metro has obligations to maintain adequate supplies of urban lands to meet current and future needs as determined under state statutes such as ORS 197.299 et seq, and Goals 8, 9, 10, and 14. The statutes governing many of these obligations, including the 20-year housing supply statute, and meeting deadlines established by other statutes and rules, such as the transportation planning rule, do not allow Metro to delay meeting its obligations until completion of the next periodic review. Nor do they allow Metro to wait until the end of periodic review to correct errors in its efforts to comply with those statutes. (See ORS 20-year land supply deadlines at ORS 197.299, et seq., corrective



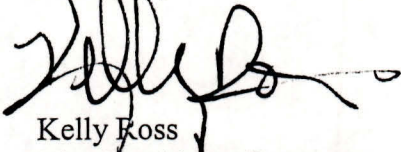
action deadline at ORS 197.302(2), manufactured housing deadlines at ORS 197.480, et seq., moratorium duration deadlines at ORS 197.520(4) and 197.530, and new rule implementation requirements, including remedy of enforcement action, at ORS 197.646). The current situation, in which Metro is out of compliance with its own current 20-year urban growth needs determinations and has found itself unable to come into compliance in a timely manner, illustrates the problem.

A logical question to ask in response to such a drastic and unprecedented change as that contained in the proposed ordinance, is why? What's the problem that needs to be fixed? There have been very few of these types of applications, and to my knowledge, relatively little controversy. Why the need to completely abolish them?

It certainly seems completely contradictory for Metro to with one hand carry the banner for citizen involvement, while the other hand keeps its property owning citizens from any self-initiated involvement in one of the most important areas of your jurisdiction.

We urge Metro to recognize that the proposed ordinance is clearly the wrong direction to take the regional land use planning program.

Sincerely,



Kelly Ross  
Vice President, Government Affairs

cc: Bill Blosser, Oregon Department of Land Conservation & Development  
Bob Repine, Oregon Department of Housing & Community Development  
Jon Chandler, Oregon Building Industry Association  
Cindy Catto, Associated General Contractors  
Jane Leo, Portland Metropolitan Association of Realtors®  
Robin White, CREEC  
Betty Atteberry, Westside Economic Alliance





## Home Builders Association of Metropolitan Portland

*faxed*  
*cc: Council*

December 12, 2001

The Honorable Lisa Naito, Chair  
Metro Policy Advisory Committee  
600 NE Grand Ave.  
Portland, OR 97232

**RE: Draft Ordinance 01-929 Revise Scope and Criteria for Quasi-Judicial Amendments to the Urban Growth Boundary**

Dear Chair Naito and Committee members:

As stated previously in my November 27<sup>th</sup> letter to you, we continue to have very strong objections to the above referenced draft ordinance, which would if adopted, completely abolish any method for quasi-judicial UGB expansions having to do with housing. The only possible method for such expansions would be through the legislative review that occurs every five years (according to the amended language in section 1.9.3—page 66A of your meeting packet—concerning the definition of a major amendment, not even the Council itself would have the ability to initiate a change outside the five-year review).

Unfortunately, there is no caselaw by Oregon courts specifically addressing the authority of Metro or other local governing bodies to refuse consideration of quasi-judicial land use applications. This absence of judicial direction is undoubtedly because for a quarter century such an idea has never occurred to any local government. Metro would become the first jurisdiction to bar access by individual applicants to the decision making process; it will unquestionably be a radical departure from accepted practice and from the common understanding of the system by all participants, including the Oregon legislature.

The legislature has specifically recognized the authority of local governments to decline to act on applications only for a specific category of legislative amendments, i.e., those which are not necessary to address the requirements of a new or amended goal, rule or statute [ORS 197.620(2)]. The clear import of this language is that the legislature has not authorized Metro or other local governments to decline action on applications that are (a) necessary to address such requirements, or (b) are quasi-judicial and therefore not legislative.

Under the Due Process clauses of the Fifth and Fourteenth Amendments to the United States Constitution, property owners have due process property and liberty interests in timely access to these procedures as well as to the application of the standards. They are therefore entitled to have the applicable standards applied in a quasi-judicial proceeding.



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One of the crucial elements that are "due" in a "due" process proceeding is timeliness. Justice delayed is justice denied, and courts throughout the land have long found implicit in due process a requirement that such decisions not be unreasonably or arbitrarily delayed, much less altogether denied.

Entirely apart from constitutional considerations, the requirement of meaningful and timely availability of these procedures is implicit, if not explicit, in the framework of state statutes, goals, and rules within which Metro carries out its land use responsibilities.

A logical question to ask in response to such a drastic and unprecedented change as that contained in the proposed ordinance, is why? What's the problem that needs to be fixed? There have been very few of these types of applications, and to my knowledge, relatively little controversy. Why the need to completely abolish them?

It seems completely contradictory for Metro to, with one hand carry the banner for citizen involvement, while the other hand keeps its property owning citizens from any self-initiated involvement in one of the most important areas of your jurisdiction.

We urge MPAC to recommend that the proposed ordinance be amended to allow quasi-judicial applications for housing related UGB expansions.

Sincerely,

Kelly Ross  
Vice President, Government Affairs



**William C. Cox** attorney at law

*Land Use and Development Consultation*

Gary P. Shepherd  
Of Counsel  
(503) 233-1985

December 13, 2001

Metro Council  
c/o Presiding Officer Bragdon  
600 N.E. Grand Avenue  
Portland, Oregon 97232

Re: Elimination of Quasi-Judicial Access to Council,  
Ordinance No. 01-929

Dear Metro Councilors,

I am appearing before you as the 2001-2002 Chairperson of the Home Builders Association of Metropolitan Portland, Government Affairs and Legal Action Committee. In that capacity I request you not adopt the proposed ordinance. It unnecessarily limits the existing right of a citizen to request a quasi-judicial amendment to or locational adjustment of the Metro Urban Growth Boundary (UGB) if that request deals with housing, industrial, churches, or private school land. Such an ordinance violates not only State Land Use Planning Goal 1, but also tramples on the U.S. and Oregon Constitutions.

**The First Amendment to the U.S. Constitution** states:

*"Congress shall make no law* respecting and establishment of religion, or prohibiting the free exercise thereof; or *abridging* the freedom of speech, or of the press; or *the right of the people* to peaceably assemble, and *to petition the Government for a redress of grievances.*"

Emphasis Added

**The Fourteenth Amendment to the U.S. Constitution** makes the First Amendment applicable to what is being proposed when it states:

*"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."*

Emphasis Added



What is the rational behind allowing only publicly owned entities and services, such as public schools, public utilities, public facility lines the legal protections of a quasi judicial process while private entities are being denied those protections? A law should not discriminate against people, entities or service providers based upon whether that entity is publicly or privately owned. That is not equal protection of the laws.

**Oregon Constitution, Bill of Rights, Section 1** states:

"We declare that all men, when they form a social compact are equal in right: that all power is inherent in the people, an all free governments are founded on the authority, and instituted for the peace, safety, and happiness; and *they have at all times a right to alter, reform or abolish the government in such manner as they may think proper.*"

Emphasis Added

The proposed ordinance eliminates a person's right to "**at all times**" alter or reform the laws with which she disagrees.

**Oregon Constitution, Bill of Rights, Section 10** holds that:

"No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay, and *every man shall have remedy by due course of law for injury done him in his person, property or reputation.*"

Emphasis Added

The removal of a property owner's right to petition Metro for redress is in effect the limiting of that person's freedom of speech. The forcing of every boundary alteration concerning housing, industrial, private school and church land into a legislative process removes a remedy which incorporates due process protections.

**Oregon Constitution, Bill of Rights, Section 8** states:

"No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write or print freely on any subject whatever; but every person shall be responsible for the abuse of this right."

Limitation of the right to redress limits free expression of opinion and restricts individual land owners' right to speak, write, and express opinions freely.



## **Proposed Ordinance Not in Accord with Citizen Involvement Goal**

Elimination of a persons right to a quasi judicial proceeding fails to follow the intent and letter of Statewide Planning Goal 1, "Citizen Involvement", which states in pertinent part:

"Federal, State and regional agencies, and special purpose districts shall coordinate their planning efforts with the affected governing bodies and make use of existing local citizen involvement programs established by counties and cities."

Local governments allow quasi judicial actions regarding comprehensive plan and code changes. Metro is mandated to make use of existing local citizen involvement programs. A person will have her local right to apply for a quasi judicial amendment to a local comprehensive plan rendered a nullity if that application involves moving the Metro UGB. She will be prohibited from exercising a right granted by the local government because she will be unable to get quasi-judicial approval from Metro.

**Goal 1, Section 1: "Citizen Involvement--To provide for widespread citizen involvement"** states in part:

"The citizen involvement program shall involve a cross-section of affected citizens in all phases of the planning process."

The right to seek quasi-judicial amendments has long been a key phase in the planning process. To eliminate it will violate the intent of Goal 1 which is to provide widespread citizen involvement in "all phases of the planning process."

**Goal 1, Section 2 "Communication-To assure effective two way communication with citizens"** states:

Mechanisms shall be established  
which provide for effective communication between citizens  
and elected and appointed officials."

How does elimination of the quasi judicial process implement that provision? It doesn't. In fact it completely eliminates a process which allows individuals to contest what they may feel are faulty conclusions, reached by biased fact finding and skewed statistics, supported only by junk science. The due process and administrative law contested case protections mandating factual findings, supported by substantial evidence, arrived at after implementing procedural safeguards, presently found in quasi-judicial proceedings, will not be afforded by the proposed ordinance.



Goal 1, Section 5, **Feedback Mechanisms**-*To assure that citizens will receive a response from policy makers.*" states in part:

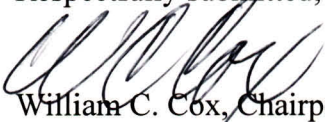
"The rationale used to reach land use policy decisions shall be available in the form of a written record".

First, my committee has yet to hear or read the true rationale for the proposed ordinance. To say that such an ordinance improves citizen participation fails to recognize the number of property owners who are being denied access to a system with the protections afforded in a quasi-judicial process. To deny the individual access to the system because some decisions made during previous quasi-judicial hearings have been overruled on appeal rewards those groups who have threatened to appeal all approved efforts to expand the UGB. To eliminate the right to apply for redress based upon threats by opponents of growth permitting decisions results in not only giving in to zealotry but violates the equal protection clauses of U.S. and Oregon Constitutions.

Second, the Goal 1 contemplated feedback mechanism is not assured in a solely legislative system. The rules regarding findings and the evidence to support those findings are greatly relaxed and more unfettered discretion is given the decision maker. That result may be fine as long as the decision maker's biases favor your position. Since this Ordinance will outlive your tenure on this Council are you sure you can trust your successors to have the same philosophies as yours. We need to open the decision making process to the public, not create impediments to selected forms of participation.

On behalf of the 25,000 plus Metro residents who are associated with the Metro Portland Home Builders Association, I respectfully request that you not adopt this ordinance. Let the property owners who feel their land will assist in meeting housing and industrial demand, and private school and private utility and facility needs have their day in court. To do otherwise is a violation of the rights given them by Federal and State Constitutional provisions and Statewide Land Use Goals and Guidelines.

Respectfully submitted,



William C. Cox, Chairperson

Government Affairs and Legal Action Committee

Home Builder's Association of Metropolitan Portland

WCC/abh





# Oregon

John A. Kitzhaber, M.D., Governor

## Department of Land Conservation & Development

800 NE Oregon St. # 18  
Portland, OR 97232  
(503) 731-4065  
FAX (503) 731-4068

December 13, 2001

Councilor David Bragdon,  
Presiding Officer  
METRO Council  
600 NE Grand Avenue  
Portland, OR 97210

SUBJECT: Public Hearing and Consideration/Major, Minor UGB Amendment  
METRO Code Amendments to Sections 3.01 and 3.07  
METRO ORDINANCE No. 01-929  
DLCD File No. METRO 007-01

Dear Councilor Bragdon:

The Oregon Department of Land Conservation and Development (DLCD) appreciates the opportunity to comment on the above proposal amending the Regional Framework Plan and Title 3 of the METRO Code. We respectfully request that this letter become part of the official record for the above proceedings.

We have reviewed the November 15, 2001 version of Ord. 01-929 and its exhibits; as well as the December 5 amendments thereto. We *support* the proposed changes for several reasons.

First, good common sense indicates that there should indeed be convergence between the analysis performed every five years under the statute requiring METRO to re-evaluate housing lands in relation to the UGB (ORS 197.299) AND the buildable lands inventory mandated in ORS 197.296(4) during METRO's periodic review cycle. Periodic review is THE appropriate vehicle in which to fulfill mandated analysis and every five years is THE appropriate time period.

Second, the amendments greatly clarify the role of the legislative process in UGB expansion decision-making. Earlier this year, the Department was



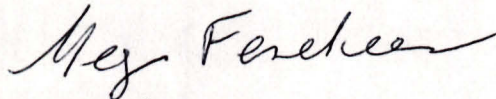


Third, our understanding of the statute indicates that METRO Council should be identifying those needs on a regional basis and such actions to expand on a subregional basis are clearly subordinate to the overall regional need. That is to say, *subregional analysis is can only be conducted after the regional need and potential expansion areas have been established in compliance with Statewide Planning Goals and the statutes.* Therefore, to allow piecemeal quasi-judicial amendments, excepting those for the limited land uses outlined in your proposed code amendments, outside of the five year periodic review cycle is not conducive to understanding the bigger picture of residential need and supply. It gives an unfair advantage to applicants seeking residential land development outside of UGBs, because it essentially becomes a "first-come, first served" process.

The Department appreciates Council's intent and effort to correct what is at minimum, a confusing set of METRO code provisions for quasi-judicial amendments. The addition of specific criteria under which to evaluate such proposals is particularly noteworthy

The Department therefore recommends that the METRO Council adopt No. 01-929 in its entirety as proposed by staff. We further appreciate your careful consideration of our comments.

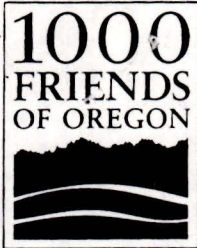
Sincerely yours,



Meg Fernekees  
Portland Metro Area Regional Representative

cc: Jim Hinman, Urban Planning Coordinator, DLCD Salem  
Richard P. Benner, Office of General Counsel





121301C-10

534 SW Third Avenue, Suite 300 • Portland, OR 97204 • (503) 497-1000 • fax (503) 223-0073 • [www.friends.org](http://www.friends.org)  
Southern Oregon Office • 33 North Central Avenue, Rm. 429 • Medford, OR 97501 • (541) 245-4535 • fax (541) 776-0443  
Willamette Valley Office • 388 State Street, Suite 604 • Salem, OR 97301 • (503) 371-7261 • fax (503) 371-7596  
Lane County Office • 120 West Broadway • Eugene, OR 97401 • (541) 431-7059 • fax (541) 431-7078

December 13, 2001

Metro Council  
600 NE Grand Avenue  
Portland, OR 97232

Re: Ordinance No. 01-929

Dear Council Members:

1000 Friends of Oregon strongly supports Ordinance No. 01-929, regarding procedures for amending the urban growth boundary. The proposed revisions to Metro's Code are consistent with recommendations we have made for years, including in comments on the periodic review of Metro's regional Framework Plan.

These revisions do several things. First, they make a cumbersome code much more clear and concise. Second, it makes a clear delineation between the types of UGB amendments that Metro will consider, eliminating overlap and confusion in the current Code. Most importantly, it identifies the purpose of the major amendment process.

Metro is required to conduct a major, legislative review of its UGB every 5 years, and ensure at that time that there is a 20-year supply of land. Five years is a quick time period, and as we have seen, goes by quite quickly due to the extensive and comprehensive analysis that staff must do under state law. Every bit of those five years is needed to make a UGB decision that is supportable by both data and policy debate. Other than the items described in (a), such as public school facilities, there should be no need for interim, quasi-judicial expansions of the UGB to meet the general category of housing need, and to which we would add, retail need. The current five-year cycle is sufficient.

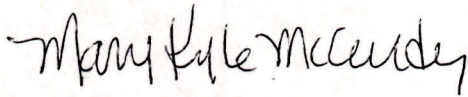
We believe that under state law, it would be extremely difficult for a residential or retail use to show that it must be accommodated at times in between the five-years cycle – i.e., that there exist a need. For example, in year 1, a 20-year land supply is established for residential needs. In year 3, there is still approximately a 17-year supply left. The applicant would not be able to show need, so why should the Code leave open a window for something that in all likelihood cannot meet state law. It simply creates false expectations and drains staff time that should be spent on the long-range analysis required for the 5-year, legislative review. And, as we have also seen, these applications for UGB



expansions for general residential use, and I think the same would be true for a general retail use, end up taking in the neighborhood of a year or more to process.

We urge you to adopt Ordinance No. 01-929 as proposed. Thank you for consideration of our comments.

Sincerely,

A handwritten signature in cursive script that reads "Mary Kyle McCurdy".

Mary Kyle McCurdy  
Staff Attorney  
Urban Program



**From:** Richard Benner  
**To:** Christina Billington  
**Date:** 12/11/01 3:57PM  
**Subject:** Ordinance 929

12/11/01

Here is Exhibit L, part of Ordinance No. 929. It is the findings of fact and conclusions of law that the Council must adopt at the time it adopts the whole ordinance.

There has been no public hearing on the ordinance yet. That will happen on Thursday, December 13, at the close of which the Council may adopt. The testimony may affect the findings. I may be able to adjust the findings at the meeting so the Council can adopt the findings, too. If not, the council can delay final action until it adopts revised findings at a later meeting.

**CC:** Dan Cooper





**Department of Community  
& Economic Development**  
Comprehensive Planning • Transportation Planning  
Community Revitalization

December 4, 2001

Chair Rod Park and  
Members of the Community Planning Committee  
C/O Brenda Bernards, Senior Regional Planner  
METRO  
600 NE Grand Avenue  
Portland, OR 97232

*Res No. 01-31234*

**Re: Impact Analysis Associated with Extension Request to Comply with Remaining Functional Plan Requirements**

### **INTRODUCTION**

This letter is submitted to support of the City of Gresham's request for an extension to comply with remaining Metro Functional Plan Requirements. We appreciate the Committee's positive acknowledgement of Gresham's accomplishments in implementing Metro 2040. We hope to comply with the few remaining Functional Plan requirements by according to the schedule appended to pending Metro Resolution No. 01-3123.

Gresham is well aware of the importance of completing this important part of region's planning strategy. The City was well on our way its way to comply with all of the Functional Plan requirements until the passage of Measure 7. We hope that Metro, in conjunction with its regional partners and others, can provide answers to important Measure 7 issues within the near future.

### **IMPACT ANALYSIS DISCUSSION**

The following "Impact Analysis" is provided to augment the previously submitted Functional Plan Compliance Work Program. It illustrates that no impacts of any significance have occurred as a result of Gresham's time extension request. Also, it projects that no impacts are likely to occur because of the City's past experience. Furthermore, it is the City's intent to not take actions in this interim period inconsistent with Metro Functional Plan requirements and will coordinate in this regard with Metro staff.

A narrative follows that explains:

- None or an insignificant amount of regional resources such as employment lands or water quality areas have been or will be compromised by the City's request for extension.



- The City will request an extension to Title 2 Provisions, which require that minimum parking standards be adopted to allow only one space for detached single family residential units, and
- It is unlikely that no negative impacts have or will occur on a local level as a result of the City's compliance status. In this regard, there have not been nor will be impacts to the City's ability to provide for efficient and safe transportation.

Attachment "A" provides a summary of the City's Functional Plan compliance to date. It also summarizes elements, which are outstanding

### **Impact Assessment of Delayed Compliance with the Metro Functional Plan.**

**Title 2: Parking Standards:** Gresham's remaining requirements under this Title include implementing a parking data collection system and requesting an exception to parking standards for single-family homes to allow two spaces instead of one.

Parking Data Collection System: Gresham has developed a parking data collection that can be implemented by December 31, 2001. This matter is a data collection and management effort and as such does not have specific land use impacts.

Conclusion: There are no impacts associated with the City implementing the Parking Data Collection System by December 31, 2001.

Exception to Parking Standards: Gresham will request an exception in the near future to the Title 2 Requirements which prescribe a minimum parking requirement of one space for single-family detached units. The City feels, because of Gresham's suburban context, that the application of this standard would have significant negative impacts and not achieve the Title's intent. In particular, it must be pointed out that Gresham residents' must drive to their jobs further than residents of any other jurisdiction in the region. Gresham has not achieved the compact urban form that makes widespread transit use practical or provides the close-to-home employment opportunities. Furthermore, like the rest of nation, Gresham has a very high proportion of two wage-earner households. Two cars are a necessary fact of life in this context.

Until the City achieves a compact urban form and close-to-home jobs opportunities that make it feasible to reduce car ownership it must respond to the need to provide off-street parking for two cars. The City proposes to accomplish this objective by allowing driveway space to serve as the second parking spot.

This will accomplish a number of site and architectural design and water-quality objectives as well ensuring mobility for Gresham residents. Also, it will ensure flexibility in street design by reducing the need for and prevalence of on-street parking.



Currently the City is taking a different approach to minimizing the impact of the automobile on the urban form. The City, recognizing the need to adopt strategies to increase its overall housing density has responded by:

- Adopting a property tax exemption for new transit oriented multiple-unit housing or mixed development as authorized by state statute, and
- Allowing single-family attached dwellings in all of the districts that allow residential development.
- Allowing a mix of housing types in the LDR zone in any partition or subdivision including two-unit attached and single-family attached housing.

This action allows for the development of housing types that have a lower parking requirement and typically a lower trip generation than the prototypical single-family detached home. Also, attached units lower the practicality to multiple vehicle ownership because of constrained space.

Within the last three years 282 of these units have been built compared to 829 single family detached units. Attached units comprise about 21 percent of total single-family construction in the City.<sup>1</sup> More of these units are anticipated, due to their relative low cost when compared to detached single-family homes.

Conclusion: The application of a minimum one off-street parking space per single-family unit is not practicable within Gresham's jobs / housing context. An exception will be filed to illustrate that imposition of this standard will not serve to implement the objectives of Title 2 of the Metro Functional Plan with Gresham. Standards of this kind are much more effective within a much more compact urban area.

Gresham's other actions to increase the range of housing opportunities in Low-Density-Residential Neighborhoods will ultimately be effective in meeting the intent of the Title. Furthermore, allowing driveway space and/or garage space (including tandem parking) as useable off-street parking area is a common-sense approach to addressing a recognized community need. Frankly, driveways and/garages will be built anyway. They should be recognized for the purpose which they are intended

**Title 3: Water Quality Standards:** Gresham has completed three out four requirements of this Title – floodplain, erosion control, and the Water Quality Resource Area Overlay District.

The outstanding Functional Plan element is the Water Quality Standards. However, the effect of not having the standards in place has been very minimal.

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<sup>1</sup> City of Gresham Building Permit Records



Review of building and development permit data indicated that the occurrence of new development has impacted little more than one-half of Title 3 area acre out of a total resource area of approximately 1,000 acres.<sup>2</sup> This includes two projects that were approved in the last year including Deer Glen Subdivision (SD/PUD/NR/TR99-3429) and Highland Run Condominiums #2 (MIS01-22).

Conclusion: Impacts on the Title 3 water quality resources have been negligible as a result of the City's request to extend its deadline for compliance with this Functional Plan Title. Also, there are no approved or pending projects that might affect the resource.

**Title 4: Retail Uses in Employment Areas:** Within the last year, there has been no permits issued for retail development in the City's employment areas.<sup>3</sup> Currently, there are no development projects in the development or building permit pipeline that could affect this resource.

Conclusion: There have been no impacts on designated employment area resources resulting from Gresham's request to extend the compliance deadline for Title 4. Also, there are no approved or pending projects that might affect this resource.

**Title 5: Neighboring Cities and Urban Reserves:** Gresham intends to be a signatory. Requires the City to be a signatory to the Clackamas / Multnomah Counties' IGA to maintain a green corridor between Gresham and Sandy.

Multnomah and Clackamas Counties regulate land use activity within the unincorporated "Green Corridor between Gresham and Sandy. The City's request to extend its Functional Plan compliance does not negatively impact affect the Counties' application of relevant land use codes to maintain the rural character of the subject area thus providing for separation between urbanized areas.

Conclusion: No impacts have resulted or will result from the City's request to extend it's the date to comply with this Functional Plan Title.

**Title 6: Regional Accessibility:** The City has requested an extension to adopted its Transportation System Plan and associated Regional Street Design and Connectivity Standards. The Transportation System Plan is scheduled for Council adoption in February 2002.

The City is currently completing the necessary land use code amendments to address Metro street connectivity and the associated regional street design standards.

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<sup>2</sup> City of Gresham Planning Files and Building Permit Records

<sup>3</sup> City of Gresham Building and Development Permit Records



The City's request to extend its Functional Plan compliance deadline has not resulted in impacts on either the regional transportation network or the ability of the local street system to accommodate transportation needs. The system's capacity has been maintained by the application of specific standards within its current Community Development Code. For example, Gresham's regulations require new development to mitigate transportation impacts to ensure a level of service (LOS) standard of "D" or better.<sup>4</sup> Development regulations also ensure that traffic impact assessments are conducted and the full range of alternative transportation modes are addressed in the planning and development review process.

The Community Development Code also requires future street plans in Section 9.0700, Neighborhood Circulation and Future Street Plans to ensure connectivity and that specific street design requirements are met.

A review of land use permits approved during last year shows that connectivity for both local and major streets has been maintained and enhanced and no connectivity opportunities have been lost. The City's development standards ensure that future development will prevent safe and efficient access to adjacent and proximate developable lands.

Conclusion: No impacts to the local or regional transportation network have resulted from the City's request to extend the compliance deadline for this title.

**Title 8: Compliance Procedures; Public Facility Plans:** This item does not appear in Exhibit A of Resolution No. 01-3123. However it has been the subject of discussion between City and Metro staff. Therefore, to avoid future confusion the following discussion is provided.

Previous communication between the City and Metro regarding this Title have focused on the need for the City to provide an adopted a public facility plan to illustrate that urban services can be provided to lands designated for urban development. The public facility plan must illustrate the type of services needed, general timing of their provision, general funding amounts and source of funding.

Gresham is currently undergoing Periodic Review of its Comprehensive Plan. One of the work tasks that must be addressed is preparing and adopting a public facilities plan. The City's Department of Environmental Services has, within the last five years, completed individual public facility plans for all of the City's major infrastructure elements. However, these plans have not been synthesized into a comprehensive document needed to meet the specific purpose of the Oregon Administrative Rules pertaining to public facility planning.

---

<sup>4</sup> Gresham Community Development Code



However, for all intents and purposes they ensure that the City has planned for public facilities and services needed to meet projected growth that might occur during a twenty-year planning period. In addition to specific projects and associated costs, the plans recommend, funding strategies and phasing. They also serve to inform the development review process, rate-setting policies and capital improvement program development and other budget planning efforts. It is important to stress, that no land use / development decisions have been occurred that resulted in development not being adequately served by public facilities. Furthermore, no development has been approved that forecloses the opportunity to provide services to proximate properties.

Gresham will, within short order, synthesize its existing individual public facilities plans and studies into a comprehensive public facility plan, which will meet the requirements of the appropriate administrative rules in OAR 660, Division 11. Concurrent with, or perhaps before this exercise, the City will make findings for Metro that the capacity and ability exists to provide services to existing and future City lands in the appropriate amount and at the time needed.

Conclusion: No impacts on region or at the local level have occurred as the result of the City's request for extension to this part of Title 8.

The following table summarizes the City's work program to accomplish the above tasks:

#### Functional Plan Compliance Work Program

Functional Plan Task	Planning. Commission Hearing Date	City Council Adoption
Title 2: Parking Data Collection System <sup>5</sup>	Not Applicable	Not Applicable
Title 2: Exception to Minimum Parking Standards for Single-Family Detached Dwellings	Planning Commission Action – March, 2002 <sup>6</sup>	Council Action – May, 2002
Title 3: Water Quality Standards	April, 2002	June, 2002
Title 4: Limit Retail Uses in Employment Zones	April, 2002	June, 2002
Title 5: Neighboring Cities and Urban Reserves	Not Applicable <sup>7</sup>	June 2002
Title 6: Regional Accessibility <ul style="list-style-type: none"><li>•Transportation System Plan</li><li>•Street Design and Connectivity Standards</li></ul>	January 2002 April 2002	February 2002 June 2002
Title 8: Compliance Procedures	April 2002	June 2002

<sup>5</sup> The Parking Data Monitoring and Collection system is currently in place and will be implemented December 21, 2001. This is an administrative procedure that does not require either Planning Commission or Council action.

<sup>6</sup> The act of requesting an exception to the requirements of a Functional Plan Title does not require legislative action on part of the City. Rather, the Planning Commission will make its recommendation followed by City Council action.

<sup>7</sup> This action requires City Council to authorize the Mayor to be signatory to an IGA. It does not require Planning Commission Action.



Page 7  
Rod Park / Brenda Bernards  
December 4, 2001

Thank you this opportunity to communicate that there are no, or at the most extremely limited impacts, of the City's request for extension of its Functional Plan Compliance dates.

Sincerely,

Ronald B. Bunch  
Principal Planner

Copy: file



## Attachment "A"

Table 1.

Functional Plan Title	Compliance		Meas. 7 Affected		Comments
	Yes	No	Yes	No	
<b>Title 1: Housing and Employment</b> Minimum Densities (Done) Partitioning Standards (Done) Access. Dwelling Units (Done) Map of Design Types (Done) Analysis Capacity (Done)	X			X	All elements have been complied with
<b>Title 2: Parking Standards</b> <u>Minimum/maximum</u> Variance Process (Done) Blended Rations (Done) <u>Parking Data (to be implemented)</u>	X	X		X	<b>Substantial Compliance Achieved</b> Exception need to limiting SF residential to 1 parking space. 2 will be requested. Parking data tracking function to be implemented ½
<b>Title 3: Water Quality</b> Floodplain Standards (Done) Erosion Control Standards (Done) Water Quality Resource Area Overlay District (Done) <u>Water Quality Standards</u>	X	X	X		<b>Substantial Compliance Achieved</b> Three out of four products have been completed. The remaining task is preparation of the water quality standards. Final adoption is pending resolution of Measure 7.
<b>Title 4: Retail in Industrial and Employment Areas</b> <u>Limit Retail in Employment/Industrial Districts</u>		X	X		<b>Staff Work Completed</b> Planning Commission has held the public hearing on proposed standards. Final Council action is pending resolution of Measure 7.
<b>Title 5: Neighboring Cities and Rural Reserves</b> <u>Separation of Cities</u>		X		X	Requires the City to be a signatory to the Clack./Mult. Co IGA to maintain a green corridor between Gresham and Sandy. The City is awaiting further direction from Metro.
<b>Title 6: Transportation</b> <u>Transportation System Plan</u> <u>Regional Street Design Standards</u> <u>Connectivity Standards</u>		X		X	<b>Hearings Pending</b> TSP adoption anticipated 12/01 Design and connectivity standards expected 6/02
<b>Title 8: Public Facilities and Services</b> <u>Findings necessary to show public facilities are or can be made available to support planned land uses.</u>		X			<b>Technical Work Completed</b> Department of Environmental Services has completed the required public facility plans.



Rod -

this changes the extension  
request for Lake Oswego ~~from~~  
for minimum densities  
from Dec 2001 to Feb 2002 due

to a lack of quorum at the

Planning Commission - The Planning  
Commission has dealt with & recommended  
approval but it will go to Council  
in Jan. rather than the original  
late November.

Do we need to amend the  
resolution again?

Brenda





Andy C. → Brenda

121301C-14  
**RECEIVED**  
DEC 11 2001

BY: \_\_\_\_\_  
DEC 10 2001

Res No.  
01-3123A

December 6, 2001

380 "A" AVENUE  
POST OFFICE BOX 369  
LAKE OSWEGO,  
OREGON 97034  
(503) 635-0213  
FAX (503) 697-6594  
MAYOR@ci.oswego.or.us

David Bragdon  
Presiding Officer  
Metro  
600 NE Grand Ave.  
Portland, OR 97232-2736

Dear David:

JUDIE HAMMERSTAD,  
MAYOR

I am writing to provide new information on the status of Lake Oswego's efforts to comply with Metro's Urban Growth Management Functional Plan. Specifically, I want to let you know that our schedule for the adoption of minimum density requirements (Title 1) will be delayed.

GAY GRAHAM,  
COUNCILOR

JACK HOFFMAN,  
COUNCILOR

We previously anticipated that our city's public hearings on minimum density would be concluded this month. However, a series of circumstances involving the scheduling of meetings has led to this delay. The Planning Commission was forced to postpone its consideration of this matter when it did not have a quorum for a scheduled meeting in November. I am glad to report that our Planning Commission was able to reschedule the matter and completed its public hearing later in the month. The Commission voted unanimously to recommend that our City Council enact the minimum density provisions. However, the delay at the Planning Commission level has caused us to delay City Council consideration until after the first of the year.

ELLIE McPEAK,  
COUNCILOR

KARL ROHDE,  
COUNCILOR

BILL SCHOEN,  
COUNCILOR

JOHN TURCHI,  
COUNCILOR

Our new City Council schedule for this matter includes a public work session on January 8, public hearing on January 15, and decision on February 5, 2002. That means that we will not have the minimum density provisions in place until March, 2002.

I want to reiterate that we are not receiving development applications for densities below 80 percent of the zoning maximum, so we do not expect this delay to have any effect on developments that may be proposed or approved during this interim period.



David Bragdon  
December 6, 2001  
Page 2

Please feel free to contact me or our Community Development Director, Stephan Lashbrook, if you have any questions about this information.

Sincerely,

A handwritten signature in cursive script that reads "Judie Hammerstad".

Judie Hammerstad  
Mayor

C:    City Council  
      Metro Council  
      Mike Burton, Metro Executive Officer  
      Doug Schmitz, City Manager  
      David Powell, City Attorney  
      Jane Heisler, Community Planning Manager  
      Stephan Lashbrook, Community Development Director



**Functional Plan Compliance Time Extensions For  
the Cities of Beaverton, Durham, Gladstone, Gresham,  
Lake Oswego, Milwaukie, Oregon City, Portland, Rivergrove,  
Tigard, West Linn, and Wilsonville and Clackamas County  
and Multnomah County**

Metro Code numbers are used to cite Functional Plan requirements with the applicable Functional Plan title following in parentheses (). The Table below identifies the Functional Plan Titles for reference.

Functional Plan Titles

Title 1	<i>Requirements for housing and employment accommodation</i>
Title 2	<i>Regional parking policy</i>
Title 3	<i>Water quality, flood management conservation</i>
Title 4	<i>Retail in employment and industrial areas</i>
Title 5	<i>Requirements for rural reserves and green corridors</i>
Title 6	<i>Regional accessibility</i>
Title 7	<i>Affordable housing</i>
Title 8	<i>Compliance procedures</i>

**Time Extensions to December 2001**

<u>Jurisdiction</u>	<u>Functional Plan Element</u>
Beaverton	Title 4 – Employment Area Retail Restrictions
Durham	Title 3 – All Elements
Gresham	Title 2 – System to Report Parking Data
Oregon City	Title 5 – Green Corridor Policy
Rivergrove	Title 3 – Water Quality and Erosion Control Standards

**Time Extensions Beyond December 2001**

Title 1

<u>Jurisdiction</u>	<u>Functional Plan Element</u>	<u>Time Extension Request</u>
Lake Oswego	Title 1 Minimum Densities	March 1, 2002
Oregon City	Minimum Densities	June 2002
	Accessory Dwelling Units	
	Design Type Boundaries	
	Capacity Analysis	
Wilsonville	Design Type Boundaries	September 2002
	Capacity Analysis	
Multnomah County	Minimum Densities	The County is signing IGA's with
	Partitioning Standards	Gresham and Troutdale and has
	Accessory Dwelling Units	signed an IGA with Portland. The
	Design Type Boundaries	County will come into compliance as
	Capacity Analysis	the IGA's are signed and as the
		County adopts the cities' codes.



**EXHIBIT A**  
**to Resolution 01-3123A**

Title 2

<u>Jurisdiction</u>	<u>Functional Plan Element</u>	<u>Time Extension Request</u>
Wilsonville	Amend Office Parking Maximum	February 2002
Multnomah County	Regional Parking Policy	The County is signing IGA's with Gresham and Troutdale and has signed an IGA with Portland. The County will come into compliance as the IGA's are signed and the County adopts the cities' codes.

Title 3

<u>Jurisdiction</u>	<u>Functional Plan Element</u>	<u>Time Extension Request</u>
Gladstone	Floodplain Management Water Quality Standards Erosion Control	June 2002
Gresham	Water Quality Standards	June 2002
Lake Oswego	Floodplain Management Water Quality Standards	March 2002 December 2002
Milwaukie	Floodplain Management Water Quality Standards	May 2002 October 2002
Portland	Water Quality Standards - Willamette River - Tributaries	April 2002 September 2002
Tigard	Floodplain Management Water Quality Standards	March 2002
West Linn	Water Quality Standards	December 2002
Clackamas County	Water Quality Standards	December 2002
Multnomah County	Floodplain Management Water Quality Standards Erosion Control	December 2002 The County will be in compliance with the urban areas once Portland and Gresham complete their work and the County signs IGA's with Gresham and Troutdale and adopts the cities' codes. The County has requested to June 2002 to complete the work for the rural areas within the Metro Boundary.



**EXHIBIT A**  
**to Resolution 01-3123A**

Title 4

<u>Jurisdiction</u>	<u>Functional Plan Element</u>	<u>Time Extension Request</u>
Gladstone	Employment Areas Retail Restrictions	June 2002
Gresham	Industrial and Employment Areas Retail Restrictions	June 2002
Oregon City	Employment Areas Retail Restrictions	March 2002
Multnomah County	Industrial and Employment Areas Retail Restrictions	The County will be in compliance once Gresham completes its work and the County adopts the cities' codes.

Title 5

<u>Jurisdiction</u>	<u>Functional Plan Element</u>	<u>Time Extension Request</u>
Gresham	Green Corridor Policy	June 2002
Wilsonville	Green Corridor Policy	September 2002
Multnomah County	Green Corridor Policy	The County will be in compliance for Green Corridors once Gresham completes its work and the County adopts the cities' codes.

Title 6

<u>Jurisdiction</u>	<u>Functional Plan Element</u>	<u>Time Extension Request</u>
Gresham	Street Design and Connectivity	June 2002
Wilsonville	Street Design and Connectivity	September 2002

BB

Council\Depts\Agendas\2001\CommunityPlanning\Nov 20 2001\01-3123 Ex A





## MULTNOMAH COUNTY OREGON

**BOARD OF COUNTY COMMISSIONERS**  
501 SE HAWTHORNE, SUITE 600  
PORTLAND, OREGON 97214  
(503) 988-3308

DIANE M. LINN • CHAIR  
MARIA ROJO DE STEFFEY • DISTRICT 1  
SERENA CRUZ • DISTRICT 2  
LISA NAITO • DISTRICT 3  
LONNIE ROBERTS • DISTRICT 4

December 13, 2001

Metro Council  
Metro Regional Center  
600 NE Grand Ave.  
Portland, OR 97232-2736

Subject: December 13, 2001 Agenda  
Lands to be evaluated for inclusion in Urban Growth Boundary (UGB)

Dear Council Members:

Thank you for the opportunity to participate in the discussion about how our region grows. Multnomah County is currently in the process of evaluating the same issue as we develop our first "West of Sandy River Rural Area Plan." It is as a result of our work in developing that new Plan that we write this letter.

The latest proposed study area map before you shows a very large area in red color south and southeast of the City of Gresham. That area of Multnomah County is "exception lands" that we are now looking at again twenty years later. We are finding changes in circumstances that prompt us to urge you to exclude those lands from the Metro study areas for expansion of the urban growth boundary until we complete our Rural Area Plan.

We began the West of Sandy River Rural Area Plan (WSRRAP) in 1998 and we expect completion of the Plan this coming spring. Key land use planning values of the County that shape this plan are preservation and protection of farm and nursery production, and support of the rural economy. It is a strong possibility that the end result of this planning process will be a reduction of the amount of land designated as "exception areas" and an increase in the amount of land zoned Exclusive Farm Use. Therefore, it should seem reasonable to exclude this area from the UGB expansion evaluations until after our planning for the area is completed.

Some of the reasons on which we base this request are:

- The West of Sandy area has the largest concentration of nursery farms in the County, and these farms make significant use of exception lands as well as EFU zoned land. The only difference between exception land and the high-value EFU farmland zoned EFU in this area being parcel size. The soils, crop production potential, and topography are generally the same in both the exception and EFU zoned areas.
- It was in 1977 that the County adopted zoning in this area to meet the requirements of the new statewide planning system, our first experience with 'exception' lands and 'resource' lands through the state acknowledgement process.



At that time we used a broad-brush approach to designate resource and exception lands by using a methodology that emphasized parcelization as a qualifier for a farming Goal Exception if there was relatively little high value farming activities occurring. However, in the intervening years high production and value nursery operations have moved into this area that are thriving on small parcels. As a point of emphasis, we have found there is sufficient production on parcels as small as one acre in size to make them viable as part of small or large nursery operations. With new technology, new methodology and new interest in nursery farming, this area has become a thriving part of our economy and Multnomah County is now responding by reevaluating the decisions made in 1977.

- We need to bring certainty to the farmers who are investing in infrastructure such as well drilling and other costs associated with their nursery operations. They need to know they are able to make these investments to keep their operations running without risk or threat of urbanization or loss of investment.
- We should recognize what brought these operations to this area in the first place: soil, climate, proximity to a labor force that lives close by in the urban areas, transportation infrastructure and others.
- We are the smallest county by land mass in the state, yet Multnomah County ranks 5th in the state of Oregon in value of farm production, and nursery stock accounts for a significant part of that total farm production. In fact, nursery stock is currently the most valuable farm commodity in the state and it is in the West of Sandy area where largest concentration of nursery farms in the County is found.

We respectfully request that you allow us to continue through our planning process and complete the West of Sandy River Rural Area Plan before any study or consideration be given to the area for urbanization. This 20 year land use and transportation plan, once completed, will allow the County to address the concerns we've raised here. The target date for completing the West of Sandy River Rural Area Plan is June 2002. Thank you in advance for your consideration.

Sincerely,



DIANE LINN  
Chair



MARIA ROJO DE STEFFY  
Commissioner, District 1



SERENA CRUZ  
Commissioner, District 2



LISA NAITO  
Commissioner, District 3



LONNIE ROBERTS  
Commissioner, District 4





**MULTNOMAH COUNTY**  
**LAND USE PLANNING DIVISION**  
1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233  
PH: 503-988-3043 FAX: 503-988-3389  
<http://www.co.multnomah.or.us/dscd/landuse>

121301C-16

01-3127B

December 4, 2001

Metro Council  
Metro Regional Center  
600 NE Grand Ave.  
Portland, OR 97232-2736

Subject: Urban Growth Boundary Study Areas

Dear Council Members:

Thank you for the opportunity to comment on the proposed Urban Growth Boundary study areas under consideration on December 13, 2001. We appreciate the difficult work the Metro Council has faced over the last few years trying to address the issue of how our region will grow. On behalf of the Multnomah County Planning Commission, we request that you eliminate the area East of Gresham (see attached map) from your consideration and allow the County time to complete an ongoing planning process without the threat of urbanization. This request will enable the planning staff, planning commission, and local citizens to continue a meaningful dialogue about land use opportunities and conflicts in this area of Multnomah County.

Multnomah County is currently involved in a long range planning process for an area called the West of Sandy River Rural Area. We are moving into the adoption phase of the West of Sandy River Rural Area Transportation and Land Use Plan, with hearings scheduled for January and February, 2002. As we are developing our plan, it has become apparent that nursery farming in this area is a vital and growing industry contributing to our economy and quality of life in Multnomah County, and also represents an important asset to the region. One likely outcome of our planning process may be to propose re-zoning this area from 'exception' zones to Exclusive Farm Use to assist in the preservation of existing farming operations and employment opportunities. We understand this action would remove these lands from consideration for urbanization.

Please give us the opportunity to finish our plan, evaluate the importance and significance of this area to our County, and allow us to design recommendations that will satisfy local concerns and needs before considering it for urbanization. Thank you in advance for your consideration.




Sincerely,



John Ingle  
Planning Commission Chair

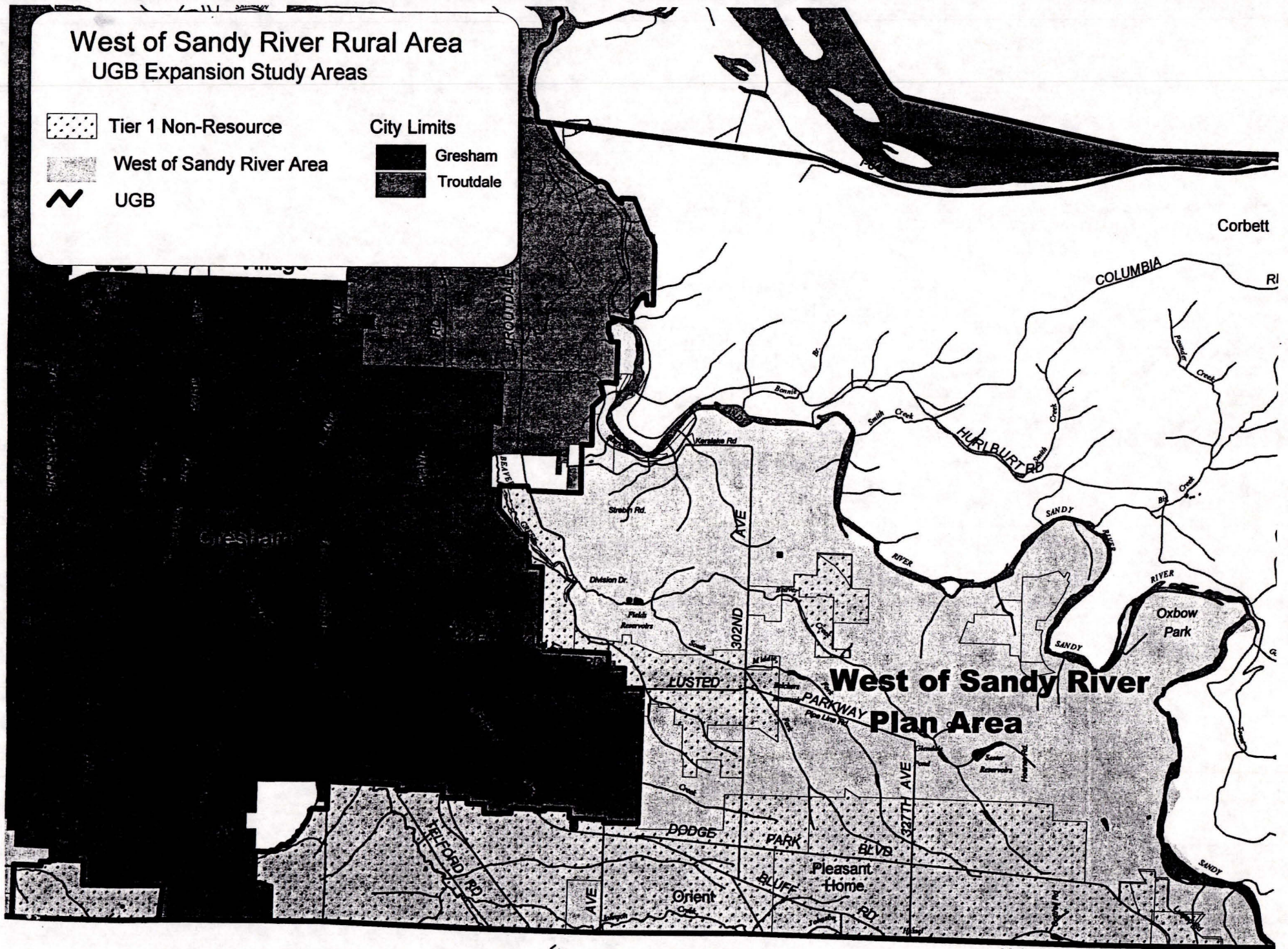
c: Multnomah County Board of Commissioners  
Multnomah County Planning Commission  
Kathy Busse, Planning Director



# West of Sandy River Rural Area UGB Expansion Study Areas

-  Tier 1 Non-Resource
-  West of Sandy River Area
-  UGB

- City Limits**
-  Gresham
-  Troutdale







# CITY OF CORNELIUS

## MEMORANDUM

Date: December 13, 2001

TO: **Executive Mike Burton  
Metro Councilors**

FROM: Richard Meyer, Community Development Director  
City of Cornelius *Richard*

SUBJECT: **Alternatives Analysis / Regional Land Supply  
Testimony RE: Metro Staff Recommendation**

On behalf of the City of Cornelius, I request that the Metro study of potential lands for expansion of the Urban Growth Boundary include "Tier 5 & 6" land north of Cornelius. Study of this land, which has been listed for consideration for some years, is necessary to determine appropriate balances of agriculture land protection and other land use goals like economics and the provision of public services in advance of you UGB expansion consideration. Cornelius is a good example of the need for sub-regional analysis before the next round of UGB expansion.

Cornelius is in great need of industrial land to expand employment. Eighty-five percent of our land value is residential, leaving the city with approximately half the property tax revenue per capita as other cities in Northwest Oregon to provide public services. We have less than 50 acres of undeveloped land zoned for industrial activity for a city of 9,760 people. Our City boundaries are virtually the same as the existing UGB. We are boxed in with little room for jobs – an unhealthy economic situation.

We hope and expect that our regional government will take the time and effort to examine other important factors in its encouragement of sustainable livable community development, besides the simple ranking of land by exception lands, and levels of agriculture land value. The long-range health, even viability, of Cornelius depends upon you examining the comprehensive effects of decisions to expand or not expand the UGB on individual jurisdictions as well as the region as a whole. Otherwise, the health of the region will continue not to be shared by all its parts.

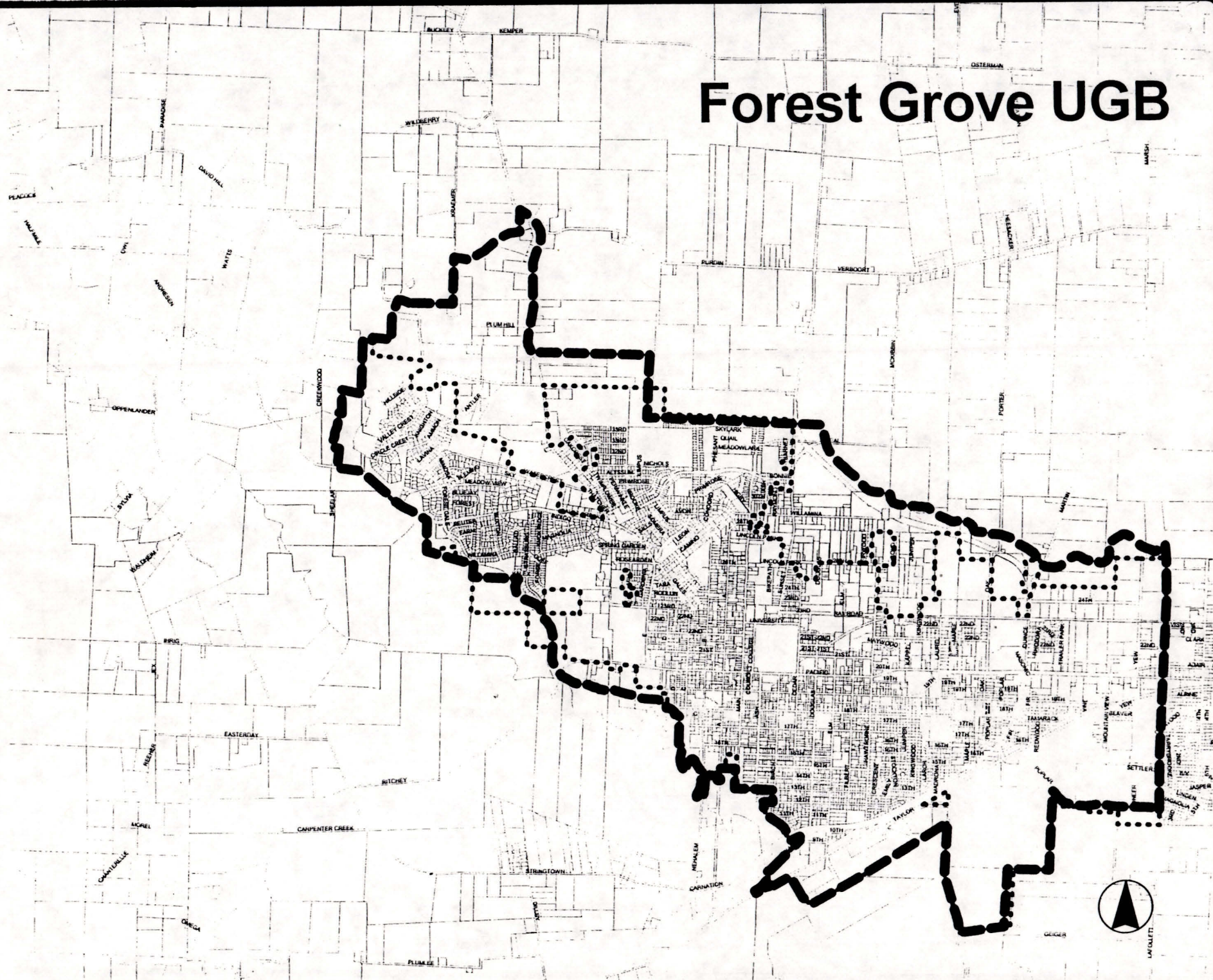
This testimony is brief, because Metro staff just this morning reported their recommendation to limit their study. If you need additional information or clarification, please do not hesitate to call me at (503) 357-7099. We thank you for your good work.

In Cornelius, we remain your partner in community service.

*Per No 01- 3127B*



# Forest Grove UGB





[illegible]



12/9/2001

Rod Park  
Chair, Community Planning Committee  
600 NE Grand AV  
Portland, OR. 97232-2736  
(503) 797-1547



Subject: To Consider Real Property map: 23E17 01300 Account NO:00628315,  
address 16600 SE Tong, in the new Metro UGB

On behalf of my father, George F. Hofmann, I would like to go on record in favor  
of being included in the new metropolitan Urban Growth Boundary.

The original parcel of forty acres was purchased in May 1965. This is described in  
Clackamas County, book 657, pages 652 and 653.

The entire parcel is in the Damascus Water district.

My father has sold off parcels of the property:

Exhibit #1- In Dec. 1976 he sold one five acre parcel to James and Linda Weaver.

Exhibit #2- In Dec. 1976 he sold one five acre parcel to James and Susan Herman.

Exhibit #3- Subdivision Hofmann View Acres of approximately 14 acres.

It has been the intent of my father to subdivide the remaining property.

The remaining property has approximately 12 acres of old diseased filbert and  
walnut trees. The property is rocky and not suitable for farming.

My father is 88 and is required to live at a foster home, because he is unable to care  
for himself. My mother past away in 1999 and I am legal guardian and have power  
attorney of my father's properties.

If you need any other information or have questions, I am available (503) 651-  
2597 or e-mail [bjhogland@web-ster.com](mailto:bjhogland@web-ster.com).

Sincerely,

*Judith L. Hogland*

*cc: Metro Council*

George F. Hofmann by  
Judith L. Hogland (Hofmann) P.O.A.  
29476 S. Elisha  
Canby, OR 97013



Exhibit #1

FORM No. 706. CONTRACT—REAL ESTATE—Monthly Payments.

STEVENS-NESS LAW PUBLISHING CO., PORTLAND, OR. 97204

TK

CONTRACT—REAL ESTATE



THIS CONTRACT, Made this \_\_\_\_\_ day of December, 19 76, between

GEORGE F. HOFMANN and DOROTHY B. HOFMANN, husband and wife

\_\_\_\_\_ hereinafter called the seller,  
and JAMES RUSSELL WEAVER and LINDA JEAN WEAVER, husband and wife

\_\_\_\_\_ hereinafter called the buyer,  
WITNESSETH: That in consideration of the mutual covenants and agreements herein contained, the  
seller agrees to sell unto the buyer and the buyer agrees to purchase from the seller all of the following de-  
scribed lands and premises situated in Clackamas County, State of Oregon to-wit:

A tract in the Southwest one-quarter of the Northwest one-quarter  
of Section 17, T.2S., R.3E., of the W.M., in the County of Clackamas  
and State of Oregon, described as follows:

Beginning at a point marked by a 1/2 inch iron rod on the East line  
of Tong Road, which is North 89°56'24" East 20.00 feet and South 0°10'  
( 30" East 1322.97 feet from the Northwest corner of said Section 17;  
thence North 89°56'24" East 430.97 feet to a 1/2 inch iron rod; thence  
South 0°10'30" East 483.84 feet to a 1/2 inch iron rod in the center  
of a private road as established April 11, 1923 which runs along a  
rocky bluff; thence in a Southwesterly direction along the center of  
said private road to the point of intersection of the center of the  
county road known as River Road and the West line of Section 17; thence  
North 0°10'30" West along the West line of said section 564.74 feet,  
more or less, to the Southeasterly line of Tong Road; thence Northerly  
along said road line on the arc of a curve to the left having a central  
angle of 14°26'28" a distance of 149.45 feet to a 1/2 inch iron pipe;  
thence North 0°10'30" West 55.66 feet to the point of beginning.

EXCEPTING THEREFROM that portion lying within the boundaries of any  
roads.

EXCEPTING THEREFROM that portion thereof conveyed to Clackamas County  
for roadway purposes.

76-47188



EXHIBIT # 2

CONTRACT—REAL ESTATE

THIS CONTRACT, Made this \_\_\_\_\_ day of \_\_\_\_\_ December \_\_\_\_\_, 1976, between  
GEORGE F. HOFMANN and DOROTHY B. HOFMANN, husband and wife  
and JAMES E. HERMAN and SUSAN C. HERMAN, husband and wife  
hereinafter called the seller,  
hereinafter called the buyer.

WITNESSETH: That in consideration of the mutual covenants and agreements herein contained, the  
seller agrees to sell unto the buyer and the buyer agrees to purchase from the seller all of the following de-  
scribed lands and premises situated in Clackamas County, State of Oregon, to-wit:

A tract of land in the West one-half of the Northwest one-quarter of  
Section 17, T.2S., R.3E., of the W.M., in the County of Clackamas and  
State of Oregon, described as follows:

Beginning at a point marked by a 1/2 inch iron rod on the East line of  
Tong Road, which is North 89°56'24" East 20.00 feet and South 0°10'30"  
East 1322.97 feet from the Northwest corner of said Section 17; thence  
North 89°56'24" East 430.97 feet to a 1/2 inch iron rod; thence South  
0°10'30" East 483.84 feet to a 1/2 inch iron rod in the center of a  
certain private road as established April 11, 1923, which private road  
runs along a rocky bluff; thence North 84°52'54" East along the center  
of said private road 64.32 feet; thence North 75°24'31" East along said  
center line 232.76 feet to a 2-inch iron pipe which is 11.26 chains East  
of the West line of Section 17; thence North 37°23'10" East 463.47 feet  
to a 1/2 inch iron rod at the most Easterly Southeast corner of that  
tract of land conveyed to George F. Hofmann, et ux, by Deed recorded  
September 4, 1969 as Recorder's Fee No. 69-18728, Film Records; thence  
North 0°10'30" West along the Easterly line of said Hofmann tract 71.81  
feet to a 1/2 inch iron rod; thence South 89°56'24" West 1003.00 feet  
to a 1/2 inch iron rod in the East line of Tong Road; thence South 0°10'30"  
East tracing the East line of Tong Road 20.00 feet to the point of beginning.

EXCEPTING THEREFROM that portion thereof conveyed to Clackamas County for  
roadway purposes.

76-47186







121301C-19  
Rus No 013127B

December 6, 2001

Mr. Bill Atherton  
600 NE Grand Ave.  
Portland, OR.

Subject: Urban Growth Boundary Expansion

Dear Bill,

On behalf of my wife and myself, I would like to express my opinions and concerns to you about the proposed expansion of the UGB into the Damascus area. As our representative to Metro, I hope you will, in fact, represent my views in this process since it seems that other elected officials for both Metro and Clackamas County are not representing the citizens of this area.

I have been involved with and following the UGB expansion for a number of years now, since the Damascus area was first targeted as the chief area for expanding into. Throughout this process, the citizens here have been told that our voices would be heard and we would have a say in what happens to this place where we live and the land that most of us consider ourselves stewards of. Yet, instead, time and again, we are told what is being decided for us. It reminds me of westward expansion onto Native American lands in the nineteenth century when the Indians were told that the 'great white father' in Washington knew what was best for them.

Recently, I have attended meetings sponsored by Clackamas County referred to as 'Conversations with Damascus' which were advertised as an opportunity to "tell us what you think... should Damascus/Boring become urban." I actually thought this might be an honest statement. What these meetings turned out to be were essentially dog and pony shows, a chance to let the citizens vent, then having the officials pat them on the head and say in so many words: there, there, we feel your pain, but we know what is best for you. I listened as one person after another in the filled halls spoke their opinions which fell into one of two categories: 1- We moved to this area specifically to be in a rural, small town setting and we are against the UGB expanding into this area, or 2- We've been told the expansion is going to happen whether or not we want it, so what can we do to at least have some say in how its going to happen? In talking with many residents I also find a third category, the people who plan to sell their land at a high price and move away. But so far, I have not met a soul who is planning on staying here who wants the major growth planned for us.

After listening to most of the citizens speak at the meeting, I stood and asked a very straightforward question, "Since most of the people who have spoken tonight are against the UGB expanding here, what can the people who live here do, specifically, to stop the boundary expansion into this area." Michael Jordan answered, in so many words, you can't do anything. Rod Park answered, you would have to change the state law which can't be done, so accept it. I was stunned. People had come home from work, come to



this meeting because they are worried their lives will be changed forever, were promised their voices would be heard, then told the great white fathers knew what was best for them.

Bill, I am not so naïve to disbelieve that some growth is going to come to this area. I see it everyday, the creeping outward of housing projects, the forested buttes and domes being clear cut, the fields being paved over. But what is most disturbing is that, rather than spreading the expected growth over the entire region or at least over several areas, Damascus has been targeted for the bulk of the growth. It is far from the ideal area to expand into. It is sorely lacking in roads and infrastructure; the hilly terrain and steep slopes will make construction of roads and utilities very difficult; mass grading will be required on the steep slopes for housing projects. As a geotechnical engineer, I know the hazards this area presents: shallow water tables, saturated soils, unstable ground, the potential for landslides. I was the geotechnical design engineer for the large Trillium housing project just west of Damascus on highway 212. That site presented several huge engineering problems and required the very expensive construction of massive underground drainage blankets to prevent ground water from causing landslides.

Areas that seem much more suitable for growth, including the Stafford Road area, already served by freeways and with fewer challenges, have been removed from consideration for UGB expansion because of their political pull. The Hillsboro area is begging for the UGB to expand there because they already have the industry and jobs and need the space for housing. Yet Damascus, like some third world country, has ended up the regional sacrificial area, and the natives be damned.

I hope you will help us Bill. I think I am speaking on behalf of many residents in this area who see the Damascus region as a beautiful rural area of lava domes and forests and fields, as good wildlife habitat, and a place worthy of saving from the blight of a sea of housing and strip malls. I have heard you speak in person and have read your views and philosophies on these matters and I believe you can and will help. I look forward to hearing from you.

Sincerely

John W. Ferguson  
19110 SE White Crest  
Boring, OR. 97009  
503-658-2331

P.S. I live between Damascus and Pleasant Valley and cannot sign this letter as it is being faxed directly from my computer hard drive.



M E M O R A N D U M



METRO

Res No. -  
01-3127B

Date: December 6, 2001

To: Andy Cotugno, Director

From: Lydia Neill, Senior Regional Planner *LN*

**Re: Alternatives Analysis Map Corrections**

Councilor Monroe has brought to my attention an area on the Alternatives Analysis Study Areas Map that has been excluded from study based on the area having a substantial percentage of slopes over 25% located throughout the site. This area along Skyline Boulevard is classified as exception land contiguous to the Urban Growth Boundary (UGB) and forest resource land. These two areas should have been included for study to be consistent with our objective of studying all exception lands contiguous to the UGB and prioritization of high value resource land. In addition, an area of exception land south of Sherwood was misidentified as Tier 5 resource land and was corrected. Two revised maps labeled as Exhibit B (exception lands and completely surrounded EFU lands) and Exhibit F (Predominately class I and II soils or irrigated class III and IV soils, prime timber land, and exception land not contiguous to the UGB but adjacent to tier 5 land) are attached to correct these oversights. The only changes to the resolution are these two exhibits.

I:\gm\community\_development\share\Alternatives Anal\altmemcorrect.doc



**Metro Council System Accounts - Resolution No.. 01-3127A**

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**From:** Thomas aufenthie <taufenthie2002@yahoo.com>  
**To:** <metro council@metro.dst.or.us>  
**Date:** 12/5/01 1:25 PM  
**Subject:** Resolution No.. 01-3127A

---

Councilors,

I have reviewed proposed resolution #01-3127A introduced by Mike Burton for your consideration at the Dec. 6 meeting..

I urge that you reject the proposal..My reasons follow:

1. You have developed what I feel is very explicit directions to the staff in regard to priorities!
2. You have very deliberately identified EFU lands needed for efficient development of Exception as Tier 3..Most notably you not put any restrictions in terms of how much exception land had to be around it to qualify for consideration or any limits on the size of the EFU parcel..( I would argue as little as practical to achieve the efficiency objectives)..
3. In my opinion the proposed resolution is a subtle attempt once again to consider EFU land before all "Exception Land" has been considered in any proposed expansion..
4. The resolution in fact indicates that the staff has already stepped away from considering just Exception lands per your priorities..

Thank You for your consideration of my arguments..

Tom Aufenthie

15674 Highpoint Dr,

Sherwood,Or

May Your Smile Light Up the World!

---

**Do You Yahoo!?**

Send your FREE holiday greetings online at [Yahoo! Greetings](#).



## CITY OF HILLSBORO



December 13, 2001

Honorable David Bragdon, Presiding Officer  
And Members of the Metro Council  
600 NE Grand Avenue  
Portland, OR 97232-2736

**RE: Metro Goal 5 Inventory and Determination of Significant and Regional  
Riparian Corridor Resources**

Dear Presiding Officer Bragdon and Council Members:

The City of Hillsboro supports the "Basin Approach" regarding determination of "significant" and "regional" riparian corridor resources recommended by Tualatin Basin Natural Resources Coordinating Committee, MTAC and MPAC.

Hillsboro has made a substantial investment and done a tremendous amount of work on our local Goal 5 program. At a recent Metro Natural Resources Committee meeting, Metro staff complimented the City on the high quality wetlands mapping we have done, which was recently approved by the Director of the Division of State Lands. The Local Wetlands Inventory comprises approximately 80% of the City's recently adopted list of significant Goal 5 resources.

As part of its Goal 5 effort, the City also developed a set of criteria as a method for determining regionally significant resources. These science based criteria were applied to determine which of the Goal 5 resources on our recently adopted list of locally significant sites would rise to the level of regional significance using parameters based on size of stream and watershed, essential salmonid habitat, complexity and quality of habitat, and other unique features widely recognized as having special characteristics, such as educational, research or other public values. A copy of the regional significance criteria proposed by Hillsboro were submitted to the Natural Resources Committee at their December 5<sup>th</sup> meeting.

The City has submitted substantial evidence to the Natural Resource Committee regarding our analysis of the application of Metro's proposed functional criteria for identifying riparian corridor resources. We have consistently asserted that Metro's methodology is delineating far more than riparian corridors, as they are commonly understood and defined under a variety of regulatory programs, including State Goal 5. As demonstrated to the NRC through presentation of numerous maps, cross-sections, etc., Metro's approach appears to include the impact area as part of the riparian corridor resource. The City's concerns about Metro's application of the science in developing the functional criteria for riparian resources were articulated in letters submitted to the



Natural Resources Committee on November 7<sup>th</sup> and December 5<sup>th</sup>. A presentation made to the NRC on November 21<sup>st</sup> illustrated the same concerns about the inadequacy of Metro's functional criteria to accurately define a riparian corridor with respect to location, quantity and quality. A technical review report of "Metro's Scientific Literature Review for Goal 5" was submitted to the NRC on December 5<sup>th</sup>.

Today, the City would like to submit additional materials, including source documents referenced in "Metro's Scientific Literature Review for Goal 5" and in the "Technical Review: Metro Goal 5 Riparian Corridor Program", prepared by Fishman Environmental Services for the City of Hillsboro. An index of these materials is attached.

Thank you again for the opportunity to comment.

Sincerely,

CITY OF HILLSBORO

A handwritten signature in black ink, appearing to read "Winslow C. Brooks". The signature is fluid and cursive, with the first name "Winslow" and last name "Brooks" clearly distinguishable.

Winslow C. Brooks  
Planning Director

Attachment: Index of additional materials submitted for the record





# Oregon

John A. Kitzhaber, M.D., Governor

## Department of Fish and Wildlife

Habitat Division  
2501 SW First Avenue  
PO Box 59  
Portland, OR 97207  
(503) 872-5255  
FAX (503) 872-5269  
TTY (503) 872-5259  
Internet [www: http://www.dfw.state.or.us/](http://www.dfw.state.or.us/)



December 13, 2001

David Bragdon, Presiding Officer  
Metro  
600 NE Grand Avenue  
Portland, Oregon 97232

RE: Metro Goal 5 Fish and Wildlife Habitat Program

Dear Mr. Bragdon:

Thank you for the opportunity to provide input into Metro's deliberations on its Goal 5 program. As we have stated previously, the Department has been an active participant on the Metro Goal 5 Technical Advisory Committee over the past two years. Our primary interest is to ensure that fish and wildlife resources in the Metro area are protected to the maximum extent possible consistent with land use policies for urbanization. The Department has both regional and statewide interests in the Metro program, as we believe Metro's Goal 5 program will be used as a model for other communities throughout the state. We want to take this opportunity to compliment your staff again on the high quality of the work they have been producing through this process.

We wanted to comment to you on three issues today. The first and most important is that we support Metro's process and methodology for applying Goal 5. Our Department has supported the methodology on the Goal 5 TAC as have numerous other federal and state resource agencies as well as environmental interest groups. The Independent Multidisciplinary Science Team (IMST) appointed by the Governor to review Oregon Plan issues has also reviewed and supported the methodology. While there is never one right way to do natural resource planning, we believe that Metro has proposed the most logical, ecologically-based and scientifically sound methodology we have seen to determine Goal 5 resources. Metro's approach has been reviewed and endorsed by its Goal 5 TAC, and MPAC. We believe that changing the methodology now would undermine the process and needlessly delay completion of Metro's Goal 5 program.

The second issue we want to comment on is the criteria for determining regional significance for riparian resources. As we have stated previously, the Department supports the Goal 5 TAC and MPAC position that all riparian resources that have primary or secondary functions should be identified as regional resources (map option 1). We believe this is ecologically defensible given the importance and





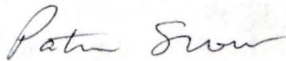
David Bragdon  
December 13, 2001  
Page 2

interconnected nature of stream resources and the fact that much of the stream system in the Metro area has already been lost to development. The level of protection for these areas may differ depending on the ESEE analysis.

This brings us to the third issue, which is the ESEE analysis. We understand that Tualatin Basin jurisdictions have requested that they be allowed to complete the ESEE analysis for Metro significant riparian resources. We believe this would be a mistake. The ESEE analysis is the heart of the Goal 5 program where decisions are made to either protect, limit conflicting uses or allow conflicting uses for significant resources. We believe Metro should take the lead in this process for regional resources.

We appreciate the opportunity to comment on the Metro Goal 5 program. Please feel free to contact me at (503) 872-5255 ext. 5593, or Holly Michael, Wildlife Diversity Biologist at (503) 657-2000, ext. 230 if you have any questions regarding our comments.

Sincerely,



Patricia Snow  
Land and Water Use Coordinator  
Habitat Division

c Metro Council  
Paul Ketcham, Metro  
Mike Houck, Audubon Society  
Meg Fernekees, DLCD - Portland





## AUDUBON SOCIETY OF PORTLAND

*Inspiring people to love and protect nature.*

December 13, 2001

Metro Council  
600 NE Grand Avenue  
Portland, OR 97232

Dear Presiding Officer Bragdon and Councilors,

I am writing on behalf of the Coalition For A Livable Future, the Coalition's Natural Resources Working Group, and Audubon Society of Portland. The Coalition consists of 60 nonprofit organizations from throughout the metropolitan region, with more than 20,000 members among the organizations. My comments are also on behalf of the Audubon Society of Portland and our 10,000 members who reside in the metropolitan region.

### **The Science:**

We have reviewed the City of Hillsboro's challenge of Metro's methodology as represented by Paul Fishman's report, *Technical Review: Metro Goal 5 Riparian Corridor Program, November 2001*. In our opinion, with regard to Metro's methodology, Fishman raises a minor points that we feel Metro staff can use to further improve your methodology. As far as the overall program is concerned, however, we do not agree with his assessment that the Metro literature review and methodology are "seriously flawed."

Many, if not most, of the points he raises in his paper he also raised in Goal 5 TAC meetings. Representatives from U. S. Fish and Wildlife, ODFW, Oregon DEQ, U S EPA, and National Marine Fisheries Service all participated in the Goal 5 TAC meetings, as did other biological consultants and ourselves. The Goal 5 TAC has endorsed Metro's literature review and methodology as has the Governor's Independent Multidisciplinary Science Team.



We urge Metro staff to carefully review the Fishman report and respond to those issues they feel are legitimate, to further strengthen your methodology against future legal challenges. We believe the Fishman report was produced for just such a legal challenge and does not represent a substantive critique of what is undoubtedly the most comprehensive Goal 5 effort ever conducted in Oregon.

**Inventory:**

We reiterate WRPAC and the Tualatin Riverkeeper's recommendation that Metro include all "waters of the state" in your riparian inventory. By doing so we believe you will add critical headwater areas to your map that are not currently on it. As we understand it, Clackamas County has already submitted additional stream miles from their own stream inventory for inclusion on your Goal 5 riparian map. These streams should be added, using the same methodology you have used on the existing map.

**Regional Resource:**

Last night MPAC joined other committees in recommending that you go forward with map option 1 and the so-called "basin approach." We urge you to adopt map 1, without regard to adopting a basin approach. Map option 1 should be adopted as a separate Metro Council action. You should then consider the basin approach and what conditions you will place on it as a separate item.

Map option 1 has been recommended by both WRPAC and the Goal 5 TAC, without reference to the basin approach. We have recommended adoption of map option 1 as well. You have also received written testimony from U. S. Fish and Wildlife Service, U. S. Environmental Protection Agency, National Marine Fisheries Service, Oregon Department of Fish and Wildlife, and Oregon Department of Environmental Quality and Oregon Department of Fish and Wildlife, all of whom expressed confidence in, and support for, Metro's methodology and adoption of all regionally significant resources as Regional Resources. You have also received numerous comments from the public supporting that approach. For example, you received over 800 post cards from citizens supporting adoption of all resources scoring 1 or more with Metro's mapping methodology as being both regionally significant and a regional resource.

**Upland Habitat:**

Every committee, including last night's MPAC decision, has recommended that you integrate the sixth riparian function (riparian habitat and connectivity) and upland habitat inventory with the riparian work as soon as possible. We strongly support that approach.



Futhermore, given that the upland work might lag sufficiently behind we suggest that you consider a strategy that would recognize those upland areas that are contiguous with riparian corridors be inventoried separately from disconnected upland areas. By producing a Riparian Area + Upland fish and wildlife habitat mapping methodology that links the riparian and the riparian-related upland habitats we believe you will first map those upland wildlife areas that are of the highest ecological value. By adopting that strategy should the "disconnected", non-riparian upland habitat work lag you can move ahead with the riparian and riparian-upland habitat work and, if necessary, come back to capture the remaining upland work later. It has been argued that Metro cannot take such an approach by the Tualatin Basin representatives. We do not agree with that assessment. Otherwise, how could Metro choose to move forward with only the riparian work?

#### **Tualatin Basin Proposals:**

You currently have two proposals on the table from the Tualatin Basin group:

Their Option 1 uses the transportation system as an analogy to develop their rationale for dividing up responsibility for management of urban waterways. We feel their analogy is faulty in that it is predicated on a static, inanimate infrastructure system of transportation facilities. We feel a more apt analogy would be the circulatory system. Stream corridors, like the human circulatory system, represent an organic, dynamic system that includes feedback loops and complex interactions between the riparian and upland areas. The circulatory system includes major arteries and veins; veinules and arterioles, and capillary beds. Take away any of these and the organism dies. The same is true with riparian zones. They are an interconnected network representing a functioning ecosystem, a "greenfrastructure", not an inanimate network of roads.

Their proposal to designate only the larger arteries and veins flies in the face of logic and Metro's entire Goal 5/Natural Resource Program. The following represent our arguments against adoption of Tualatin Basin's Option 1:

The Title 3 program concluded that all streams, due to their interconnected nature and downstream influences, should fall under the Water Quality, Floodplain and Erosion standards. I have underlined specific passages that relate to the question of which streams should be considered both significant and region:

The Goal 5 *Purpose, Vision, Goal, Principles and Context* document reads:



**Vision:** Our region places a high priority on the protection of its streams, wetlands and floodplains to maintain access to nature; sustain and enhance native fish and wildlife species and their habitats; mitigate high storm flows and maintain adequate summer flows; provide clean water; and create communities that fully integrate the built and natural environment. As ribbons of green, stream and river corridors maintain connections with adjacent upland habitats, form an interconnected mosaic of urban forest and other fish and wildlife habitat, and contribute significantly to our region's livability.

**The Future Vision Document** adopted in 1995 reads: "We value natural systems for their intrinsic value, and recognize our responsibility to be stewards of the region's natural resources. In 2045, the region should be characterized by "Improved water quality, and increased biodiversity," and "restored ecosystems protected from future degradation and decline." Specific actions identified include Manage watersheds to protect, restore, and maintain the integrity of streams, wetlands and floodplains, and their multiple biological, physical, and social values."

**Metro's Greenspaces Master Plan** reads: "preserving diversity of plant and animal life in the urban environment, using watersheds as the basis for ecological planning. The Greenspaces Master Plan is guided by the following ecological principles: "Maintain biological diversity by restoring and enhancing a variety of habitats, including wetlands, riparian corridors, forests and agricultural lands." And " Protect, restore and recreate stream corridor vegetation by replacing riparian vegetation where it is lacking or dominated by exotic species and removing barriers, where possible, to maintain connections with adjacent upland habitats."

The RUGGOs state that the region should "Manage watersheds to protect and ensure to the maximum extent practicable the integrity of streams, wetlands and floodplains, and their multiple biological, physical, and social values," as well as that "A region-wide system of linked significant wildlife habitats should be developed. This system should be preserved, restored where appropriate, and managed to maintain the region's biodiversity."

**Metro's Goal 5 Goal:** The overall goal is to conserve, protect and restore a continuous ecologically viable streamside corridor system, from the streams' headwaters to their confluence with others streams and rivers, and with their floodplains in a manner that is integrated with the surrounding urban landscape. This system will be achieved through conservation, protection and appropriate restoration of streamside corridors through time.

Tualatin Option 2:



**Basin Approach:**

MPAC recommended at last night's meeting that you move forward with exploring the basin approach, with a January 31<sup>st</sup> deadline for ascertaining how such an approach will be pursued. We support that recommendation, with the operative word being explore. We urge you not to commit to a basin approach until you are satisfied that the questions posed in "Basin Approach Issues and Suggested Answers", December 11, 2001 as developed by your staff.

Issues critical to us include, but are not limited to, the following:

First, and foremost, nothing prevents the Tualatin Basin from pursuing a basin approach now. Nothing is preventing them from integrating their Watersheds 2000, Clean Water Act, Endangered Species Act, and Goal 5 planning through the existing process. They have already said they plan to address ESA on their own. They already have to meet DEQ's TMDL's for the basin. Once Metro has adopted a Goal 5 and natural resource program they are bound by law to review and revise their comprehensive plans just as they did with Title 3.

We do not object in any way to the Tualatin Basin's proposal to develop their own response to Metro's riparian, and upland, habitat protection and restoration program. We have consistently supported basin-wide planning. We are pleased to hear they are committed to integrating their Watersheds 2000, Impervious Surface Mapping, Clean Water Act, Endangered Species Act, and Goal 5 planning in a more holistic approach, by next fall.

We would assume this would be similar, if not identical, to the approach they took with Title 3. Metro will need to develop a "model ordinance" and/or performance standards by which the Tualatin Basin's program would be judged for substantial compliance, just as occurred in the Title 3 process. We applaud the Tualatin Basin's proposal to develop a multi-jurisdictional approach to complying with the regional Goal 5/Natural Resource program. Their pledge to accelerate the process is commendable and we will pledge to work with them throughout the development of their program, as we did with Title 3.

**ESEE:**

Passing authority to the Tualatin Basin for conducting the ESEE analysis is unacceptable without Metro's direct involvement. Metro's region-wide ESEE must be applied to the Tualatin Basin as well. We do not object to Metro and the Tualatin Basin group participating as equal partners in a manner that would have Metro conduct a basin-wide ESEE that is consistent with the regional ESEE analysis that would then be further informed by the basin's more localized ESEE. Simply handing off the ESEE to the Tualatin Basin, however, is not acceptable.



The Tualatin Basin has suggested that Metro make a substantial compliance determination at the end of the local ESEE and program development process. The political reality of such an arrangement would be tantamount to allowing local governments complete autonomy, without any regional oversight. In fact, the Tualatin Basin's proposal specifies that Metro would be "nominally" involved in the ESEE process. My dictionary defines "nominal" as "1. Being such in name only; so-called; putative; 2. named as mere matter of form, being trifling in comparison with the actual value; minimal. Nominal participation and oversight by Metro is neither desirable nor acceptable. The reality is that once a local or basin program had progressed through the ESEE analysis and program development it is inconceivable that Metro would be in a position to reject the local or basin wide program.

**Metro committee involvement:** Each Metro committee (MTAC, Goal 5 TAC, WRPAC) and natural resource agencies must be involved at each step of the way if a joint Metro-Tualatin Basin ESEE process emerges from the proposed discussions. Just as Metro has proceeded with an albeit painfully slow, methodical process, so too should the Tualatin Basin be required to gain Metro committee, Natural Resource Committee, and Council approval at every step of the way.

The public should also be involved at every step of the ESEE analysis, decision, and program development, both regional and basin-wide.

**Hydrologic Unit Code (HUC) Size:**

We agree with the observations of Portland, Clackamas County and City of Lake Oswego. The minimum HUC size is too large to be of use to anyone other than the Tualatin Basin.

**Urban-Rural Watershed Differences:**

The Tualatin Basin will, by necessity, need to apply an urban-specific ESEE analysis to those areas that have been inventoried inside Metro's jurisdiction and a different ESEE analysis for rural agricultural and forest lands. This is important for two reasons. First, there is no inventory comparable to Metro's outside Metro's jurisdictional boundaries. We do not believe it is legally defensible to apply the same ESEE analysis to two different inventory methodologies. Second, and more importantly, we are concerned that comparing urban streams with more rural, non-urbanized streams will lead to conclusion that urban streams can be "written off" in deference to the higher biological integrity of rural waterways.

Finally, we are concerned that by conducting an ESEE analysis, decision, and program throughout the entire Tualatin watershed will potentially bog



down our work in the urban area. We believe their argument that they will be in a position to bring in rural portions of the Tualatin Watershed rings hollow, given they have absolutely no authority over the state's Forest Practices Act and SB 1010, agricultural lands process. They are, in fact, prohibited by state law from exercising authority over agricultural and forest practices. We agree with and support basin-wide planning. What needs to happen, though, is not a dilution of Metro's natural resource planning but, rather, enhanced agricultural and forest lands natural resource protection outside the UGB.

Respectfully,

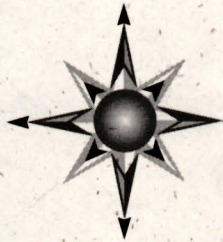
A handwritten signature in black ink, appearing to read "Mike Houck", written over the word "Respectfully,".

Mike Houck, Urban Naturalist

and

Chair, Coalition For A Livable Future's  
Natural Resources Working Group





# COALITION FOR A LIVABLE FUTURE

1220 SW MORRISON STREET, SUITE 535 • PORTLAND, OR 97205  
PHONE: 503.294.2889 • FAX: 503.225.0333 • WWW.CLFUTURE.ORG

December 13, 2001

Councilor David Bragdon, Presiding Officer  
Councilor Rod Park  
Councilor Bill Atherton  
Councilor Carl Hosticka  
Councilor Susan McLain  
Councilor Rex Burkholder  
Councilor Rod Monroe

Dear Presiding Officer Bragdon and Council,

I am presenting this testimony on behalf of the Coalition for a Livable Future. The Coalition is an association of 61 community organizations working together to create a sustainable and equitable Portland-Vancouver metropolitan area. Through our Natural Resources Working Group, CLF has been an active participant in Metro's Regional Wildlife and Habitat Protection Planning Process since its inception.

Probably one of the most remarkable aspects of our work is that we help make connections among regional issues that previously have been considered in isolation. For example, in the case of protecting wildlife and natural resources, it is absolutely essential that we provide citizens ample access to nature throughout the region as a quid pro quo for our approach to limiting sprawl at the edge of the metro area. From more of an ecological perspective, it is essential that we protect and restore as much urban "wilderness" possible so that our urban ecosystem is stable and healthy and can provide the "services" – water and air filtration, etc. – that we, as biological organisms, rely upon. These are cornerstones of what it means to create a livable region.

In this spirit, I want to express my strongest support for the Option 1 map for designating Regional Resources. At this point in the process, Metro should designate all streams, from their headwaters to the confluence with other streams and rivers, as both regionally significant and as regional resources. This is the most scientifically credible option and a vital first step toward protection of our region's wild places and livability of our neighborhoods.

Sincerely,

Jill Fuglister  
Coordinator

C O A L I T I O N M E M B E R S

AMERICAN INSTITUTE OF ARCHITECTS, PORTLAND CHAPTER • AMERICAN SOCIETY OF LANDSCAPE ARCHITECTS • ASSOCIATION OF OREGON RAIL AND TRANSIT ADVOCATES • AUDUBON SOCIETY OF PORTLAND • BICYCLE TRANSPORTATION ALLIANCE • CITE, CREATIVE INFORMATION • CITIZENS FOR SENSIBLE TRANSPORTATION • COLUMBIA GROUP SIERRA CLUB • COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION • COMMUNITY ACTION ORGANIZATION • COMMUNITY ALLIANCE OF TENANTS • COMMUNITY DEVELOPMENT NETWORK • ECUMENICAL MINISTRIES OF OREGON • ENTERPRISE FOUNDATION • ENVIRONMENTAL COMMISSION OF THE EPISCOPAL DIOCESE OF OREGON • FAIR HOUSING COUNCIL OF OREGON • FANS OF FANNO CREEK • FRIENDS OF ARNOLD CREEK • FRIENDS OF CLARK COUNTY • FRIENDS OF GOAL FIVE • FRIENDS OF ROCK, BRONSON AND WILLOW CREEKS • FRIENDS OF SMITH AND BYBEE LAKES • FRIENDS OF TRYON CREEK STATE PARK • GROWING GARDENS • HILLSDALE NEIGHBORHOOD ASSOCIATION • HOUSING PARTNERS, INC. • JOBS WITH JUSTICE • JUSTICE & PEACE COMMISSION OF ST. IGNATIUS CATHOLIC CHURCH • KEEPERS OF THE WATERS • LEAGUE OF WOMEN VOTERS OF THE COLUMBIA RIVER REGION • LIVABLE OREGON • MULTNOMAH COUNTY COMMUNITY ACTION COMMISSION • NETWORK BEHAVIORAL HEALTHCARE, INC. • NORTHWEST HOUSING ALTERNATIVES • 1000 FRIENDS OF OREGON • OREGON COUNCIL OF TROUT UNLIMITED • OREGON ENVIRONMENTAL COUNCIL • OREGON FOOD BANK • OREGON SUSTAINABLE AGRICULTURE LAND TRUST • PORTLAND CITIZENS FOR OREGON SCHOOLS • PORTLAND COMMUNITY DESIGN • PORTLAND HOUSING CENTER • PORTLAND IMPACT • REACH COMMUNITY DEVELOPMENT, INC. • ROSE COMMUNITY DEVELOPMENT CORP. • SISTERS OF THE ROAD CAFE • SUNNYSIDE UNITED METHODIST CHURCH • SUSTAINABLE COMMUNITIES NORTHWEST • TUALATIN RIVERKEEPERS • TUALATIN VALLEY HOUSING PARTNERS • URBAN LEAGUE OF PORTLAND • WETLANDS CONSERVANCY • WILLAMETTE PEDESTRIAN COALITION • WOODLAWN NEIGHBORHOOD ASSOCIATION



facsimile  
TRANSMITTAL

DEC 10 2001

## NuPark Development LLC

8765 SW Hillview Terrace  
Portland, Oregon 97225

Phone: 503-297-6551  
Fax: 503-292-1960

**Name:** David Bragdon, Presiding Officer  
**Organization:** Metro Council  
**Fax:** 503-797-1793  
**Phone:** [Phone]  
**From:** Roger J. Neu *Roger Neu*  
**Date:** Dec. 10, 2001  
**Subject:** Thursday vote to expand waterway/wildlife protection  
**Pages:** 1

### Comments:

I am writing to ask you to vote against any expansion of waterways protection. First of all I think there are adequate protections in place at this time. As a small infill developer in eastern Washington County, I am constantly working with sites that are subject to ever expanding protection. In the last couple of years regulations protecting the waterways were implemented. As a result of those regulations, I could not build the same development today that I built a few years ago. If you expand it even more, I think that you severely underestimate the impact on reaching the other goals of promoting infill and containing the UGB. I think the regulations in place at this time offer ample protection. Here are the reason for my objection to new expanded watershed regulations:

First of all the basis of this expansion should be good science. I serve on the Advisory Commission to the Clean Water Services (CWS) Board of Directors. I have reviewed their "Health Streams" study which is the basis of their mapping, which resulted in 1700 hundred acres being "protected" versus one of Metro's proposals which includes about 3000 acres. The Clean Water Services Survey is very comprehensive, and while I do not know the basis of



Metro's study, I hope it is as comprehensive and based upon "good science" and reasonable applications. The fact that the two estimates of lands to be protected are so far apart, should cause Metro to re-examine the reasons. While I'm not saying that the CWS report is flawless, it does not mean that "More is better", which is what happens if you adopt the larger acreage and it is not based on science equal in stature to the CWS study.

Right now my paranoia regarding the accuracy and objectivity of environmental studies is quite high. First of all some court rulings are suggesting that some mistakes or "lack of good science" may be present. Secondly, in recent litigation nationally, the National Homebuilders Association, of which I am a member, discovered some disturbing information regarding the National Marine Fisheries Service (NMFS) critical habitat designations for west coast salmonids. Donna Darm, who was NMFS acting Regional Administrator for the Northwest until October 1, 2001 said: "When we make critical habitat designations we just designate everything as critical, without an analysis of how much habitat an ESU needs...." Darm added that no analysis of habitat need was performed "because we lack information."

NMFS has designated "everything" as critical habitat in over 150 watersheds blanketing California, Idaho, Oregon, and Washington. Federal critical habitat is a key trigger for many state and local land use restrictions. If Metro is using this information, then I would ask that you postpone any decision until you have a reliable study upon which to base a decision. If you have a study, but it was initiated based upon meeting the federal critical habitat, I would ask that you postpone any action also.

"More is not always better", which is a common theme in matters regarding environmental protection. We have made quantum leaps towards protection of the watershed. Lets see if its working and make sure that we are not fixing something that is not broken. Has there been any studies since implementation of other water shed protections to see if they are working? That might be a prudent and good first step.

My other concern, is that with adoption of new regulations, their implementation usually boils down to a rule of "one size fits all". Left over "infill" parcels are all so unique. I have taken 1-3 acre parcels with streams nearby, clustered the houses and retained the waterways in what I believe is a very responsible way. Your new rule, had it been in place when I did these developments, would have rendered these two sites as "undevelopable". My environmental consultants, on a case by case basis, came up with development plans that were protective. These two infill parcels would not even have the chance to be developed with your new expanded waterway expansion.

Please do not implement more expansive watershed rules. Let us learn how to respond to existing regulations, or let local jurisdictions with local input, devise rules that examine each parcel of land in light of existing rules or new rules that they adopt to protect the watershed.

Thank you for your time and consideration!



*DRAFT*

# Metro's Riparian Corridor Inventory

November, 2001



**NOTE:**

Underline indicates additions  
Brackets indicate deletions

**The following amendments to the 11/13/2001 version of Table 1: Ecological Functional Values and Landscape Features are made in accordance with Metro Council Resolution NO 01-3134:**

Page A-2 Microclimate and shade under the secondary functional value is revised as follows: "Forest or woody vegetation that is [contiguous to the primary area (which is 100 feet) and extends outward to] beyond 100 feet but within 780 feet."

Page A-5 Large Wood and Channel Dynamics under secondary functional value is revised as follows: "Forest within 150 to 262 feet of a stream[, or developed floodplains]."

Page A-6 Organic Material Sources under primary function is revised as follows: "Forest or woody vegetation within 100 feet of a stream or wetland, or within a flood area, or low structure vegetation or undisturbed soils within 50 feet of a stream or wetland."



## **STAFF REPORT**

### **CONSIDERATION OF RESOLUTION NO. 01-3141, FOR THE PURPOSE OF ESTABLISHING CRITERIA TO DEFINE AND IDENTIFY REGIONALLY SIGNIFICANT FISH HABITAT AND APPROVING A DRAFT MAP OF REGIONALLY SIGNIFICANT FISH HABITAT AREAS**

Date: November 28, 2001

Prepared by: Michael Morrissey

**Proposed Action:** Metro adopts by resolution, key products, including a series of maps, that satisfy certain state and Metro requirements for the protection of fish habitat. Resolution 01-3141 identifies riparian corridors that are designated significant regional resources, and that will be subject to further action by Metro, including Economic, Social, Energy and Environmental (ESEE) analysis and program components. Passage of this resolution is not a final land use action. Final action on the Fish and Wildlife Habitat Protection Program, via adoption of a functional plan is anticipated for the fall of 2002.

**Factual Background and Analysis:** Resolution No. 01-3141 partially fulfills action required by the Regional Framework Plan, Chapter 4, and the Urban Growth Management Functional Plan Title 3, section 5. MPAC recommended approval the Functional Plan in 1996 and the Framework Plan in 1997. It also concurred in dividing the work called for in Title 3 of the Functional Plan into a water quality—state goals 6 and 7 related—section, completed in 1999, and a fish and wildlife habitat—state goal 5--section. It is the latter that is the subject of this resolution. In October of 2000, MPAC approved a "Streamside CPR Purpose, Vision Goal Principles and Context" statement intended to guide the development of Metro's Fish and Wildlife Habitat Protection Program.

While Metro's program is intended to satisfy requirements of state Goal 5, it also intends to apply other policy considerations identified in Metro's Future Vision, RUGGO's, and Regional Framework plan, for example. This approach is also recognized in the Vision Statement. The Council may use aspects of these policies, as well as requirements of state Goal 5, to assist in determining the mapped landscape features that will be designated significant resources and regional resources.

The Natural Resources Committee has been developing the framework for decision making during the course of 2001. It has received regular and consistent guidance from the Water Resources Policy Advisory Committee (WRPAC), the Goal 5 TAC, Metro Technical Advisory Committee (MTAC) and the Metro Policy Advisory Committee



(MPAC). WRPAC and the Goal 5 TAC have submitted final recommendations to the Natural Resource Committee. The Metro Executive has also submitted recommendations, but has not yet made final conclusions as how regional resources should be designated.

Resolution 01-3141 contains material described in the resolution as a decision package. The package includes maps, analysis of existing local Goal 5 data, an inventory narrative concerning information on location, quality and quantity of potential resource sites, and a summary of recommended criteria for identifying regional resources for fish habitat.

Several public hearings have been held to receive public feedback. Other outreach efforts, including mailings and coffee talks have been held to inform the public of Metro's activity in this area, of which this resolution is the first important step.

**Existing Law:** Resolution 01-3141 fulfills a key component of state goal 5, an inventory of regional resources. It also moves towards completion of the Urban Growth Management Functional Plan, Title 3, section 5 Fish and Wildlife Habitat Protection.

**Budget Impact:** No budget impact is associated with passage of Resolution 01-3141



## Criteria defining regionally significant riparian corridors

1. **Science-based** means that the option is compatible with the information presented in Metro's Goal 5 Science Literature Review, and that it is likely to provide some level of protection for each of the five identified Ecological Functional Values addressed in Metro's GIS model.
2. **Watershed approach** implies that the option provides resource protection with the minimum spatial unit considered being a watershed. This is consistent with Metro's Regional Urban Growth Goals and Objectives (RUGGOs) Objective 12 and Metro's Regional Framework Plan (RFP) section 4.13, dealing with watershed management and regional water quality, and is an important component of master planning because conditions in one part of the watershed may be influenced by activities in all other parts of the watershed.
3. **Protects hydrology** within this context suggests that an option will help protect existing hydrologic function from further human-induced alteration. In urbanized watersheds, altered hydrology is a fundamental pathway to ecological and biological degradation. However, it is important to recognize that hydrology in many of the region's watersheds is already substantially altered, and restoration of more natural hydrological regimes will require programs that address the fundamental impacts on hydrology, such as impervious surfaces and piping of stormwater runoff directly to streams.
4. **Promotes connectivity:** Connectivity refers to how tributaries are connected to larger rivers, how groundwater interacts with surface water, how water moves among streams, wetlands and floodplains, and how fish and wildlife move among watershed components (aquatic and terrestrial). The ecological health of a watershed (and its wildlife) depends in part on the connectivity between and among streams and other water resources, as well as the riparian area, over space and time. Well-connected streams and riparian buffers serve as movement corridors for wildlife and plants, allowing re-population of extirpated species, gene flow over space, and dispersal and migration corridors. Metro's Vision Statement reiterates our commitment to regional connectivity: "As ribbons of green, stream and river corridors maintain connections with adjacent upland habitats, form an interconnected mosaic of urban forest and other fish and wildlife habitat, and contribute significantly to our region's livability."
5. **Multispecies benefits** implies protection of vertebrate and invertebrate biological diversity (not just fish). This is consistent with Metro's RUGGOs stating that the region should "Manage watersheds to protect and ensure to the maximum extent practicable the integrity of streams, wetlands and floodplains, and their multiple biological, physical, and social values." To protect the region's biodiversity, options with multispecies benefits provide a more holistic ecological approach, and may help prevent future Endangered Species Act listings of other species.
6. **Restoration potential:** alternatives addressing this criterion will address certain areas within and near the riparian corridor that may be currently degraded, but are important to wildlife and hydrology and could be restored to increase ecological function. While not required by Goal 5, restoration of such areas is consistent with Metro's RUGGOs and Vision Statement and would likely result in higher levels of ecological function, increase the potential for ESA compliance, and decrease the potential for future ESA listings.
7. **Meets Goal 5 requirements:** alternatives likely to be in compliance with the rules outlined in the Goal 5 rule.
8. **Meets the goals in the Vision Statement:** alternatives that support the goals outlined in Metro's Vision Statement.
9. **Likely to address ESA requirement:** alternatives that are likely to be consistent with National Marine Fisheries Services' matrix of Pathways and Indicators and what is necessary to protect critical fish habitat.



**Exhibit D**  
**Resolution 01-3141**

**Basin Approach Issues**  
December 11, 2001

- 1. What is the overall vision and approach?**
- 2. Who and what comprises a basin?**
  - a. What is the desired geographic coverage?**
  - b. What kind of agreements do local governments make among themselves?**
  - c. What kind of agreement is made between local governments and Metro?**
    - i. What is the legal form used?**
    - ii. What is the time line for completion?**
    - iii. What non-performance guarantees are there?**
    - iv. What public involvement approach is used?**
  - d. What is the programmatic scope of a basin approach?**
- 3. How is the Economic, Social, Environment and Energy (ESEE) Analysis Completed for a basin?**
  - a. What is the template for analysis?**
  - b. How will Metro regional resources be addressed?**
  - c. What regional parameters will be determined?**
    - i. for industrial lands?**
    - ii. for commercial - office lands?**
    - iii. for commercial - retail lands?**
    - iv. for residential lands by differing densities?**
    - v. for mixed use centers?**
  - c. How will consultation, coordination and monitoring occur?**



**i. How will advisory committees interact?**

**ii. How will pre-decision coordination with Metro Council be addressed?**

**d. How will the decision be made concerning prohibiting , limiting or allowing conflicting uses?**

**i. How will a map be created, reviewed and adopted?**

**ii. What consultative process will be used?**

**4. How will a Program be created?**

**a. How will performance standards be created?**

**i. What existing information or standards (from federal requirements like the Clean Water Act, Endangered Species Act, from agencies like the US Environmental Protection Agency, National Marine Fisheries Service, US Fish and Wildlife Service, US Geologic Service, Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife, or other agencies, existing or developing standards like Total Maximum Daily Loads, properly functioning conditions, improved health of resource within a basin, or other approaches)**

**ii. What will be the geographic extent of performance standards?**

**iii. What jurisdictional issues should be addressed with performance standards?**

**b. How will the regional safe harbor be established?**

**i. How specific will/should the regional safe harbor be?**

**ii. Are there or should there be differing types of regional safe harbor?**

**c. How should "substantial compliance" be determined?**

**d. What Metro review process should be provided once local tasks are completed?**

**\*\*\*\*\***



# Exhibit B and Attachment A Resolution 01-3141B

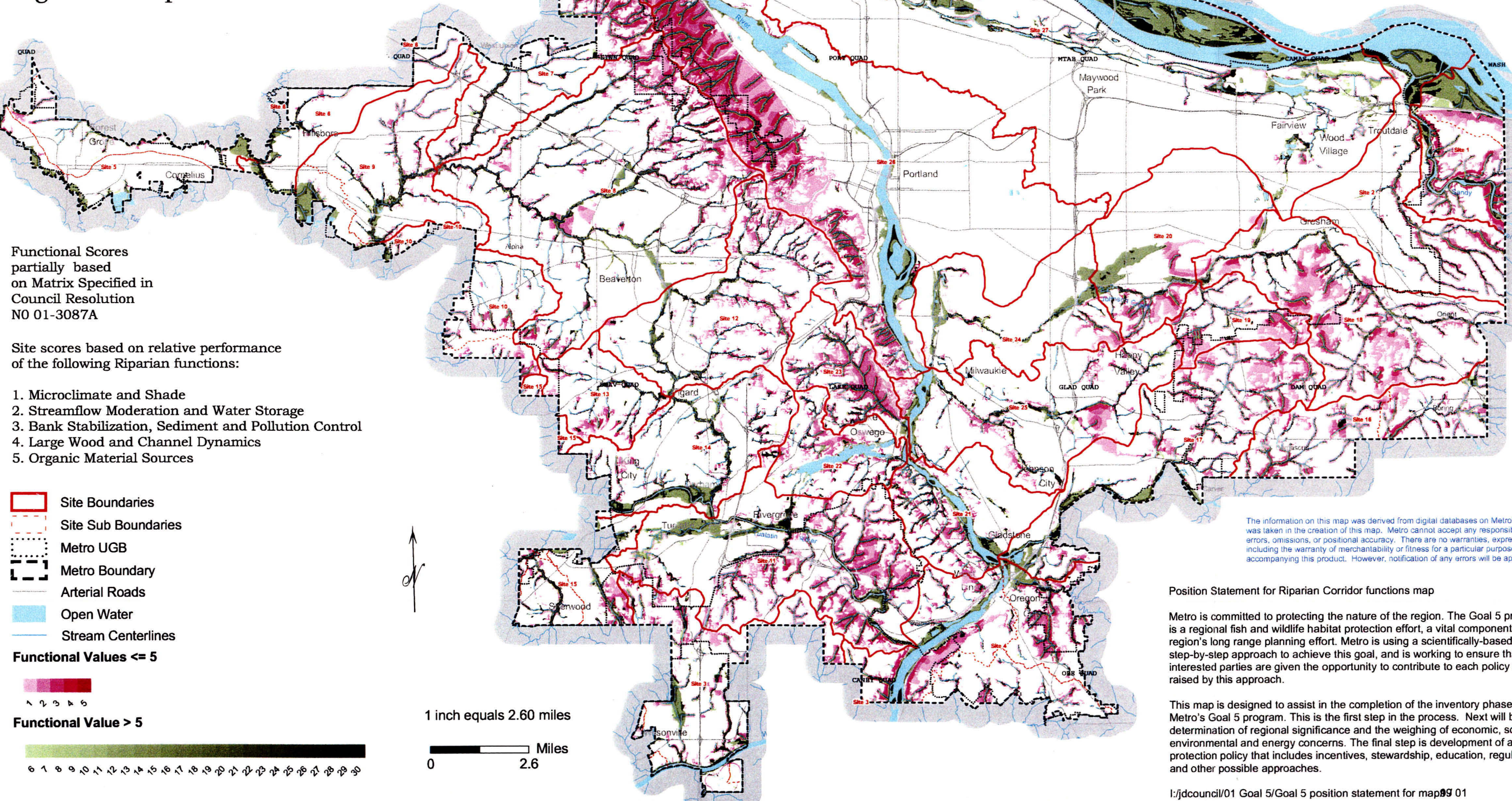
## Riparian Corridor Resource Sites and Significant Riparian Corridors



METRO

METRO DATA RESOURCE CENTER  
600 NORTHEAST GRAND AVENUE  
TEL (503) 797-1742 FAX (503) 797-1909  
drc@metro.dst.or.us www.metro-region.org

Decision Draft 11/21/2001



The information on this map was derived from digital databases on Metro's GIS. Care was taken in the creation of this map. Metro cannot accept any responsibility for errors, omissions, or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.

### Position Statement for Riparian Corridor functions map

Metro is committed to protecting the nature of the region. The Goal 5 program is a regional fish and wildlife habitat protection effort, a vital component of the region's long range planning effort. Metro is using a scientifically-based, step-by-step approach to achieve this goal, and is working to ensure that all interested parties are given the opportunity to contribute to each policy decision raised by this approach.

This map is designed to assist in the completion of the inventory phase of the Metro's Goal 5 program. This is the first step in the process. Next will be the determination of regional significance and the weighing of economic, social, environmental and energy concerns. The final step is development of a protection policy that includes incentives, stewardship, education, regulation and other possible approaches.



# Attachment B

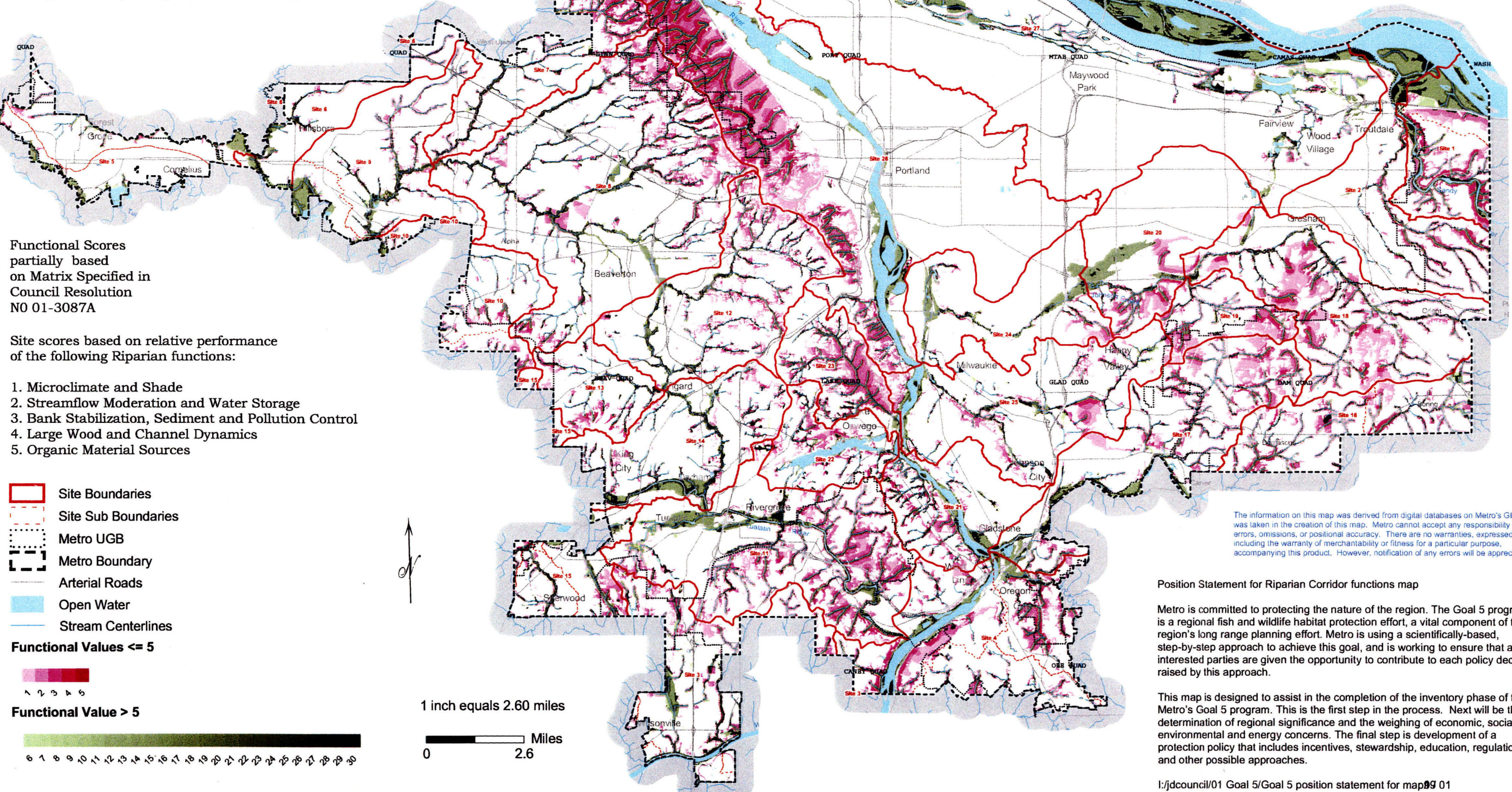
## Resolution 01-3141B

### Riparian Corridor Resource Sites and Regionally Significant Riparian Corridors



METRO DATA RESOURCE CENTER  
800 NORTHEAST GRAND AVENUE  
TEL (503) 797-1742  
dro@metro.dst.or.us  
PORTLAND, OREGON 97232-2736  
FAX (503) 797-1909  
www.metro-region.org

Decision Draft 11/21/2001





# Attachment C

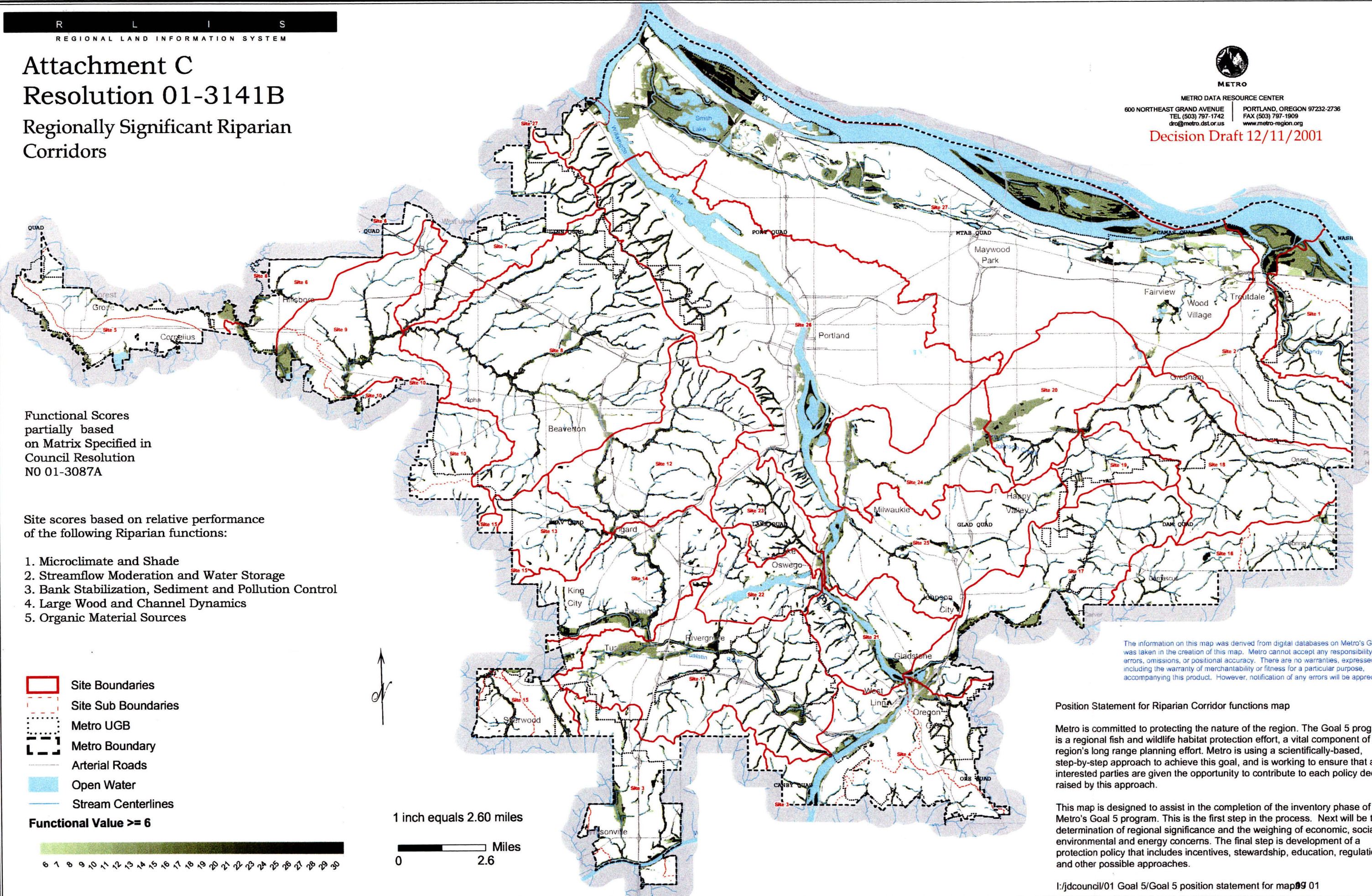
## Resolution 01-3141B

### Regionally Significant Riparian Corridors



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Decision Draft 12/11/2001





METRO  
600 NE Grand  
Portland, OR 97232

December 12, 2001

Post-It® Fax Note	7671	Date	12/13/01	# of pages	1
To	DAVID BRAGDON		From	A. DEBOLT/M. MANSEAU	
Co./Dept.	METRO		Co.		
Phone #			Phone #	503-645-0503	
Fax #	503-797-1793		Fax #	503-64-8395	

Dear Presiding Office Bragdon and Council,

We strongly support the Option 1 map for designating Regional Resources. Metro should declare all streams, from their headwaters to the confluence with others streams and rivers, as both regionally significant and as regional resources. This is the most scientifically credible option and a vital first step toward protection of our region's wild places as well as health of the streams and rivers. Only Option 1 provides adequate protection of streams and wetlands as other options recognize significantly fewer resources. There is no such thing as an insignificant stream or wetland—every trickle of water contributes to the ecosystem of a watershed. A healthy system of rivers and streams begins with the smallest parts.

As development increases and intensifies, impervious surfaces alter the natural hydrology and its dependent native flora and fauna. As citizens actively involved in the Land Use process with Washington County for the past ten years and as members of the Friends of Rock, Bronson and Willow Creeks group we have seen first hand the devastation of wetlands and upland areas. We continue to be concerned—for example the Jenkins/Kim property where protection of wetlands and tributaries of Rock Creek is threatened by roads impacting wildlife habitat and crossing sensitive and fragile areas. Too many times we have seen manipulation in the treatment of wetland areas that results in the loss and the degradation of natural resources. Neighborhood livability declines in both a physical and aesthetic sense.

"We can't go closer than 100 feet to the wetland." This is a quote from an old episode of PBS's "This Old House." This episode was filmed in Massachusetts. Our experience has been that protection is weaker in Oregon. We live in Oregon because we love the abundance of natural resources. Please provide our communities with the tools we need to protect them. Option 1 is the right choice.

Sincerely,

*April DeBolt*

April DeBolt  
5625 NW 137<sup>th</sup> Avenue  
Portland, OR 97229  
(503) 645-0503

*Mary Manseau*

Mary Manseau  
5230 137<sup>th</sup> Avenue  
Portland, OR 97229  
(503) 645-1672



December 12, 2001

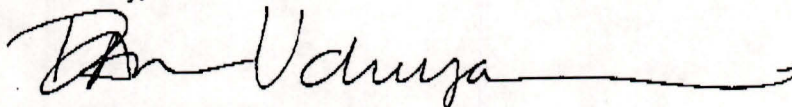
Presiding Officer David Bragdon and Metro Council  
Metro  
600 NE Grand Avenue  
Portland Oregon 97232

Dear Presiding Officer Bragdon and Metro Council,

I write to I offer my strongest support for the Option 1 Map for designating Regional Resources. Metro should declare all streams, from their headwaters to the confluence with other streams and rivers, as both regional resources and regionally significant. This is the most scientifically credible option and a vital first step toward the protection of our region's waterways and overall livability.

Please keep me informed of your progress on this very important issue.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Dawn Uchiyama', with a long horizontal flourish extending to the right.

Dawn Uchiyama

1325 SW Upland Road  
Portland, Oregon 97221

radvilas@telport.com



**Basin Approach Issues  
and Suggested Answers**  
December 11, 2001

**1. What is the overall vision and approach?**

**Suggested Answer:**

Metro's Fish and Wildlife Habitat Vision Statement shall be used as description of the overall goal of a basin approach. In addition, supplementary goals are: the improvement of habitat health within each of the 27 Metro identified resource sites; production of salmonid Endangered Species Act (ESA) recovery plans; avoidance of any future ESA listings; meeting Clean Water Act requirements; addressing State Goal 5 requirements for riparian corridors and wildlife; and avoiding duplication of effort.

**2. Who and what comprises a basin?**

**Suggested Answer:**

A desired geographic coverage could be established along with local government participation agreements. Suggestions for these are described below.

**a. What is the desired geographic coverage?**

**Suggested Answer:**

Basins must be large enough to provide for a broad ecological perspective as well as economies of scale. Basins may not be smaller than a fourth field hydrologic unit. Accordingly, within the Metro region, there are six fourth field hydrologic units, or basins. These basins are: the Tualatin, Clackamas, Lower Willamette, Middle Willamette, Lower Columbia/Sandy and the Molalla-Pudding. A map of basin boundaries is attached.

In addition, a basin approach will focus on those riparian corridor areas within a basin identified by the Metro Council as being "regional resources".

**b. What kind of agreements do local governments make among themselves?**

**Suggested Answer:**

All cities and counties within a basin must agree to participate in a basin plan through an intergovernmental agreement.



**c. What kind of agreement is made between local governments and Metro?**

**i. What is the legal form used?**

Suggested Answer:

The intergovernmental agreement between local governments could be expanded to include Metro.

**ii. What is the time line for completion?**

Suggested Answer:

A timeline for completion of a basin plan shall be provided to the Metro Council and be consistent with Metro's timeline.

**iii. What non-performance guarantees are there?**

Suggested Answer:

There is an incentive for local governments to complete a basin plan on a timely basis in order to tailor the program to local conditions. Metro could consider requiring regional safe harbor regulations, once adopted by the Metro Council, as interim requirements with a basin if the Metro Council determined that substantial progress had not been made in a timely manner, until a basin plan is completed and approved by the Metro Council.

**iv. What public involvement approach is used?**

Suggested Answer:

All interested parties will be provided the opportunity to participate in the development and recommendation of the ESEE and program tasks. More information about when these opportunities should be provided are described below.

**d. What is the programmatic scope of a basin approach?**

Suggested Answer:

At a minimum, a basin approach should address, coordinate and integrate at least State Goal 5 riparian corridors and wildlife habitat, the Endangered Species Act, the Clean Water Act (including storm water management) and Metro's Vision Statement.



### **3. How is an Economic, Social, Environment and Energy (ESEE) Analysis completed for a basin?**

Suggested Answer:

One approach would be to have a multi-perspective ESEE that reflects both regional and local concerns, is based on a regional parameters that establish conflicting uses and a ESEE decision process that provides for interested party review and comment as well as Metro Council review and approval to proceed.

#### **a. What is the template for analysis?**

Suggested Answer:

An analysis of the economic, social, environmental and energy consequences shall be completed by assessing the consequences of prohibiting, limiting, or allowing conflicting uses. Riparian corridor resources within the region will be addressed as will regional wildlife habitat when available and any urban growth boundary expansion areas outside the current Metro jurisdictional boundary. This work will assess consequences at the regional, Metro's twenty-seven resource sites, basin and local site levels - one ESEE with multiple perspectives. Methodology options will be reviewed as will those analyses that implement selected methodology(s).

#### **ii. How will Metro regional resources be addressed?**

Suggested Answer:

A minimum scope will be set. A basin approach will address at least those riparian corridor areas within a basin or watershed identified by the Metro Council as being "regional resources". Special emphasis will be placed on assessing the cumulative impacts on fish and wildlife habitat resources.

#### **b. What regional parameters will be determined?**

##### **i. for industrial lands?**

##### **ii. for commercial - office lands?**

##### **iii. for commercial - retail lands?**

##### **iv. for residential lands by differing densities?**

##### **v. for mixed use centers?**

Suggested Answer:

Additional analysis of this question should be completed.



**c. How will consultation, coordination and monitoring occur?**

Suggested Answer:

Regular review by the Metro Council or a subcommittee of the Council as well as review by advisory committees such as the Goal 5 TAC, WRPAC, MTAC and MPAC will be provided to survey regional and basin plan progress and products.

**i. How will advisory committees interact?**

This undertaking will involve close coordination of local and regional representatives as well as substantial opportunities for involvement by all interested parties, including review by the Goal 5 TAC, WRPAC, MTAC and MPAC as well as Metro staff. The Metro Council or a subcommittee of the Council may draw on these reviews and any recommendations from these advisory committees.

**ii. How will pre-decision coordination with Metro Council be addressed?**

Suggested Answer:

Concurrent with advisory committee review, the Metro Council, or its designate subcommittee, will review basin progress and products.

**d. How will the decision be made concerning prohibiting, limiting or allowing conflicting uses?**

Suggested Answer:

Culmination of the ESEE step will be accomplished through a formal decision, perhaps made by a resolution adopted by the Metro Council and local governments, concerning conflicting uses and decisions to prohibit, limit or allow conflicting uses.

**i. How will a map be created, reviewed and adopted?**

Suggested Answer:

Metro will create a map based on scientific principles established in the inventory phase along with considerations of the economic, social, environmental and energy consequences, impact area aspects, map corrections, public and advisory committee comment.



**ii. What consultative process will be used?**

Suggested Answer:

Metro will confer with the Metro Committee on Citizen Involvement as well as with local governments and Metro advisory committees to ensure that broad consultation is achieved.

**4. How will a Program be created?**

Suggested Answer:

Through the coordination of local, basin and regional efforts, program options (including, but not limited to incentives, acquisition, education and regulations) will be identified to address decisions about prohibiting, limiting or allowing conflicting uses. Here too, close coordination must be attained through review by Metro staff in addition to advisory committees such as the Goal 5 TAC, WRPAC, MTAC and MPAC.

The final step shall include actions by local governments and Metro Council. Metro shall adopt a regional safe harbor program including regulations, a model ordinance, and incentives and education recommendations that could implement a regional safe harbor. Metro shall also provide a local government discretionary review process that, at local government option, can provide a case-by-case review of development applications with unique or challenging site characteristics. In addition, Metro shall adopt performance standards in order to provide for flexibility and option for local riparian district plans or basin program approaches.

Concurrent to Metro adoption actions, consortiums of local governments that have pursued a basin approach shall adopt a basin plan and Metro will review it for substantial compliance.

After Metro adoption actions, individual local governments or other groups of local governments shall adopt the regional safe harbor or initiate their own basin approach, riparian district plan or combination for Metro substantial compliance review.

**a. How will performance standards be created?**

**i. What existing information or standards (from federal requirements like the Clean Water Act, Endangered Species Act, from agencies like the US Environmental Protection Agency, National Marine Fisheries Service, US Fish and Wildlife Service, US Geologic Service, Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife, or other agencies, existing or developing standards like Total Maximum Daily Loads, properly functioning conditions, improved health of resource within a basin, or other approaches)**



Suggested Answer:

Metro staff should investigate these and other sources of possible performance standards. Experts from these and other agencies should be consulted, and where appropriate, brought to Metro advisory committee meetings or Metro Council or subcommittee meetings for briefings.

**ii. What will be the geographic extent of performance standards?**

Suggested Answer:

Performance standards would be designed to be used anywhere within the region. Whether they would be used would be a local determination, and could be pursued either through a basin approach or by an individual jurisdiction or other entity that may choose to complete a riparian district plan rather than the regional safe harbor.

**iii. What jurisdictional issues should be addressed with performance standards?**

Suggested Answer:

A local government pursuing a basin plan or riparian district plan that relies on performance standards would be subject to Metro review and local government demonstration that they could meet the performance standards by taking measures within that portion of the basin within the Metro jurisdictional boundary.

**b. How will the regional safe harbor be established?**

Suggested Answer:

The regional safe harbor will be established by using a science based approach that takes into consideration the economic, social, environment and energy consequences of protecting, limiting or allowing conflicting uses, Metro's 2040 Growth Concept and as informed by the public, interested parties, local governments and advisory committees. The desired goal will be to complete clear and objective standards, a model ordinance, incentives, education and other tools consistent with this approach.

**i. How specific will/should the regional safe harbor be?**

Suggested Answer:

The regional safe harbor is expected to be very specific, although options, such as the riparian district plan or basin approach will allow for flexibility and other approaches so long as performance standards are met.



**ii. Are there or should there be differing types of regional safe harbor?**

Suggested Answer:

The fish and wildlife habitat Vision Statement refers to a local discretionary review option which would involve case-by-case local review of development applications. These reviews would have to meet the overall objectives of the regional safe harbor, but could provide an opportunity to look at a development proposal and fish and wildlife habitat resources at a very fine level of detail and with additional information not available even at the local level until development is proposed.

**c. How should "substantial compliance" be determined?**

Suggested Answer:

Metro is now in the process of clarifying compliance. Additional staff work may be needed in order to specify how substantial compliance will work with the fish and wildlife habitat work effort and the basin approach.

**d. What Metro review process should be used once local tasks are completed?**

Suggested Answer:

Additional staff work should be done to clarify Metro review. In some cases, where there is agreement between Metro and a local government or group of governments about a resource, either that it should be protected or that there is no need to protect it, regional review might be minimal. In other cases, where there is disagreement, or where there is agreement about incentives, education or acquisition, other review methods may be needed.

\*\*\*\*



Motion #1 – Al Burns moved and Mike Houck seconded to recommend adoption of the criteria with amendments. The motion passed 17-1-1.

The vote was as follows:

**Yes:**

Stephen Lashbrook	City of Lake Oswego
Dan Drentlaw	City of West Linn
Ramsey Weit	Washington County Citizen
Hal Bergsma	City of Beaverton
Brent Curtis	Washington County
Jim Jacks	City of Tualatin
Bob Ellsperman	Multnomah E.S.D.
Gary Clifford	Multnomah County
John Andersen	City of Fairview
Mike Dennis	Tri-Met
Rebecca Geisen	Portland Water Bureau
Mary Kyle McCurdy	1000 Friends of Oregon
Richard Ross	City of Gresham
Brian Campbell	Port of Portland
Cindy Catto	Associated General Contractors
Al Burns	City of Portland
Mike Houck	Portland Audubon Society

**No:** Wink Brooks      City of Hillsboro

**Abstain:** Marty Sevier      Westside Economic Alliance

*NOT VOTING LATER*

Motion #3 – Mike Houck moved and Ramsey Weit seconded to recommend Resolution No. 3141A to include the amendments on the criteria and define option 1 map (Primary and Secondary Functions) as significant resource and option 1 (Primary and Secondary Functions) map as regional resource. To adopt an Exhibit E that defines the question to be agreed upon to undertake a basin approach, which must be agreed upon by January 31, 2002.

Motion #4 – Mary Sevier moved and Brian Campbell seconded to amend Motion #3 to remain silent on the regional resource decision. The motion to amend motion #3 failed 3-11-4.

The vote was as follows:

**Yes:**

Marty Sevier	Washington Economic Alliance
Brian Campbell	Port of Portland
Cindy Catto	Associated General Contractors

**No:**

Stephen Lashbrook	City of Lake Oswego
Dan Drentlaw	City of West Linn
Ramsey Weit	Washington County Citizen
Bob Ellsperman	Multnomah E.S.D.
Gary Clifford	Multnomah County
Mike Houck	Portland Audubon Society
Rebecca Geisen	Portland Water Bureau
Mary Kyle McCurdy	1000 Friends of Oregon
Richard Ross	City of Gresham
Al Burns	City of Portland
Wink Brooks	City of Hillsboro

**Abstain:** Brent Curtis      Washington County

Hal Bergsma	City of Beaverton
Mike Dennis	Tri-Met
Jim Jacks	City of Tualatin



Motion #3 (without amendments) passed 14-0-4.

The vote was as follows:

<b>Yes:</b>	Cindy Catto	Associated General Contractors ✓
	Stephen Lashbrook	City of Lake Oswego ✓
	Dan Drentlaw	City of West Linn
	Ramsey Weit	Washington County Citizen ✓
	Bob Ellsperman	Multnomah E.S.D. ✓
	Gary Clifford	Multnomah County ✓
	Al Burns	City of Portland ✓
	Mike Houck	Portland Audubon Society ✓
	Jim Jacks	City of Tualatin
	Mary Kyle McCurdy	1000 Friends of Oregon ✓
	Richard Ross	City of Gresham - NOT VOTING ON 5
	Hal Bergsma	City of Beaverton
	Brent Curtis	Washington County
	Wink Brooks	City of Hillsboro
<b>No:</b>	None	
<b>Abstain:</b>	Rebecca Geisen	Portland Water Bureau
	Mike Dennis	Tri-Met
	Marty Sevier	Washington Economic Alliance
	Brian Campbell	Port of Portland

Motion #5 – Brian Campbell moved and Marty Sevier seconded to request that MPAC and the Metro Council also consider an alternative – adoption of the Option 3 map (Primary function only) as the regional resource with the option of doing a basin approach. The motion passed 9-7-1.

The vote was as follows:

<b>Yes:</b>	Stephen Lashbrook	City of Lake Oswego
	Wink Brooks	City of Hillsboro
	Brian Campbell	Port of Portland
	Hal Bergsma	City of Beaverton
	Brent Curtis	Washington County
	Cindy Catto	Associated General Contractors
	Jim Jacks	City of Tualatin
	Bob Ellesperman	Multnomah E.S.D.
	Marty Sevier	Westside Economic Alliance
<b>No:</b>	Dan Drentlaw	City of West Linn
	Mike Houck	Portland Audubon Society
	Ramsey Weit	Washington County Citizen
	Gary Clifford	Multnomah County
	Al Burns	City of Portland
	Rebecca Geisen	Portland Water Bureau
	Mary Kyle McCurdy	1000 Friends of Oregon
<b>Abstain:</b>	Mike Dennis	Tri-Met





METRO

December 13, 2001

The Honorable David Bragdon  
Presiding Officer, Metro Council  
600 NE Grand Avenue  
Portland, OR 97232-2736

Dear Presiding Officer Bragdon:

At the Metro Policy Advisory Committee (MPAC) meeting held on December 12, the committee took the following action.

It was moved by Doug Neeley and seconded by Dan Saltzman that MPAC recommends adoption of Resolution 01-3134A, for the purpose of establishing criteria to define and identify regionally significant fish habitat and approving a draft map of regionally significant fish habitat areas, with the inclusion of option 1B; which is the Basin Approach on Map #1. The motion passed unanimously.

Further, the committee strongly urged the Council to direct staff to pursue the idea of including uplands in the ESEE analysis and program development.


Also, the committee took action on Ordinance 01-929, for the purpose of amending the regional framework plan ordinance no. 97-715B, and Metro Code sections 3.01.010, 3.01.025, 3.01.030, 3.01.035, 3.01.040, 3.01.045, 3.01.050, 3.01.055, 3.01.060, 3.01.065 and 3.07.1120 and repealing Metro Code sections 3.01.037 and 3.01.075 to revise the scope and the criteria for quasi-judicial amendments to the urban growth boundary.

It was moved by Judi Hammerstad and seconded by Dan Saltzman that "land trades" be added back into minor adjustments. The motion passed unanimously.

It was moved by Dan Saltzman and seconded by Judie Hammerstad that the ordinance as amended be recommended for adoption by the Metro Council. The motion passed unanimously.

A copy of the MPAC minutes from December 12, 2001 will be submitted to the clerk of the council for inclusion in the record of the December 13, 2001 Metro Council Meeting. If there are any questions, do not hesitate to contact me.

Sincerely,

  
Cathy Kirchner  
Administrative Assistant  
MPAC Staff Support



**REVISED DRAFT**

# Metro's Scientific Literature Review for Goal 5

August 2001

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# Proposed Resource Site & Riparian Function Mapping

Decision Draft  
11/21/2001



METRO DATA RESOURCE CENTER  
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TEL (503) 797-1742  
drc@metro.dsl.or.us  
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FAX (503) 797-1909  
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Functional Scores  
partially based  
on Matrix Specified in  
Council Resolution  
NO 01-3087A

Site scores based on relative performance  
of the following Riparian functions:

1. Microclimate and Shade
2. Streamflow Moderation and Water Storage
3. Bank Stabilization, Sediment and Pollution Control
4. Large Wood and Channel Dynamics
5. Organic Material Sources

- Site Boundaries
- Site Sub Boundaries
- Metro UGB
- Metro Boundary
- Arterial Roads
- Open Water
- Stream Centerlines

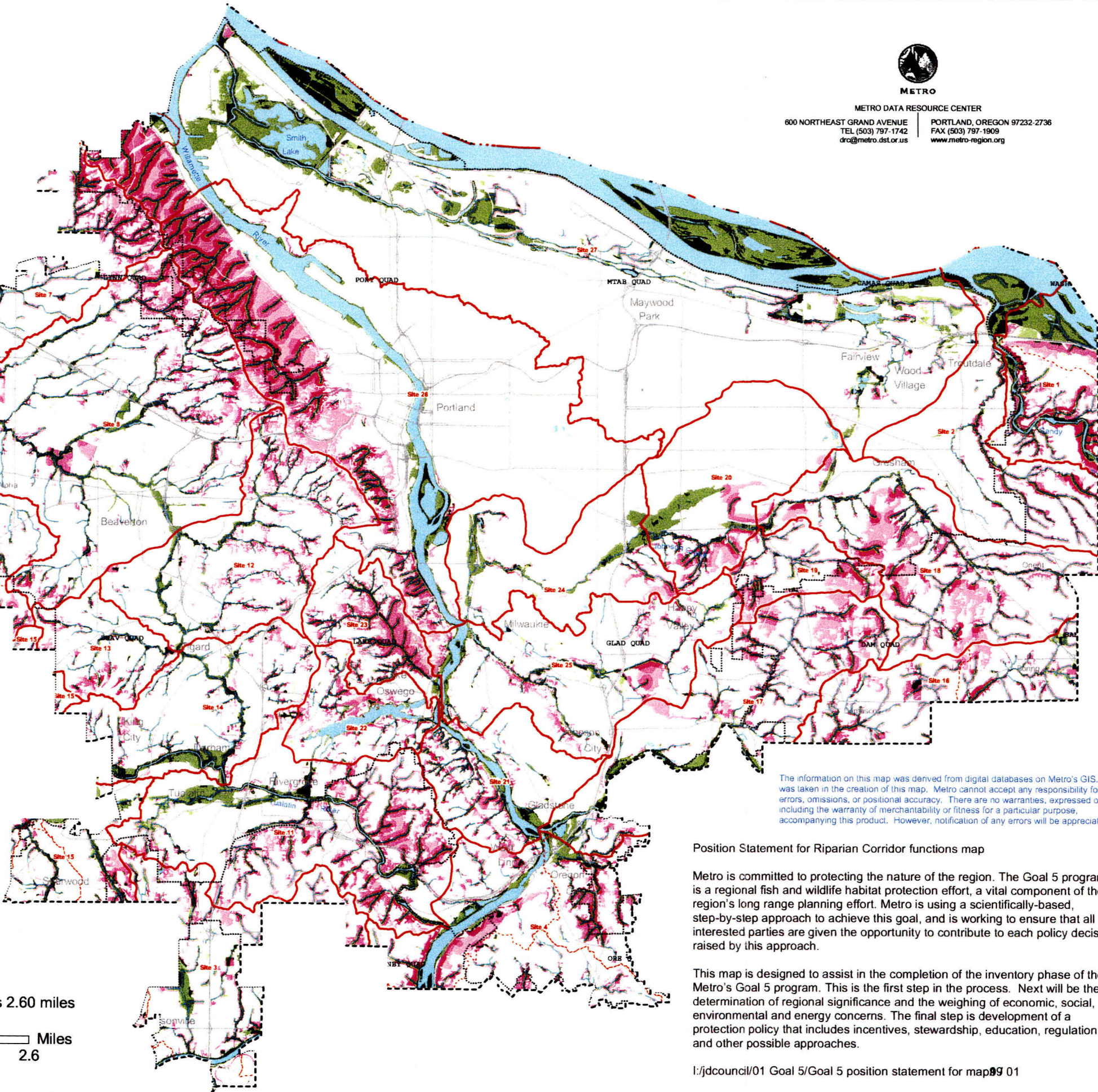
Functional Values <= 5



Functional Value > 5



1 inch equals 2.60 miles



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### Position Statement for Riparian Corridor functions map

Metro is committed to protecting the nature of the region. The Goal 5 program is a regional fish and wildlife habitat protection effort, a vital component of the region's long range planning effort. Metro is using a scientifically-based, step-by-step approach to achieve this goal, and is working to ensure that all interested parties are given the opportunity to contribute to each policy decision raised by this approach.

This map is designed to assist in the completion of the inventory phase of the Metro's Goal 5 program. This is the first step in the process. Next will be the determination of regional significance and the weighing of economic, social, environmental and energy concerns. The final step is development of a protection policy that includes incentives, stewardship, education, regulation and other possible approaches.





METRO

December 13, 2001

The Honorable David Bragdon  
Presiding Officer, Metro Council  
600 NE Grand Avenue  
Portland, OR 97232-2736

Dear Presiding Officer Bragdon:

At the Metro Policy Advisory Committee (MPAC) meeting held on December 12, the committee took the following action.

It was moved by Doug Neeley and seconded by Dan Saltzman that MPAC recommend adoption of Resolution 01-314A, for the purpose of establishing criteria to define, identify and approve a draft map of "significant" riparian areas and "regional" riparian areas. This includes option 6B; which is the option of the Basin Approach on Map #1, including all primary and secondary functional criteria. The motion passed unanimously.

Further, the committee is interested in including upland areas in the ESEE analysis and program development, and will have a recommendation in January, 2002.

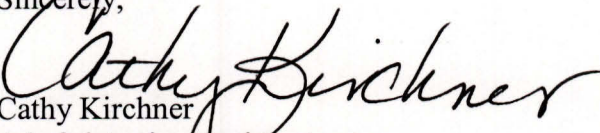
Also, the committee took action to recommend adoption of Ordinance 01-929, for the purpose of amending the regional framework plan ordinance no. 97-715B, and Metro Code sections 3.01.010, 3.01.025, 3.01.030, 3.01.035, 3.01.040, 3.01.045, 3.01.050, 3.01.055, 3.01.060, 3.01.065 and 3.07.1120 and repealing Metro Code sections 3.01.037 and 3.01.075 to revise the scope and the criteria for quasi-judicial amendments to the urban growth boundary.

It was moved by Judi Hammerstad and seconded by Dan Saltzman that "land trades" be added back into minor adjustments. The motion passed unanimously.

It was moved by Dan Saltzman and seconded by Judie Hammerstad that the ordinance as amended be recommended for adoption by the Metro Council. The motion passed unanimously.

A copy of the MPAC minutes from December 12, 2001 will be submitted to the clerk of the council for inclusion in the record of the December 13, 2001 Metro Council Meeting. If there are any questions, do not hesitate to contact me.

Sincerely,

  
Cathy Kirchner  
Administrative Assistant  
MPAC Staff Support



*DRAFT*

# Metro's Riparian Corridor Inventory

November, 2001



**NOTE:**

Underline indicates additions  
Brackets indicate deletions

**The following amendments to the 11/13/2001 version of Table 1: Ecological Functional Values and Landscape Features are made in accordance with Metro Council Resolution NO 01-3134:**

Page A-2 Microclimate and shade under the secondary functional value is revised as follows: "Forest or woody vegetation that is [contiguous to the primary area (which is 100 feet) and extends outward to] beyond 100 feet but within 780 feet."

Page A-5 Large Wood and Channel Dynamics under secondary functional value is revised as follows: "Forest within 150 to 262 feet of a stream[, or developed floodplains]."

Page A-6 Organic Material Sources under primary function is revised as follows: "Forest or woody vegetation within 100 feet of a stream or wetland, or within a flood area, or low structure vegetation or undisturbed soils within 50 feet of a stream or wetland."



## **STAFF REPORT**

### **CONSIDERATION OF RESOLUTION NO. 01-3141, FOR THE PURPOSE OF ESTABLISHING CRITERIA TO DEFINE AND IDENTIFY REGIONALLY SIGNIFICANT FISH HABITAT AND APPROVING A DRAFT MAP OF REGIONALLY SIGNIFICANT FISH HABITAT AREAS**

Date: November 28, 2001

Prepared by: Michael Morrissey

**Proposed Action:** Metro adopts by resolution, key products, including a series of maps, that satisfy certain state and Metro requirements for the protection of fish habitat. Resolution 01-3141 identifies riparian corridors that are designated significant regional resources, and that will be subject to further action by Metro, including Economic, Social, Energy and Environmental (ESEE) analysis and program components. Passage of this resolution is not a final land use action. Final action on the Fish and Wildlife Habitat Protection Program, via adoption of a functional plan is anticipated for the fall of 2002.

**Factual Background and Analysis:** Resolution No. 01-3141 partially fulfills action required by the Regional Framework Plan, Chapter 4, and the Urban Growth Management Functional Plan Title 3, section 5. MPAC recommended approval the Functional Plan in 1996 and the Framework Plan in 1997. It also concurred in dividing the work called for in Title 3 of the Functional Plan into a water quality—state goals 6 and 7 related—section, completed in 1999, and a fish and wildlife habitat—state goal 5--section. It is the latter that is the subject of this resolution. In October of 2000, MPAC approved a "Streamside CPR Purpose, Vision Goal Principles and Context" statement intended to guide the development of Metro's Fish and Wildlife Habitat Protection Program.

While Metro's program is intended to satisfy requirements of state Goal 5, it also intends to apply other policy considerations identified in Metro's Future Vision, RUGGO's, and Regional Framework plan, for example. This approach is also recognized in the Vision Statement. The Council may use aspects of these policies, as well as requirements of state Goal 5, to assist in determining the mapped landscape features that will be designated significant resources and regional resources.

The Natural Resources Committee has been developing the framework for decision making during the course of 2001. It has received regular and consistent guidance from the Water Resources Policy Advisory Committee (WRPAC), the Goal 5 TAC, Metro Technical Advisory Committee (MTAC) and the Metro Policy Advisory Committee



(MPAC). WRPAC and the Goal 5 TAC have submitted final recommendations to the Natural Resource Committee. The Metro Executive has also submitted recommendations, but has not yet made final conclusions as how regional resources should be designated.

Resolution 01-3141 contains material described in the resolution as a decision package. The package includes maps, analysis of existing local Goal 5 data, an inventory narrative concerning information on location, quality and quantity of potential resource sites, and a summary of recommended criteria for identifying regional resources for fish habitat.

Several public hearings have been held to receive public feedback. Other outreach efforts, including mailings and coffee talks have been held to inform the public of Metro's activity in this area, of which this resolution is the first important step.

**Existing Law:** Resolution 01-3141 fulfills a key component of state goal 5, an inventory of regional resources. It also moves towards completion of the Urban Growth Management Functional Plan, Title 3, section 5 Fish and Wildlife Habitat Protection.

**Budget Impact:** No budget impact is associated with passage of Resolution 01-3141



# Exhibit B and Attachment A Resolution 01-3141B

## Riparian Corridor Resource Sites and Significant Riparian Corridors



METRO

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FAX (503) 797-1909  
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Decision Draft 11/21/2001

Functional Scores  
partially based  
on Matrix Specified in  
Council Resolution  
NO 01-3087A

Site scores based on relative performance  
of the following Riparian functions:

1. Microclimate and Shade
2. Streamflow Moderation and Water Storage
3. Bank Stabilization, Sediment and Pollution Control
4. Large Wood and Channel Dynamics
5. Organic Material Sources

- Site Boundaries
- Site Sub Boundaries
- Metro UGB
- Metro Boundary
- Arterial Roads
- Open Water
- Stream Centerlines

Functional Values <= 5



1 2 3 4 5

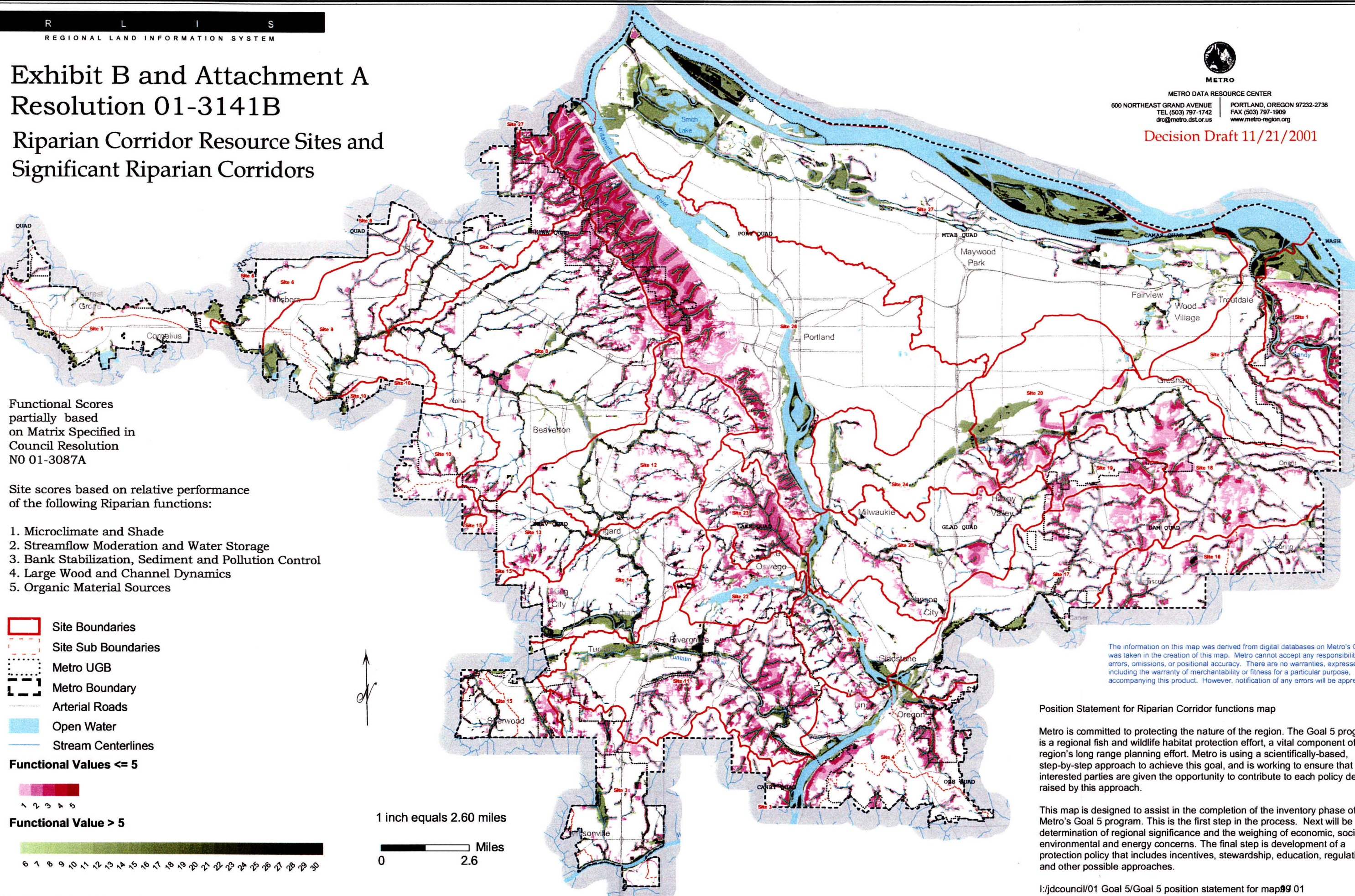
Functional Value > 5



6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

1 inch equals 2.60 miles

0 2.6 Miles



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### Position Statement for Riparian Corridor functions map

Metro is committed to protecting the nature of the region. The Goal 5 program is a regional fish and wildlife habitat protection effort, a vital component of the region's long range planning effort. Metro is using a scientifically-based, step-by-step approach to achieve this goal, and is working to ensure that all interested parties are given the opportunity to contribute to each policy decision raised by this approach.

This map is designed to assist in the completion of the inventory phase of the Metro's Goal 5 program. This is the first step in the process. Next will be the determination of regional significance and the weighing of economic, social, environmental and energy concerns. The final step is development of a protection policy that includes incentives, stewardship, education, regulation and other possible approaches.



## Criteria defining regionally significant riparian corridors

1. **Science-based** means that the option is compatible with the information presented in Metro's Goal 5 Science Literature Review, and that it is likely to provide some level of protection for each of the five identified Ecological Functional Values addressed in Metro's GIS model.
2. **Watershed approach** implies that the option provides resource protection with the minimum spatial unit considered being a watershed. This is consistent with Metro's Regional Urban Growth Goals and Objectives (RUGGOs) Objective 12 and Metro's Regional Framework Plan (RFP) section 4.13, dealing with watershed management and regional water quality, and is an important component of master planning because conditions in one part of the watershed may be influenced by activities in all other parts of the watershed.
3. **Protects hydrology** within this context suggests that an option will help protect existing hydrologic function from further human-induced alteration. In urbanized watersheds, altered hydrology is a fundamental pathway to ecological and biological degradation. However, it is important to recognize that hydrology in many of the region's watersheds is already substantially altered, and restoration of more natural hydrological regimes will require programs that address the fundamental impacts on hydrology, such as impervious surfaces and piping of stormwater runoff directly to streams.
4. **Promotes connectivity:** Connectivity refers to how tributaries are connected to larger rivers, how groundwater interacts with surface water, how water moves among streams, wetlands and floodplains, and how fish and wildlife move among watershed components (aquatic and terrestrial). The ecological health of a watershed (and its wildlife) depends in part on the connectivity between and among streams and other water resources, as well as the riparian area, over space and time. Well-connected streams and riparian buffers serve as movement corridors for wildlife and plants, allowing re-population of extirpated species, gene flow over space, and dispersal and migration corridors. Metro's Vision Statement reiterates our commitment to regional connectivity: "As ribbons of green, stream and river corridors maintain connections with adjacent upland habitats, form an interconnected mosaic of urban forest and other fish and wildlife habitat, and contribute significantly to our region's livability."
5. **Multispecies benefits** implies protection of vertebrate and invertebrate biological diversity (not just fish). This is consistent with Metro's RUGGOs stating that the region should "Manage watersheds to protect and ensure to the maximum extent practicable the integrity of streams, wetlands and floodplains, and their multiple biological, physical, and social values." To protect the region's biodiversity, options with multispecies benefits provide a more holistic ecological approach, and may help prevent future Endangered Species Act listings of other species.
6. **Restoration potential:** alternatives addressing this criterion will address certain areas within and near the riparian corridor that may be currently degraded, but are important to wildlife and hydrology and could be restored to increase ecological function. While not required by Goal 5, restoration of such areas is consistent with Metro's RUGGOs and Vision Statement and would likely result in higher levels of ecological function, increase the potential for ESA compliance, and decrease the potential for future ESA listings.
7. **Meets Goal 5 requirements:** alternatives likely to be in compliance with the rules outlined in the Goal 5 rule.
8. **Meets the goals in the Vision Statement:** alternatives that support the goals outlined in Metro's Vision Statement.
9. **Likely to address ESA requirement:** alternatives that are likely to be consistent with National Marine Fisheries Services' matrix of Pathways and Indicators and what is necessary to protect critical fish habitat.



**Exhibit D**  
**Resolution 01-3141**

**Basin Approach Issues**  
December 11, 2001

- 1. What is the overall vision and approach?**
- 2. Who and what comprises a basin?**
  - a. What is the desired geographic coverage?**
  - b. What kind of agreements do local governments make among themselves?**
  - c. What kind of agreement is made between local governments and Metro?**
    - i. What is the legal form used?**
    - ii. What is the time line for completion?**
    - iii. What non-performance guarantees are there?**
    - iv. What public involvement approach is used?**
  - d. What is the programmatic scope of a basin approach?**
- 3. How is the Economic, Social, Environment and Energy (ESEE) Analysis Completed for a basin?**
  - a. What is the template for analysis?**
  - b. How will Metro regional resources be addressed?**
  - c. What regional parameters will be determined?**
    - i. for industrial lands?**
    - ii. for commercial - office lands?**
    - iii. for commercial - retail lands?**
    - iv. for residential lands by differing densities?**
    - v. for mixed use centers?**
  - c. How will consultation, coordination and monitoring occur?**



**i. How will advisory committees interact?**

**ii. How will pre-decision coordination with Metro Council be addressed?**

**d. How will the decision be made concerning prohibiting , limiting or allowing conflicting uses?**

**i. How will a map be created, reviewed and adopted?**

**ii. What consultative process will be used?**

**4. How will a Program be created?**

**a. How will performance standards be created?**

**i. What existing information or standards (from federal requirements like the Clean Water Act, Endangered Species Act, from agencies like the US Environmental Protection Agency, National Marine Fisheries Service, US Fish and Wildlife Service, US Geologic Service, Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife, or other agencies, existing or developing standards like Total Maximum Daily Loads, properly functioning conditions, improved health of resource within a basin, or other approaches)**

**ii. What will be the geographic extent of performance standards?**

**iii. What jurisdictional issues should be addressed with performance standards?**

**b. How will the regional safe harbor be established?**

**i. How specific will/should the regional safe harbor be?**

**ii. Are there or should there be differing types of regional safe harbor?**

**c. How should "substantial compliance" be determined?**

**d. What Metro review process should be provided once local tasks are completed?**

**\*\*\*\***



# Attachment B

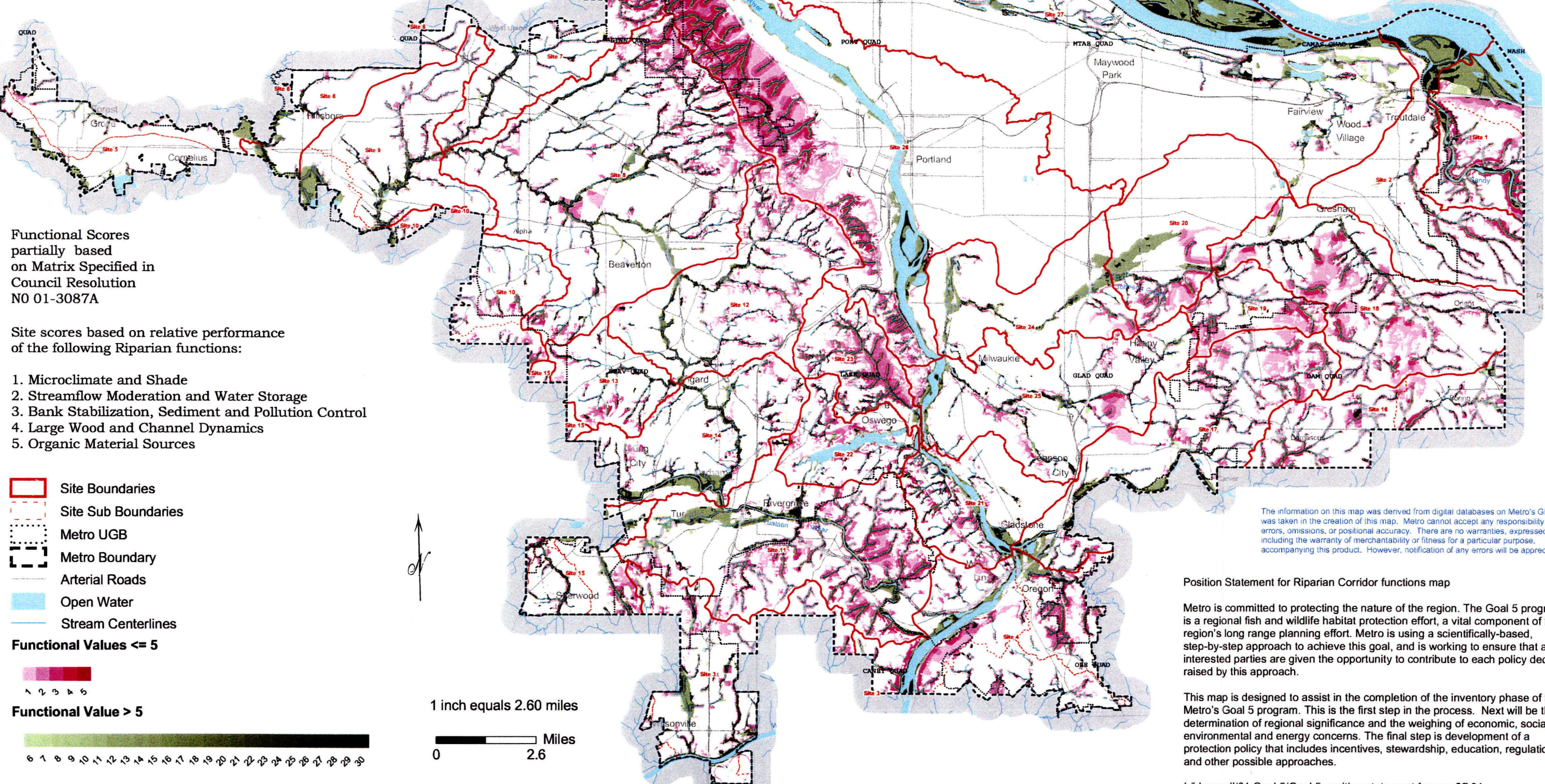
## Resolution 01-3141B

### Riparian Corridor Resource Sites and Regionally Significant Riparian Corridors



METRO DATA RESOURCE CENTER  
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Decision Draft 11/21/2001



Functional Scores  
partially based  
on Matrix Specified in  
Council Resolution  
NO 01-3087A

Site scores based on relative performance  
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- Metro Boundary
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- Open Water
- Stream Centerlines

Functional Values <= 5



Functional Value > 5



1 inch equals 2.60 miles



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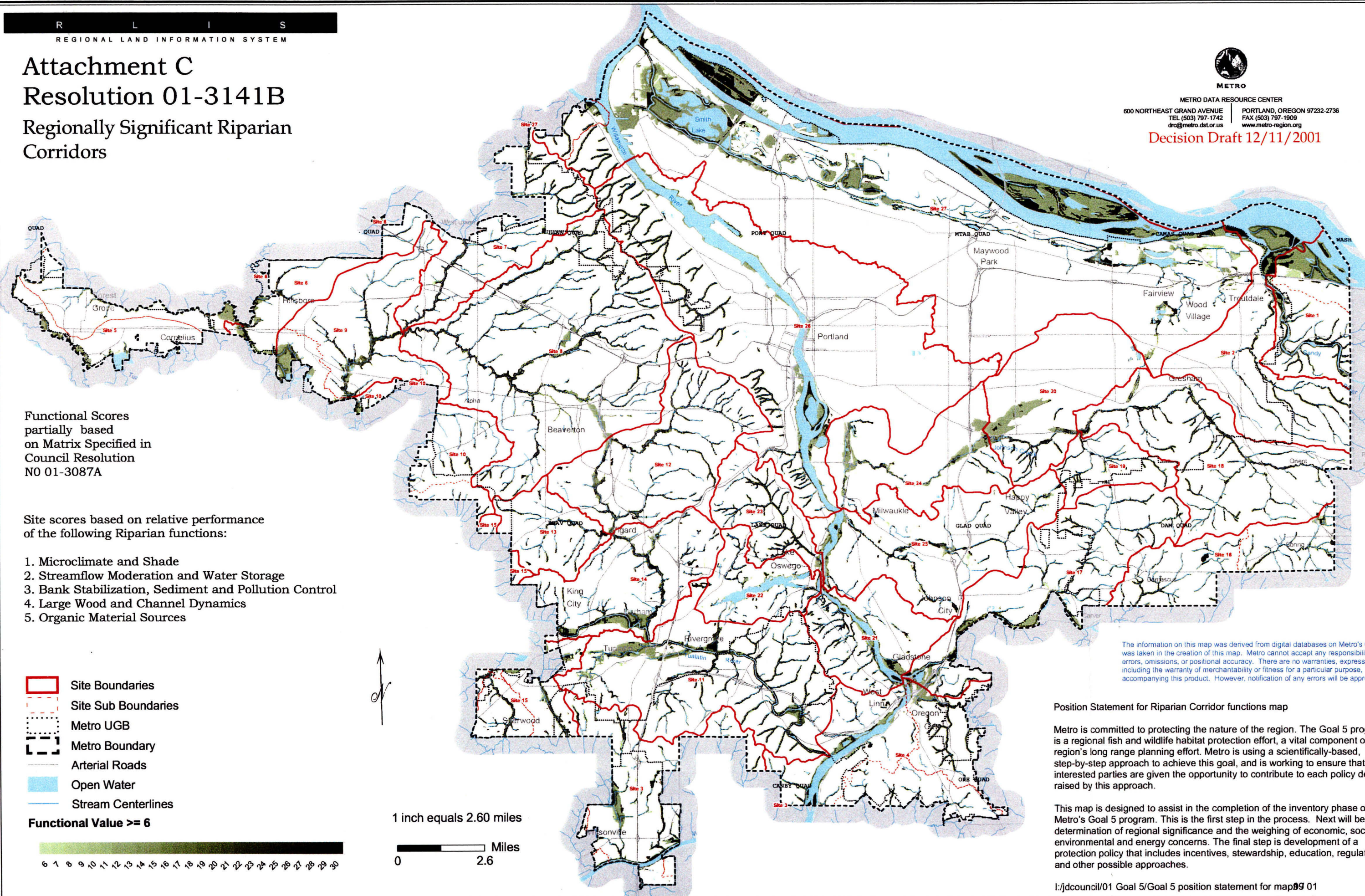


Attachment C  
Resolution 01-3141B  
Regionally Significant Riparian  
Corridors



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Decision Draft 12/11/2001



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**METRO**

**TO:** David Bragdon, Presiding Officer

**FROM:** Andy Cotugno, Director, Planning

**DATE:** December 13, 2001

**SUBJECT:** City of Hillsboro's December 5, 2001 Submittal Challenging Metro's Proposed Functional Criteria for Identifying Riparian Corridor Resources

During the December 5, 2001 Natural Resources Committee hearing on Resolution No. 01-3141 (establishing criteria to define and identify regionally significant fish habitat), the City of Hillsboro submitted a technical review of Metro's riparian corridor inventory methodology prepared by their consultants, Fishman Environmental Services. This technical review raises a number of concerns which, in the words of the consultant, "jeopardize the entire Metro riparian corridor program."

Attached is the staff response. The bottom line is that the criticisms do not negate, but rather help to refine and substantiate, Metro's science literature review and criteria for mapping riparian corridor resources. Staff has prepared a point by point response to the City of Hillsboro's technical review and has identified minor changes to the scientific literature review. Staff recommends proceeding with the determination of significant regional resources based on our current functional criteria.

As you know, the State's Independent Multi-Disciplinary Science Team (IMST) appointed by Governor Kitzhaber to provide scientific guidance, recently reviewed Metro's Scientific Literature Review. The seven members of the IMST include Logan Norris, Chair, John Buckhouse, Wayne Elmore, Stan Gregory, Kathleen Kavanagh, James Lichatowich, and William Percy. They found our science document to be "well organized, reasonably comprehensive but concise, and scientifically sound in the conclusions reached." While the IMST makes several recommendations to bolster our science document, nothing in their review suggests we are heading in the wrong direction:

"In general, our congratulations on compiling a most impressive array of documents for guidance of policy development as it relates to Goal 5 and the Oregon Plan for Salmon and Watersheds. While there is always more that can be done, we are impressed with the thoughtfulness and thoroughness of what has been done. This document will not only be valuable to staff of Metro working on recovery of listed Pacific salmon, but it will benefit those working on similar tasks in other urban centers throughout Oregon and the region."

I would be happy to discuss any aspect of these materials at your convenience.



**STAFF RESPONSE TO**

**CITY OF HILLSBORO'S**  
**TECHNICAL REVIEW OF**  
**METRO GOAL 5 RIPARIAN CORRIDOR PROGRAM**

**December 12, 2001**



## **Introduction**

This report contains Metro's response to a critique of Metro's riparian corridor inventory prepared by Paul Fishman on behalf of the City of Hillsboro (Fishman 2001). Fishman and his staff reviewed Metro's Scientific Literature View, with special focus on Table 5; this table provides the foundation for the Riparian Corridors GIS model in Metro's Goal 5 inventory process.

Fishman's critique and Metro's analysis of that critique will help strengthen our scientific approach, and our legal standing, in the future. The criticisms he provides do not negate our literature review or our GIS model, but help refine and substantiate it.

In general, the comments and criticisms Fishman offer appear to be geared towards reducing the amount of land considered to be part of the riparian corridor. This has been an ongoing point of disagreement between Metro and certain entities within the Tualatin Basin. Some of the key issues include:

- Differences in ecological definitions and terminology. This is a common and ongoing difficulty in the ecological sciences.
- Local jurisdictions' interest in maintaining full control over land use decisions.
- Local jurisdictions' concern over the amount of developable land. Jurisdictions with extensive stream/floodplain systems, such as those in the Tualatin Basin, are potentially susceptible to reduction of the developable land base due to their extensive riparian resources.

Our response addresses the first of these three issues. In addition, we address a number of Key Points raised by Fishman, including:

1. Confusion of terminology between riparian science and land management.
2. Confusion between Goal 5 resource and Goal 5 impact area.
3. Inclusion of the 100-year floodplain as part of the riparian corridor resource.
4. Lack of incorporation of the effects of impervious surfaces into Metro's methods.
5. Minimum riparian corridor width recommendations (Metro's Table 5).
6. Metro's Functional Values and Landscape Features for identifying significant riparian corridors.

### **Key Point 1: Confusion of terminology between riparian science and land management**

We found confusion between Key Points 1 and 2 in that both appeared to be addressing various aspects of the definition of riparian, riparian buffer zone, etc. However, Fishman does not disagree with Metro's definition of riparian corridor and agrees that it is consistent with Goal 5, thus we do not wish to argue semantics of various other terms here, beyond agreeing that there is disagreement. Here we address Fishman's statement regarding Metro's apparent confusion



between riparian science and land management. Fishman argues against Metro's methods on page 5 of his report:

...starting with Table 5 and continuing through the remaining 'building blocks' defines 'riparian corridor' and sometimes 'riparian area' as a distance from water features (streams and rivers) within which certain ecological functions may be provided. Metro is confusing an ecosystem type with a planning area (i.e. a buffer or management zone). The riparian corridor, as defined in Oregon Statewide Goal 5, and in science portions of the Metro Scientific Literature Review itself, can only be delineated by either: a) observation or measurement of field conditions that satisfy specific parameters; or, b) characterization of stream and landscape features, such as geomorphology, that allow approximations of the riparian corridor location.

Fishman states in the next paragraph that Goal 5 allows two choices to define riparian corridors – through an inventory process or a standard setback. We have conducted an inventory using high resolution aerial photography and GIS layers including topography, floodplains and wetlands, and land features including stands of trees, woody vegetation, meadows, and steep slope areas that are located along the region's streams and rivers. We believe there is a logical link between the ecological functions for riparian areas and the specific land and water features that are associated with those functions (note that land and water features are also what are measured in field surveys; the theoretical basis behind this approach is no different from conducting field surveys). Ecological functions provided by riparian areas are ultimately what Metro is trying to protect. The recommended widths in Table 5 estimate the distances needed to provide for critical riparian functions based on science. GIS provide a tool to approximate the region's riparian corridors from an ecological function approach. This is not land management, but science.

Goal 5 defines the riparian area as the "area of transition from aquatic to terrestrial ecosystems." See page 13 of Metro's Inventory Report for Metro's definition of riparian areas using an ecological functions mapping approach. This approach has been endorsed by Metro's advisory committees (Goal 5 TAC, WRPAC, MTAC) and by state and federal resource agencies (ODFW, DEQ, USFWS, NMFS, EPA). In addition, scientific literature supports an ecological functions approach to defining the riparian area (Kauffman et al. 2001):

[Referring to Naiman and Decamps' (1997) definition:] "...these definitions describe the influences of hydrologic processes and increased availability of moisture on the streamside or floodplain biota, but do not include the multiple functional roles that encompass how the terrestrial biota influences the geomorphology, hydrology, or stream processes. Interactions between terrestrial and aquatic ecosystems include modifications of microclimate, alteration of nutrient inputs from hill slopes, contribution of organic matter to streams and floodplains, and retention of inputs."

...From an ecosystem perspective, riparian zones are defined in terms of their multiple functional roles as the interface between aquatic and terrestrial environments. Therefore, riparian zones are defined as the three-dimensional zones of direct physical and biotic interactions between terrestrial and aquatic ecosystems; boundaries of the riparian zone extend outward to the limits of flooding and upward into the canopy of streamside vegetation.



## **Key Point 2: Confusion between Goal 5 resource and Goal 5 impact area**

Fishman's primary criticism in this portion of the critique seems to revolve around Metro's inclusion of the Zone of Influence within the riparian corridor, as described on Page 17 of Metro's Scientific Literature Review:

Beyond the riparian area is the "zone of influence" – the transition area between the riparian area and the upland forest where vegetation is not directly influenced by hydrologic conditions (Naiman et al. 1992; Gregory et al. 1991). Vegetation in this zone still influences the stream by providing shade, microclimate, fine or large woody materials, nutrients, organic and inorganic debris, terrestrial insects, and habitat for riparian-associated wildlife... The zone of influence may be considered part of the riparian area (Gregory et al. 1991; Naiman et al. 1992; Naiman and Decamps 1997; Knutson and Naef 1997).

Fishman argues that the Zone of Influence is not part of the riparian corridor but instead, comprises part of the "impact area," a planning term defined in Goal 5. However, in ecological systems, a transition area (sometimes called an ecotone) is the *gradient* of change between two types of habitats, ecosystems, etc. This transition area is what defines the riparian area under Goal 5 (i.e., "the area of transition between the aquatic and terrestrial ecosystems"). By definition, this implies there is no clear demarcation between riparian and upland habitats within the Zone of Influence, and also implies that it is very difficult to ascertain where the influence of hydrologic conditions subsides completely. As the inset paragraph above indicates, a number of very reputable riparian ecologists consider the Zone of Influence to be part of the riparian zone. Metro is providing a well-established ecological definition of riparian corridors. "Impact areas" is a political term. From an ecological standpoint, the Zone of Influence should be considered part of the riparian corridor.

## **Key Point 3: Inclusion of the 100-year floodplain as part of the riparian corridor resource**

On page 8 of his report Fishman states, "The 1-year floodplain (perhaps the 2 or 3-year) is appropriate to include in the riparian corridor, not the 100-year..." We disagree, and so does much of the scientific literature. As Metro's literature review indicates, the linkage between the stream and its floodplain is of critical importance to fish and wildlife. According to the scientific literature, the riparian zone of influence includes the extent of the 100-year floodplain because of the movement of the stream or river across the floodplain through time (Gregory and Ashkenas 1990; Schueler 1995; Spence et al. 1996). Chris May, whose literature is cited in Metro's Scientific Literature Review, concurs (May, personal communication 7 Dec. 01). As Fishman states, "The channel migration zone (CMZ), a concept discussed later in this report, might be a feature to use instead of the floodplain to determine the extent of the riparian corridor." The CMZ is the lateral extent of likely channel movement over the past 100-year period (May 2000), or where aquatic or wetland habitat could possibly exist at some time in the future (Pollock and Kennard 1998). The 100-year flood is often used for purposes of delineating the extent of the floodplain (May 2000), although the CMZ includes *lower terraces and hillslopes adjacent to the floodplain* where the stream is likely to meander (Pollock and Kennard 1998). Based on the definition of CMZ, Fishman appears to be arguing for widths that may actually be, in some cases, more extensive than the 100-year floodplain.



It is important to note that there has been general (although not complete) consensus on Metro's use of the 100-year floodplain in the Goal 5 context, as documented in public records from Goal 5 Technical Advisory Committee meetings and the Metro Natural Resources Committee. Metro's current methodologies have also been approved by the Water Resources Policy Advisory Committee, Metro Technical Advisory Committee, and the Scientific Literature Review has been peer-reviewed by the Independent Multidisciplinary Scientific Team (IMST). Input from these sources, including jurisdictions within the Tualatin Basin, resulted in Metro's excluding developed (impervious) areas from the 100-year floodplain in the GIS model criteria, but inclusion of undeveloped 100-year floodplains in the model. The 100-year floodplain was also included in the base-level protections provided by Title 3 and as such, has already been accepted as part of the riparian corridor based on extensive advisory committee and peer review. Metro should retain the 100-year undeveloped floodplain within its GIS model delineating riparian corridors.

#### **Key Point 4: Lack of incorporation of the effects of impervious surfaces into Metro's methods**

In his critique, regarding imperviousness Fishman states:

This very important factor of stream health is all but ignored in the riparian corridor inventory method developed by Metro... This ignores the fact that a number of the stream health parameters they are trying to protect with "riparian areas" are not or will not be properly functioning because of the effects of imperviousness in the watersheds... (Fishman p. 8)

We agree that imperviousness is a critical factor that must be addressed in urban ecosystems (it is also something that will change over time). However, Fishman incorrectly states that Metro does not address this factor. Metro's model criteria<sup>1</sup> are designed to identify "forest, woody vegetation, or low structure vegetation/undeveloped soils landcover type" – in other words, the opposite of impervious surfaces. By carefully mapping these landcover types, Metro has identified existing *pervious* surfaces along the region's streams and wetlands and the remaining flood areas. Metro has also mapped remaining forest canopy within upland portions of the region.

Metro recognizes the adverse effects of land use and impervious surfaces on basin hydrology cannot be mitigated by riparian corridor protection efforts alone. However, identifying remaining pervious surfaces, which is part of Metro's GIS riparian model, is an essential step in addressing overall basin hydrology; additional planning efforts to address harmful effects of impervious surfaces are also necessary if overall ecological conditions of urban watersheds are to be improved. Imperviousness will be addressed in more detail after Goal 5 is complete, during the watershed and stormwater planning processes.

Fishman states that large areas of Washington County already contain high levels of imperviousness, and uses this as an argument against as much protection for streams in such

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<sup>1</sup> Metro's Ecological Functional Values and Landscape Features (the table describing Metro's GIS riparian model variables).



areas (Fishman p. 8). To back up this argument he quotes Schueler (1994) (Fishman p. 9). Schueler advocates dividing urban streams into three *management categories* (our emphasis) based on imperviousness and stream quality. Fishman appears to be confusing management/policy issues with science, as he charges Metro of doing. Metro is in the inventory phase of the Goal 5 process; the type of protection to be administered is not part of this process, but is part of the policy process that will deal with implementation measures.

Metro's Green Streets Program and scientific literature indicate that the effects of imperviousness can be mitigated to an unknown extent in urbanized areas (i.e., Total Impervious Area versus Effective Impervious Area; see Metro's Scientific Literature Review). The Scientific Literature Review also addresses impervious surfaces beyond the riparian primary and secondary zones in the GIS model. How new developments are built, as well as the potential for retrofitting existing development, will be important issues to address in the *program* phase of Goal 5, when specific strategies are formed and implemented to deal with imperviousness and other key urban watershed issues. Because imperviousness can be mitigated, downgrading sites based on surrounding imperviousness is not appropriate during the inventory stage.

#### **Key Point 5: Minimum riparian corridor width recommendations (Table 5)**

Using an outdated version of the model and literature review, Fishman critiqued Metro's Table 5, "Range of recommended minimum riparian area widths for fish and wildlife habitat." Please note that the following categories are obsolete in Metro's current review due to the deferral of the "Riparian Wildlife Habitat and Connectivity" criterion:

- Wildlife needs
- Edge effect
- Movement corridors

This renders 8 out of 25 Literature Review Forms (specific criticisms) irrelevant to this assessment.

Fishman identified Table 5 as his primary concern and criticism, stating, "In all too many cases, the source literature has been mis-interpreted, mis-represented, incorrectly used, or used in ways that are misleading" (Fishman p. 1), and that "the basic problem with this set of building blocks is that the foundation block, Table 5 of the Scientific Literature Review, is seriously flawed" (Fishman p. 4). A very careful review of Fishman's comments versus the original literature demonstrates relatively minimal problems with Table 5. We address Fishman's concerns (where they are relevant to the current literature review and model) in Appendix 1, attached.

When we agreed that there might be a problem with a reference within Table 5, we assessed the potential impacts on Metro's GIS model criteria by calculating the average recommended widths for the remaining literature. When the literature suggested a range of values, we used the midpoint of the range for that reference's entry into the averaging. The primary question we asked was, would we reach a different conclusion for the model criterion without the reference in question? Fishman is clearly arguing for narrower widths, but careful review of the information



presented in Table 5 and the associated literature sometimes actually argue for more extensive widths. These are discussed in Appendix 1 and summarized in Key Point 6.

The IMST committee reviewed the Scientific Literature Review and returned very positive comments about the review in general, and Table 5 in particular. In addition, we are in receipt of a document authored by an interagency team of fisheries biologists convened in Portland, Oregon in March 2001 to draft criteria for protecting at-risk salmonids (USFWS 2001). Based primarily on four documents (FEMAT 1993; USDA 1995; Quigley et al. 1997; NMFS 1998), the team drew the following conclusions, based on a functional approach quite similar to Metro's, for distances from stream channels needed to provide for LWD recruitment, stream shading, and sediment filtering:

- LWD recruitment: 1 SPTH
- Shade: 1 SPTH
- Sediment filtering: 1 SPTH

Fishman's criticisms that Metro's widths are too extensive is based partially on riparian wildlife, a criterion that Metro has deferred. When we re-assessed the literature sources in Table 5 to ensure consistent application of average widths we found our model widths justifiable based on science and that if anything, several widths in the model should be increased.

#### **Key Point 6: Metro's Functional Values and Landscape Features for Identifying Significant Riparian Corridors**

On page 9 of Fishman's critique, he comments again on Metro's intermixing of riparian terms, then states, "This error in terminology is really not the problem, however. The problem is that Metro has misapplied or incorrectly used information from scientific literature in Table 5, and then uses the information in Table 5 as justification for defining the riparian resources region-wide."

The individual criticisms of the literature cited in Metro's Table 5 have been addressed in Appendix 1. Table 1 below summarizes, by GIS model criterion, the Metro staff recommendations contained within Appendix 1. Our findings suggest that the Microclimate and shade, Bank stabilization, sediment and pollution control, and Large wood and channel dynamics criteria should either remain as is or the widths increased. Streamflow moderation and water storage and Organic material sources should remain as is.



**Table 1. Summary of Metro staff recommendations**

<b>GIS model criterion</b>	<b>Reference (from Appendix 1)</b>	<b>Metro staff recommendation</b>
Microclimate and shade	Raleigh et al. 1986	Remove this and the three other Raleigh references from Table 5. No model changes recommended.
	May et al. 2000	No action or increase from 100 ft (30.5 m) to 113 ft. (34.4 m).
	Johnson and Ryba 1992	Remove the word "minimum" from Table 5 title caption.
	Spence et al. 1996	No action.
	FEMAT 1993	No action.
	FEMAT 1993	Remove FEMAT reference from Table 5 within this criterion.
	FEMAT 1993	No action or increase Primary Functional Value from 100 ft (30.5 m) to 292 ft (89 m).
Streamflow moderation and water storage	No criticisms received.	N/A
Bank stabilization, sediment and pollution control	May et al. 2000	No action or increase to Primary Functional Value from 100 ft (50 m) to 164 ft (50 m) in low-slope areas.
	May et al. 2000	No action or increase Primary Functional Value from 100 ft (30.5 m) to at least 164 ft (50 m) in low-slope areas.
	Johnson and Ryba 1992	No action.
	Johnson and Ryba 1992	Correct Table 5 to reflect correct metric conversion.
	Spence et al. 1996	No action.
Large wood and channel dynamics	May et al. 2000	No action or increase Primary Functional Value from 150 ft (45.7 m) to 164 ft (50 m).
	FEMAT 1993	No action.
	FEMAT 1993	Remove FEMAT reference from Table 5 within this criterion.
Organic material sources	Spence et al. 1996	No action.
	FEMAT 1993	No action.

## Conclusion

Metro's vision statement states:

Our region places a high priority on the protection of its streams, wetlands and floodplains to maintain access to nature; sustain and enhance native fish and wildlife species and their habitats; mitigate high storm flows and maintain adequate summer flows; provide clean water; and create communities that fully integrate the built and natural environment. As ribbons of green, stream and river corridors maintain connections with adjacent upland habitats, form an interconnected mosaic of urban forest and other fish and wildlife habitat, and contribute significantly to our region's livability... The overall goal is to conserve, protect and restore a continuous ecologically viable streamside corridor system, from the streams' headwaters to their confluence with others streams and rivers, and with their floodplains in a manner that is



integrated with the surrounding urban landscape. This system will be achieved through conservation, protection and appropriate restoration of streamside corridors through time

The RUGGOs state:

...the region should "Manage watersheds to protect and ensure to the maximum extent practicable the integrity of streams, wetlands and floodplains, and their multiple biological, physical, and social values," as well as that "A region-wide system of linked significant wildlife habitats should be developed. This system should be preserved, restored where appropriate, and managed to maintain the region's biodiversity.

After careful review of Fishman's critique, we have identified several easily corrected problems within Metro's Scientific Literature Review. We have identified and responded to areas of disagreement between Metro and the City of Hillsboro's consultant. The scientific literature, as well as state and federal natural resource agencies, support Metro's Goal 5 inventory approach and specific criteria in their current form. After making the minor changes recommended above, staff recommends proceeding with the determination of Significant Riparian Resources based on our current guidelines and GIS model.

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## Appendix 1. Staff response to riparian corridor width recommendation criticisms made by Paul Fishman on behalf of City of Hillsboro.

Reference	Table 5 criterion	GIS model criterion	Fishman's criticism(s)	Agree or disagree?	Comments and relevance to Metro's GIS model
Raleigh et al. 1986	Aquatic wildlife	Bank stabilization, sediment and pollution control	States that "riparian width" is not identified as a habitat suitability model variable, but instead reflects the paper's authors' opinion.	Agree in part. Fishman is correct that riparian width was not a model variable, but professional opinion of the experts who wrote the paper may be valid. However, because this is not based on empirical data and the authors' opinion has been called into question, we suggest removing this reference from Table 5, as well as the other Raleigh / Hickman and Raleigh references. To examine whether the criterion parameters should be changed we found the midpoint in each recommended range, then calculated the average of the five remaining literature references. Our analysis shows an average of 125 ft (38.1 m) without the Raleigh / Hickman and Raleigh references.	Reexamination of Table 5 without the first four references results in a potentially wider features mapped, on average, than retaining the references in the table. <b>No action recommended</b> on GIS model criterion based on this literature reference (although it could be justified that the Primary Functional Value width be increased).
May et al. 2000	Temperature regulation and shade	Microclimate and shade	Fishman has a problem with May's table and terminology. He will have to take up the terminology arguments with May. Fishman states that 7 out of 10 references have a low-end range of less than 30 m (98.4 ft; our analysis shows an average of 85.3 ft, or 26 m, calculated same as above).	Disagree. Although Fishman is correct in his assessment of different habitat types providing different amounts of shade (e.g., willow communities provide less shade than old growth forests), the scientific literature documents increases in water runoff temperature as it runs across exposed soils or impervious surfaces (Brosofske et al. 1997). In our opinion, 98.4 ft (30 m) is a bare minimum required to protect stream temperatures in our region, in which many streams are already temperature-limited. In addition, one of the narrowest recommendations in May's Table 2 provides for only 50-60% shade; removing the 50-60% reference from the average calculation for that table results in an average of 89.13 ft (26.74 m). We would like to further note that Chris May is a well-known and highly respected Pacific Northwest researcher and as such, his professional opinion is of value.	Water temperature is a critical factor for salmonids and other aquatic organisms. In an urban setting, where harmful thermal influences prevail, the mid-point of the literature values is unlikely to be sufficient. Metro's Table 5 citations currently average 110.9 ft (33.8 m); removing the May reference brings the average recommendation to 113.1 ft (34.5 m), higher than that in Metro's GIS model primary functional value of 100 ft. <b>Recommend increasing the GIS model's Primary Functional Criterion width, or leaving it as is.</b>
May et al. 2000	Sediment & erosion control	Bank stabilization, sediment and pollution control	Fishman's primary problem with this use of the citation in the context of sedimentation revolves around May's Table 4, which lists a number of citations with ranges lower than 30 m. Part of the second paragraph under Fishman's critique (beginning "May continues...") does not relate to sediment removal and appears to have been copied from the previous May evaluation.	Disagree. Fishman states that Metro fails to elucidate the "apparent arbitrary nature of [May's] recommendation..." We do not agree that May's recommendation was arbitrary, however, we agree our recommendation needs clarification, which we present here. Fishman is correct in commenting that May attributes (we believe, correctly) the high variability of the range of recommended widths to differences in soil type, slope, vegetation, and whether the studies are short term or long term (long-term studies recommend buffers $\geq$ 98.4 ft, or 30 m). May discusses this on pages B-23 through B-25. Most Vegetated Filter Strips (VFS) use grass as a filter medium and should not be directly compared to studies involving natural riparian vegetation. VFS appear to require a narrower buffer than riparian forests to trap the same amount of sediments. On page B-25 May comments that "The use of VFS to treat runoff has merit, but this treatment should be done outside the boundaries of the stream-riparian ecosystem." In other words, catch the sediments before they enter the riparian zone if possible (arguing for even wider widths). Metro's GIS model criterion addressing Primary Functional Value recommends "a forest, woody vegetation, or low structure vegetation/undeveloped soils landcover type within 100 ft (30.5 m) of a surface stream" (e.g., pervious surfaces), and goes out to 200 ft (61 m) in steep slope areas. Presumably, the desired future condition for most of the (to-be-protected) riparian areas will be riparian forest. We should focus on the literature addressing riparian forests. Accordingly, removing VFS/grass filter references, and the two references only resulting in 50% sediment removal (in our opinion insufficient), from May's Table 4 results in an average recommended width (calculated same as before) of 190.9 ft (58.2 m), about triple that currently recommended as a Primary Functional Criterion.	<b>Recommend increasing the GIS criterion's Primary Functional Value to at least 164 ft (50 m) or leaving it as is</b> (pervious surfaces). This may (but may not in heavily urbanized areas) provide sufficient sediment control in riparian forests. It also provides for sufficient riparian width as bare ground and non-woody vegetation areas are provided with sufficient protection and restoration to create the dominant natural streamside habitat in our region, riparian forest.
May et al. 2000	Pollutant removal	Bank stabilization, sediment and pollution control	Fishman's primary problems with this use of the citation in the context of general pollutant removal are similar to those in the Sediment Removal comments (above).	Disagree. Pollutants in urban systems are often bound to soil particles. Relating to this fact, on page B-27 May states: "Therefore, removal of fine sediment and organic matter often removes a large percentage of the pollutant load as well." This actually argues for wider widths within this GIS criterion because of the Sediment Removal portion, assessed above. Please see the discussion in the previous May critique for a discussion of VFS versus riparian forest buffers; grassy areas have different pollutant removal capacities than riparian forests. Removing the VFS references from May's Table 5 results in an average recommended width (calculated as before) of 147 ft (44.9 m). Again, however, sediments are a primary consideration in dealing with pollution.	Recommendation same as that in the previous entry (May 2000, Sediment and erosion control): <b>recommend increasing Primary Functional Value width to at least 164 ft (50 m) in low-slope areas or leaving it as is.</b> This is necessary but not sufficient, as pollutants and excess nutrients should also be controlled at their sources.
May et al. 2000	LWD	Large wood and channel dynamics	Similar to his other comments on May's 2000 paper. Says May's selection of 262 ft (79.9 m) is arbitrary.	Disagree in part. Metro's Primary Functional Criterion for Large Wood and Channel Dynamics is forested landcover or hydrologically connected wetland within 150 ft (45.7 m) of a stream, or within undeveloped floodplains (large wood is carried from the floodplain to the river during flood events as a natural process). Only the secondary function in the GIS model extends out to 262 ft (79.9 m). Calculating the mid-points for the ranges in May's Table 3 yields an average mid-point of 160 ft (48.75 m). Three out of five of Metro's Table 5 literature citations for LWD recommend one SPTH; of the other two, one is May (262 ft) and one recommends 150 ft (45.7 m). National Marine Fisheries Service (1998) defines Site Potential Tree Height as	<b>Recommend increasing primary criterion to 160-165 ft (50.0 – 50.3 m) or leaving it as is.</b>



# Appendix 1. Staff response to riparian corridor width recommendation criticisms made by Paul Fishman on behalf of City of Hillsboro.

Reference	Table 5 criterion	GIS model criterion	Fishman's criticism(s)	Agree or disagree?	Comments and relevance to Metro's GIS model
				tallest dominant trees at 100 years, given site conditions (there are definitions that range both higher and lower, but NMFS is probably a reliable reference). According to the NMFS definition, these heights range from about 130 ft (39.6 m) to over 200 ft (61.0 m) for second-growth conifers in riparian areas; second-growth conifers are commonly found in Portland area riparian forests (Hennings 2001). The mid-point of NMFS' SPTH range is 165 ft (50.3 m) (Spence et al assume 170 ft in westside forests), matching well with the mid-point calculations of May's Table 3. We believe that 150 ft (45.7 m) for the Primary Functional Criterion is not too wide, but may be too narrow. We will not be able to recover, or even preserve existing runs, of salmonids in the Metro region without sufficient LWD, as it is a key structural component vital to salmonid life history requirements. LWD also traps sediments, provides habitat for aquatic insects (a key salmonid food source), and helps retain salmon carcasses, a critical element of Pacific Northwest ecosystems (Cederholm et al. 2001). LWD is known to be sparse in urban habitats. Narrower forests in the Portland Metro region have, on average, lower percentages of canopy cover (Hennings 2001) and therefore have less potential for providing LWD. The selection range for the GIS model's secondary criterion (forested land cover within 150-262 ft (45.7 – 79.9 m) of a stream or developed floodplain) is in our opinion sound; erring on the side of caution for this criterion is a wise choice.	
Johnson & Ryba 1992	Temperature & shading	Microclimate and Shade	Problem with Metro calling a range of values a "minimum" recommendation. Fishman does not appear to disagree with the 98.4 ft (30 m) protection distance. Also, problem with exclusion of large rivers (i.e., Johnson and Ryba make specific comments regarding the value of riparian vegetation in small and intermediate sized streams).	Agree in part. Many of the riparian area widths listed in Metro's Table 5 reflect recommended ranges (including both a minimum and a maximum), thus the use of the word "minimum" may not accurately reflect the information provided. Fishman's comment regarding large rivers is a relatively minor one, given that the vast majority of waterways in our area are small- to medium-sized streams. However, developing different protection measures for large rivers may be appropriate, and certain entities in the region (e.g., City of Portland and the Willamette Restoration Initiative) have studied or are studying this issue. For the time being, however, it is far wiser to place protection on the Columbia and Willamette Rivers using the current criteria than not to protect them at all. See also our discussion under this criterion for May 2000 criticisms, as well as page 116 in Metro's Literature Review.	Recommend changing Metro's Table 5 to remove the word "minimum." Consider developing separate programs later for the region's large rivers. In the meantime, afford large rivers the same protection as other waterways.
Johnson & Ryba 1992	Sediment removal	Bank stabilization, sediment and pollution control	Problem with Metro calling it "minimum." Large versus small information was also re-addressed. Also, may have a problem with using the 10 ft (3.0 m; sand) to 400 ft (121.9 m; clay) range, although this is unclear.	Agree in part. See entry above this one to address "minimum" and small streams versus large rivers. The volcanic nature of our urban region produces an abundance of clay soils, so if Fishman is arguing about the range (10-400 ft, or 3.0-121.9 m), we would have to conclude that the higher end of the range (clay) given in the Johnson and Ryba reference would be most appropriate. A review of Metro's GIS model criterion indicates protection substantially less than 400 ft (121.9 m), unless a floodplain is present.	No new recommendation.
Johnson & Ryba 1992	Nutrient removal	Bank stabilization, sediment and pollution control	Same problems with Metro calling it "minimum" and large versus small rivers. Fishman also caught a metric conversion error (Metro's Table 5 minimum range number was lower than it should have been).	Agree in part. Thanks to Fishman for the correction. Amusingly, Fishman made an error correcting our incorrect conversion, quoting a range of 10-14 m rather than 10-40 m. We have already addressed Metro's use of the term "minimum" above.	Correct Metro's Table 5 to reflect metric conversion correction (should read: 33-141 ft).
Spence et al. 1996 (ManTech Report)	Bank stabilization	Bank stabilization, sediment and pollution control	Fishman states that they cannot find the specific 170-ft bank stabilization reference within the ManTech Report's text, but that Metro contradicts the references' authors and that we ignore the time perspective.	Agree in part. Metro located 170 ft (51.8 m) recommendation from the Stream Shading section in the ManTech report (page 217) or the SPTH recommendation in the conclusion, meant for overall protection of most key ecological functions. Regarding streambank stability, the ManTech Report (p. 225) states that "retention of riparian vegetation within 0.5 site-potential tree heights of the active stream channel appears necessary to maintain streambank stability." It further states that this may not be adequate in systems with large floodplains and steep slope sites and that long-term protection may require wider buffers. Protecting channels in urban ecosystems is critical, because sediments from stream channels are a major source of instream sedimentation; for example, sediments from stream channels in southern California provided approximately two-thirds of the total sediment yield (Trimble 1997). One-half of the authors' suggested westside SPTH of 170 ft (51.8 m) for protection would be 85 ft (25.9 m). However, this criterion also addresses sediment and pollution control, which Metro has addressed above and which fall well within the ranges set forth in the GIS model criterion.	This part of the GIS model criterion has the least influence on protection width or area; the criterion is driven more by sediment and pollution control, which have more extensive requirements. Thus this correction does not change the GIS model criterion. Recommend no action except that already outlined in other parts of this criterion above.



## Appendix 1. Staff response to riparian corridor width recommendation criticisms made by Paul Fishman on behalf of City of Hillsboro.

Reference	Table 5 criterion	GIS model criterion	Fishman's criticism(s)	Agree or disagree?	Comments and relevance to Metro's GIS model
Spence et al. 1996	Organic litterfall	Organic material sources	Fishman states that they cannot find the specific 170-ft organic materials source reference within the ManTech Report's text, but that Metro contradicts the references' authors.	Agree in part. Metro located the 170 ft (51.8 m) recommendation (1 SPTH as defined by Spence et al for westside forests) from the Stream Shading section or elsewhere in the ManTech report (page 217). This does differ from ManTech's recommendations. On page 218, the ManTech Report states that although little research has been done, FEMAT assumes that most fine organic litter originates within 30 m from the channel. "In deciduous woodlands," Spence et al state, "windborne leaf litter may travel farther from source trees than needles or twigs from coniferous vegetation; consequently, riparian buffers may need to be wider than suggested above to protect natural levels of organic inputs." The predominant riparian forest type in the Metro region at this time is deciduous, suggesting that larger widths may be necessary to supply sufficient organic materials to stream systems. Organic matter comprises a major portion of the foundation of aquatic food webs; we believe the current criterion is more likely to protect adequate organic debris supplies than narrower widths, based on Spence et al.'s comments.	Recommend no action.
Spence et al. 1996	Shade	Microclimate and shade	Fishman's comments on time perspective and that he cannot locate reference within text are similar to those for already discussed for the ManTech Report.	Disagree. Spence et al's discussion of stream shading on page 217 includes this statement: "...several authors have concluded that buffers of 98.4 ft (30 m) or more provide adequate shade to stream systems... The generalized curves presented by FEMAT (1993) suggest that cumulative effectiveness for shading approaches 100% at a distance of approximately 0.75 tree heights from the stream channel." Assuming Spence et al.'s 170-ft (51.8 m) westside SPTH, this translates to 128 ft (39.0 m). Spence et al. frequently appear to go with FEMAT's recommendations, which were developed specifically for the Pacific Northwest and the Northwest Forest Plan. We see no problem, after reading the discussion on page 217, with using the 170-foot specification. Again, as discussed above, thermal impacts are a major problem in urban areas and as such, we should afford the best protection possible from such deleterious impacts.	Recommend no action (except that outlined in other parts of this criterion above).
FEMAT 1993	Shade	Microclimate and shade	Fishman states that Metro has cited the reference incorrectly, by using a general statement within the text that is not substantiated. Fishman further cites a statement from the reference: "No target management or threshold level for these habitat variables can be uniformly applied to all streams. While the approach is appealing in its simplicity, it does not allow for natural variation among streams." Fishman also states that the FEMAT report does not give "minimums."	Disagree. First, it is important to note that the team leader for authorship of this reference was Jack Ward Thomas, former chief of the U.S. Forest Service. Many others with vast professional experience and knowledge were members of the team that developed this Pacific Northwest-oriented reference. While it is true that the figure Fishman references (Figure V-12) is not directly derived from empirical data, it does represent the combined professional opinion of some of the premier wildlife biologists in the country. The reason Metro is using multiple ecological variables in the GIS model is to avoid a "one size fits all" (uniform) approach, and instead to use a <i>consistently applied</i> set of criteria based on science and what is on real features identified through high-resolution aerial photography and satellite imagery – which vary from site to site and represent existing variability within stream systems, thus we are not using a "one size fits all" approach. There is certainly a difference between "consistently applied" and "uniform," as the GIS model maps demonstrate (one does not see uniform buffers around streams except when the stream is impaired and defaults to the 50 ft minimum protection). The recommended GIS model widths represent a science-based, practical <i>cutoff</i> for mapping ecological functions that are likely to exist within the urban region, a reasonable approach for a regional model. Many functions probably extend further than the cutoffs we have proposed, thus perhaps Metro has set forth threshold levels; Metro could always remove the threshold and map each feature as far out as it can reasonably be assumed to extend. It is also worth noting that this approach, and the ecological criteria Metro has proposed, have been approved by the Goal 5 Technical Advisory Committee, which includes biologists from ODFW, NMFS and USFWS, among other wildlife, geomorphologic, and ecological specialists.	Recommend no action other than removing "minimum" from Ecological Functional Values and Landscape Features table.
FEMAT 1993	Bank stabilization and sediment control	Bank stabilization, sediment and pollution control	Fishman states that Metro is ignoring a discrepancy in source document, rendering our use of reference inapplicable. Also, same argument that FEMAT does not give "minimums."	Agree in part. Metro does not necessarily agree that there is a discrepancy in the source document, because there is a recognized relationship between crown width and three height (Silva Ecosystem Consultants 1996), although the reference authors do not expressly state so. However, the root strength concept discussed in the reference on page V-26 refers to both stream channel and upslope (steep) areas, thus is not necessarily riparian-specific. Use of this reference for the bank stabilization criterion is questionable enough to merit exclusion in Metro's Table 5. Metro's use of the term "minimum" has already been addressed.	Recommend removing FEMAT reference from Metro's Table 5, Bank Stabilization and Sediment Control category. This does not influence the GIS model because many references recommended wider distances.
FEMAT 1993	LWD	Large wood and channel dynamics	Problem with use of the word "minimum." Also, Fishman states that: "In fact, this simplification of the data for the purposes of suggesting management goals is a process against which the authors expressly warn."	Disagree. Metro's use of the term "minimum" has already been addressed, as has the second part of Fishman's criticism (see the first FEMAT reference in this table).	Recommend no action.



**Appendix 1. Staff response to riparian corridor width recommendation criticisms made by Paul Fishman on behalf of City of Hillsboro.**

Reference	Table 5 criterion	GIS model criterion	Fishman's criticism(s)	Agree or disagree?	Comments and relevance to Metro's GIS model
FEMAT 1993	Organic litterfall	Organic material sources	Problem with FEMAT's diagram and Metro's use of "minimum."	Disagree. Fishman will need to contact the FEMAT team of authors to address his problem with the discrepancy within the text of Figure V-12 (page V-26). The error does not render the graph irrelevant, nor does it confound the reader's understanding of the information if taken in context with the graph itself. Metro's use of the term "minimum" has already been addressed.	Recommend no action.
FEMAT 1993	LWD and structural complexity: snags and downed wood	Large wood and channel dynamics	Problem with FEMAT's diagram and Metro's use of "minimum."	Agree in part (but not for the same reasons). This FEMAT citation deals more directly with LWD and snag resources for terrestrial wildlife. Because Metro has removed the wildlife criterion from the GIS model (although not in the outdated version used by Fishman), the other FEMAT LWD citation (see above) is more appropriate for instream LWD. This reference, however, could be appropriately used when Metro addresses the terrestrial wildlife component of the region's watersheds. Calculating the average Table 5 recommendations as was done previously within this table, but omitting the FEMAT reference for 1 SPTH, results in an average width of 151 ft (46.0 m) (assuming SPTH of 170 ft). This is very close to the GIS model Primary Functional Value of 150 ft (45.7 m).	<b>Recommend removing this FEMAT reference from Metro's Table 5, Large Wood and Channel Dynamics category.</b> This does not influence the GIS model because many references recommended wider distances.
FEMAT 1993	Microclimate	Microclimate and shade	Fishman states that the FEMAT numbers illustrate the maximum distance effects from a clear-cut edge into upslope forests in the Cascades, whereas Metro claims this as a minimum width. Fishman notes that the FEMAT report estimated these widths because they lacked empirical data. Other confusion and minor comments.	Metro's use of the term "minimum" has already been addressed, as has the credibility of the FEMAT authors' professional opinions. Recalculating mid-point ranges on Table 5 without the FEMAT reference results in an average width of 292 ft (89.0 m), or approximately triple Metro's GIS model's Primary Functional Value of 100 ft (30.5 m), including a reference for 75 ft (22.9 m) that pertains solely to windthrow. Shade is not really the issue here (due to narrower protection width requirements) as much as temperature and relative humidity. Metro has located an additional reference (Ledwith 1996), conducted in Six Rivers National Forest of California, dealing specifically with the effects of buffer width on air temperature and relative humidity along riparian zones. This study only examined widths of up to 492 ft (150 m); mean air temperature was still declining towards the stream at the 150 m limit, and relative humidity was still increasing towards the stream at the 150 m limit. It is our opinion that Metro's Primary Functional Value for this criterion is insufficient to provide full protection of microclimate conditions within the riparian zone, although the curves in Figures 1 and 2 in the Ledwith paper suggest that 100 ft (30.5 m) represents a good cutoff, after which point temperature declines and humidity increases near the stream are less extreme.	<b>Recommend either increasing Primary Functional Value or leaving criterion as is.</b> Increasing the criterion would likely provide enhanced protection for microclimate and shade along streams.

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December 13, 2001

Metro Council  
c/o Honorable David Bragdon, Presiding Officer  
600 NE Grand Avenue  
Portland, OR 97232-2736

**Re: Proposed Wildlife Habitat Criteria and Mapping**

Dear Council Members:

This letter is written on behalf of the business coalition known as the Retail Task Force (RTF). Please place this letter into your record as testimony on Resolution No. 01-3141A.

While it is understood that Metro has expended considerable time and study to the establishment of criteria to define and identify regionally significant fish and wildlife habitat, the RTF has the following procedural and substantive concerns regarding Metro's current proposal:

- It exceeds federal and state requirements under either the Endangered Species Act or Statewide Planning Goal 5 (Natural Resources);
- It exceeds the independent Goal 5 work done by most of the local jurisdictions within the region, thereby calling into question what type of regional role Metro should play in Goal 5 implementation;
- It is being done on a piecemeal basis, where natural resource inventory mapping is completed in a vacuum of the future ESEE analysis and adoption of regulations. This segmented process deprives property owners of sufficient information upon which to base their comments on the proposed natural resource criteria and related mapping;
- It is being done without sufficient notice to affected property owners within the region.



- It is being done without a conscious decision, based upon public notice, comment and hearing, to proceed under OAR 660-23-080(3) instead of OAR 660-23-080(2), the latter subsection of which would not usurp local planning prerogative; and
- It is being done without regard to the concerns and criticisms raised with respect to the scientific basis for the criteria proposed for adoption by the Technical Review: Metro Goal 5 Riparian Corridor Program prepared for the City of Hillsboro by Paul A. Fishman, Fishman Environmental Services, November 2001.

The Metro Council should postpone adoption of the criteria and mapping until the technical issues raised by Mr. Fishman are resolved. In addition, the Metro Council should engage in further public process to consider following the procedure outlined in OAR 660-02-080(2), which procedure would allow local governments to complete the Goal 5 process, including the ESEE consequences analysis.

We appreciate the opportunity to present our testimony on this important matter.

Very truly yours,



Mark D. Whitlow

MDW:djf  
cc: Mike Burton  
Dan Cooper  
RTF participants










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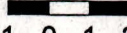
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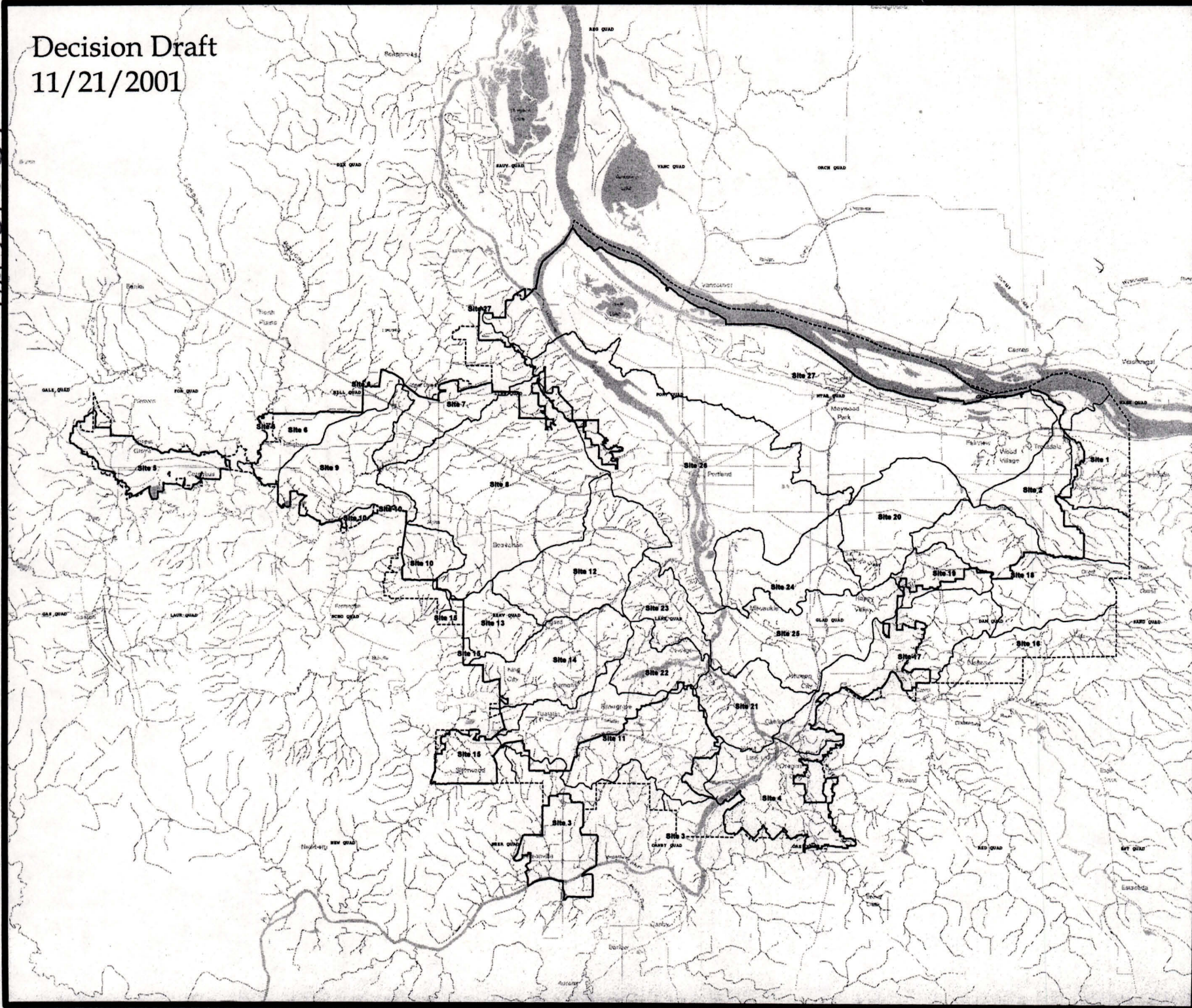
REGIONAL LAND INFORMATION SYSTEM

# Proposed Resource Sites

-  Metro UGB
-  Metro Boundary
-  Arterial Roads
-  Open Water
-  Stream Centerlines
-  Site Boundaries
-  Site Sub Boundaries



 Miles  
1 0 1 2





## PERKINS COIE LLP

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TELEPHONE: 503 727-2000 • FACSIMILE: 503 727-2222

FRANK M. FLYNN  
Phone: (503) 727-2029  
Email: flynf@perkinscoie.com

December 13, 2001

Honorable David Bragdon, Presiding Officer  
Metro Council  
600 Grand Avenue  
Portland, OR 97232-2736

**Re: Metro's Regionally Significant Riparian Corridor and Wildlife  
Habitat Criteria and Mapping (Resolution No. 01-3141A)**

Dear Presiding Officer Bragdon and Council Members:

This letter has been prepared at the request of Majestic Realty, Inc. ("Majestic"). Majestic owns property in Hillsboro, Oregon located north of N.W. Imbrie Drive and east of N.W. Evergreen. That property is subject to the preliminary mapping prepared by Metro based on criteria intended to protect natural resources. This letter is intended as Majestic's testimony on the above referenced resolution and should be included in the record for this matter. In addition, material and technical analysis referenced herein should also be incorporated into Metro's record by this reference. While Majestic recognizes the need to protect important natural resources and to ensure that the quality of life in the Hillsboro and the Portland Metropolitan Area remains high, it opposes adoption of the natural resource criteria and maps in the form presently before the Metro Council.

After reviewing the technical analysis prepared by Paul Fishman of Fishman Environmental Services for the City of Hillsboro, we have had serious concerns about whether Metro has applied relevant scientific principals and research correctly when developing the proposed protective criteria. Until the concerns raised by Mr. Fishman are resolved fully, any decision to adopt criteria or maps resulting from the application of such criteria is premature and should be postponed.

[31218-0009/PA013470.067]



December 13, 2001

Page 2

Reviewing Metro's preliminary maps raise serious questions about the practical application of the criteria and whether the criteria which we understand were intended to protect natural resources actually serves that purpose. Using the four lots that were the subject of our November 8, 2001 letter to Commissioner Hostica and Mr. Cotugno, as an example, Majestic has real concerns about how and the extent to which these criteria are being applied. The preliminary maps for this property show large portions subject to protection. However, the Oregon Division of State Lands, the U.S. Army Corps of Engineers and the City of Hillsboro have all issued permits authorizing, with appropriate compensatory mitigation, grading and other construction on these lots. The aerial photographs provided to Majestic by the City of Hillsboro clearly indicate these lots have been leveled and graded in preparation for construction. In fact, a Les Schwab dealership is currently being constructed on one lot that is earmarked under Metro's preliminary maps for protection. Although we have drawn this issue to Metro's attention and intend to initiate Metro's map correction process to ensure that these properties are recognized as having been approved for development, the fact that such property can be mapped as a natural resource and as wildlife and fish habitat calls into question the criteria themselves and the application of that criteria on the ground. We believe that such a mapping error may be directly related to the issues raised by Mr. Fishman. Consequently, this increases the importance of resolving the concerns raised by Mr. Fishman about the adequacy of the science supporting the criteria presently before the Commission. It also supports postponing the Metro Council's decision.

In addition to the issues raised above, Majestic is very concerned that the Metro Council has without public discussion or debate, implicitly decided to exclude local governments from participating in the remainder of the Goal 5 decision making process. As we understand the process that Metro proposes, local governments will be left with little to do except implement decisions made by the Metro Council on the purpose for which various lots and parcels located within local jurisdictions can be used. Majestic has been involved in long complex discussions with the City of Hillsboro relating to the environmental and habitat value of the properties at issue and has resolved those issues to the satisfaction of Majestic and the City of Hillsboro. We believe that it is inappropriate for the Metro Council, at this late date, to effectively undo decisions, which are so important not just for protection of natural resources but to the economic viability and stability of the Hillsboro area. For this reason, Majestic believes that it is important to allow local government to conduct the ESEE analysis required under Statewide Planning Goal 5 and to prepare, and not just implement,



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regulations intended to protect resources that will also have such a tremendous impact on the economic development in this area.

It is Majestic's testimony on this matter that the Metro Council should hold in abeyance any decision with respect to adoption of the proposed criteria and mapping. In addition, Metro should engage in a full public debate on Metro's implicit decision to exclude local governments from participating in the final decision making required by Goal 5. Further, Majestic believes that Metro should provide better and more suitable notice that would actually encourage meaningful public comment on these matters. We note that the process in which Metro has chosen to engage in prevents a full discussion of the far-reaching implications of today's decision. Until Metro combines all Goal 5 decisions into one process and allows the public and local governments to comment uniformly on the proposed criteria, the inventory maps, the ESEE analysis and the regulations intended to implement Goal 5, then meaningful public comment is not possible.

If you have any questions regarding this matter, please feel free to contact me at your convenience.

Very truly yours,



Frank M. Flynn

FMF:bmw

cc: Phillip C. Brown  
Mark Whitlow



## BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ESTABLISHING	)
CRITERIA TO DEFINE AND IDENTIFY	) RESOLUTION NO 01- 3141B
REGIONALLY SIGNIFICANT FISH HABITAT AND	)
APPROVING A DRAFT MAP OF REGIONALLY	) Introduced by Councilor Carl Hosticka
SIGNIFICANT FISH HABITAT AREAS	)

WHEREAS, the Regional Framework Plan and Urban Growth Management Functional Plan ("UGMFP") state that Metro will undertake a program for protection of fish and wildlife habitat; and

WHEREAS, the Title 3, Section 5 of the UGMFP sets forth actions that the Metro Council anticipated that Metro would take in identifying, considering and protecting regionally significant fish and wildlife habitat conservation areas; and

WHEREAS, Metro is applying the Goal 5 administrative rule as the framework for identifying regionally significant fish and wildlife habitat areas; and

WHEREAS, the Regional Framework Plan and Metro's Regional Urban Growth Goals and Objectives identify watersheds as the appropriate scale for Metro to consider in identifying regionally significant fish and wildlife habitat conservation areas; and

WHEREAS, in October, 2000, the Metro Policy Advisory Committee ("MPAC") adopted, and the Metro Council accepted, a "Streamside CPR Purpose, Vision, Goal, Principles and Context" statement to guide development of Metro's Fish and Wildlife Habitat Conservation and Protection Program; and

WHEREAS, a comprehensive review of scientific literature concerning watersheds, aquatic and riparian habitat, upland habitat and restoration in an urban environment was



gathered, organized, analyzed and a report completed by Metro staff entitled "Metro's Scientific Literature Review for Goal 5 dated August, 2001; and

WHEREAS, on May 9, 2001, the Metro Natural Resources Committee directed staff to prepare draft functional criteria for identifying fish and wildlife habitat consistent with State Goal 5; and

WHEREAS, staff presented draft criteria to the Natural Resource Committee on June 6, 2001 for identifying Goal 5 riparian corridors based on six functions derived from a review of scientific literature; and

WHEREAS, staff also presented to the Natural Resource Committee on June 6, 2001, three pilot areas applying these criteria to limited landscapes within the region; and

WHEREAS, the Natural Resources Committee directed staff to apply the functional criteria to the region; and

WHEREAS, on September 19, 2001, staff presented region-wide riparian function maps for the Natural Resources Committee to review; and

WHEREAS, the Natural Resources Committee directed staff to provide the region-wide riparian function maps to the Goal 5 Technical Advisory Committee ("Goal 5 TAC"), the Metro Technical Advisory Committee ("MTAC"), Metro Policy Advisory Committee ("MPAC") and the Water Resources Policy Advisory Committee ("WRPAC"); and

WHEREAS, on October 3, 2001, the Natural Resources Committee released a tentative schedule of dates and forums including Natural Resource Committee meetings, public hearings, meetings of WRPAC, Goal 5 TAC, MTAC, MPAC and the Metro Council where local partners, groups and citizens could learn about the region-wide maps and Metro fish and wildlife habitat program; and



WHEREAS, in October, 2001, Metro mailed an informational packet to approximately 88,000 persons including stakeholders, landowners, citizens, citizen planning organizations and neighborhood organizations providing additional notice and reminder of Metro's efforts to inventory riparian corridors and wildlife habitat; and

WHEREAS, in an October 9, 2001 letter the State of Oregon's Independent Multi-Disciplinary Science Team (IMST) reviewed "Metro's Scientific Literature Review for Goal 5 and concluded that the report:

"In general, our congratulations on compiling a most impressive array of documents for guidance of policy development as it relates to Goal 5 and the Oregon Plan for Salmon and Watersheds. While there is always more that can be done, we are impressed with the thoughtfulness and thoroughness of what has been done. This document will not only be valuable to staff of Metro working on recovery of listed Pacific salmon, but it will also benefit those working on similar tasks in other urban centers throughout Oregon and the region. ... Nonetheless, we do find that in general the information in Attachment 1 (Metro's Scientific Literature Review) is well organized, reasonably comprehensive but concise, and scientifically sound in the conclusions reached. We are impressed with the recognition of the importance of considering:  
-Stream, riparian and upland condition and function individually and in aggregate,  
-Individual sites, individual reaches and streams, whole watersheds and aggregations of adjacent watershed,  
-Time scales that range from days to at least decades, or longer." and;

WHEREAS, at its November 21, 2001 meeting, MTAC recommended that the Metro Council consider a "Basin Approach" that could apply to resources that meet the following criteria:

- a. Have been determined to be significant and regional resources by Metro  
(mandatory element); and



- b. Will be addressed by a coordinated intergovernmental process leading to a basin-wide (4<sup>th</sup> field hydrologic unit code or greater) program. The coordinated process must address the Clean Water Act ("CWA"), Endangered Species Act ("ESA") and natural resources and include comprehensive inventory data; and
- c. Have protection and restoration programs that are submitted to Metro for review and compliance with the Metro program developed in Fall 2002; and

WHEREAS, at its ~~November~~ December 12, 2001 meeting, MTAC recommended and MPAC unanimously recommended ---adoption of this resolution, including resolve 7b defining the regional resource to include all areas of primary and secondary function with the recognition that some areas may be implemented through a basin approach; and

WHEREAS, a majority of Goal 5 TAC members present at its October 12, 2001 meeting recommended that the riparian functional criteria and mapping should be used as the basis for delineating the boundaries of riparian corridors and that those boundaries be defined as those areas of the landscape receiving a primary or secondary score in the five identified riparian functions; and

WHEREAS, at its November 16, 2001, meeting the Goal 5 TAC recommended that all areas identified as having a primary or secondary function for the five mapped criteria, excluding riparian wildlife areas, should be considered significant "riparian corridor" resources. Goal 5 TAC also recommended that all of those significant resources should be identified as "regional resources" under the Goal 5 administrative rule; and

WHEREAS, at its November 19, 2001, meeting, WRPAC recommended that Metro consider using "waters of the State" as defined in ORS 196.800(14) to determine the extent of



the Stream network. WRPAC recommended that all areas identified as having a primary or secondary function for the five mapped criteria, excluding riparian wildlife areas, should be considered significant “riparian corridors” resources. WRPAC also recommended that all of those significant resources should be identified as “regional resources” under Goal 5 administrative rule; and

WHEREAS, the Natural Resources Committee directed staff to provide a decision package that included the following products:

- An analysis of existing Goal 5 data, reports and regulations from cities and counties.
- A map(s), based on the region-wide riparian function maps, identifying Goal 5 resource sites and Goal 5 “riparian corridors” within those resource sites to serve as the basis for identifying regionally significant fish and wildlife habitat.
- An inventory narrative including information on the location, quantity and quality of the potential resource sites identified on the map.
- A map(s) of potential significant resource sites containing riparian corridors.
- A summary of recommended criteria for identifying and defining regionally significant fish and wildlife habitat made by Metro’s advisory committees, stakeholders, landowners, citizens, citizen planning organizations, neighborhood organizations and staff.
- A map(s) of potential resource sites containing riparian corridors which could be adopted as “regional resources” under the Goal 5 administrative rule.



WHEREAS, on November 21, 2001, staff presented the above information to the Natural Resources Committee and the committee requested comment from all interested parties; and

WHEREAS, the Metro Natural Resources Committee recommended changes be made to the matrix of ecological functional values and landscapes features from that dated July 17, 2001, and included in Resolution 01-3087A, so that

- For microclimate and shade the secondary functional value is retained to include all forest or woody vegetation that is beyond 100 feet but within 780 feet;
- For stream flow moderation and water storage developed floodplains should not be included as a primary function, rather, they should be included as a secondary function;
- For large wood and channel dynamics the secondary functional value should be revised to read "Forest within 150 to 262 feet of a stream, ~~or developed floodplains.~~";
- For the organic materials functional, the primary function be revised to read "Forest or woody vegetation within 100 feet of a stream or wetland; or within a flood area, or vegetation or undisturbed soils within 50 feet of a stream or wetland"; and

WHEREAS, the Metro Council has reviewed the information contained in a November 20, 2001 from the Office of General Council concerning local Goal 5 data, reports and regulations and additional information concerning fish and wildlife habitat areas gathered and exchanged with local governments and agencies, and



WHEREAS, on December 5, 2001, the Natural Resources Committee accepted the WRPAC and Goal 5 TAC recommendation and recommended to the Metro Council that all areas identified as having a primary or secondary function for the five mapped criteria, excluding riparian wildlife areas, should be identified as significant "riparian corridor" resources as required by the Goal 5 administrative rule, and

WHEREAS, on December 5, 2001, the Natural Resources Committee recommended to the Metro Council that it consider adopting one of three options as the inventory of regionally significant riparian corridors as the basis for the next steps in the Goal 5 process, the ESEE analysis and Program to implement Goal 5. Those three options are

- Adopt all sites containing significant riparian corridors as "regional resources."
- Adopt all sites containing significant riparian corridors as regional resources as part of a "Basin Approach" as proposed by the Tualatin Basin Natural Resource Coordinating Committee.
- Adopt all sites containing riparian corridors that have one primary function identified on Metro's maps (Alternative 3) as regional resources. Identify areas providing secondary functions as impact areas in the ESEE process; and

WHEREAS, as directed by the Natural Resources Committee, Metro staff is examining stream length extension to address the Water Resource Policy Advisory Committee's recommendation to consider using "waters of the state" as defined by Oregon Revised Statutes Chapter 196.800 (14) to determine the extent of the stream network within the region for future Metro Council consideration, and;



WHEREAS, the Metro Council anticipates adopting an ordinance(s) designating regionally significant fish and wildlife habitat, an ESEE analysis and Program to Achieve Goal 5 as part of Metro's Fish and Wildlife Habitat Conservation and Protection Program by the end of 2002; and

WHEREAS, before such ordinance(s) can be adopted, as several next steps are necessary, including, but not limited to, identifying "impact areas" and potential restoration areas;

WHEREAS, the Metro Council remains committed to examining a wide range of tools for conserving, protecting and restoring regionally significant fish and wildlife habitat, including, but not limited to, acquisition, incentives, regulation and education; now, therefore

BE IT RESOLVED:

1. That the Metro Council finds that the information in Exhibit A, including Metro's Riparian Corridor Inventory, dated November, 2001, with Appendix A as amended, Appendices B through G by reference, and Metro's Scientific Literature Review for Goal 5, dated August, 2001, contains adequate information to determine the location, quantity and quality of riparian corridor resources in the Metro region.
2. That the Metro Council finds that sufficient data has been gathered and examined concerning local Goal 5 data, reports and regulations to comply with Title 3, Section 5(C)(2) of the Urban Growth Management Functional Plan.
23. That the Metro Council identifies the resource sites in Exhibit B as ~~significant~~ Goal 5 resource sites containing riparian corridors.
4. The Metro Council accepts the Natural Resource Committee, WRPAC, Goal 5 TAC, MTAC and MPAC recommendations that all areas identified as having primary or secondary function for: 1) microclimate and shade, 2) stream flow moderation and water storage, 3) bank stabilization, sediment and pollution control, 4) large wood and channel dynamics, and 5) organic material sources, as amended in Exhibit A, are significant "riparian corridor" resources. The map "Attachment A" to the Staff Report to this resolution illustrates the approximate land coverage of those primary and secondary functions. Staff is directed to produce a map reflecting this significance decision, incorporating the amendments to the functional criteria in Exhibit A, for Council review prior to identifying conflicting uses in the ESEE analysis.



35. That the Metro Council interprets the term “regionally significant” fish habitat as that term is used in Title 3 of the Urban Growth Management Functional Plan to be those Goal 5 riparian corridor resources that qualify as “regional resources” under the Goal 5 administrative rule.
46. That the list of criteria in Exhibit C are criteria that define regionally significant riparian corridors. A resource need not meet every criteria to be considered regionally significant. These criteria have been applied to alternatives set forth in Table 11 of Exhibit A.
57. ~~That the Metro Council has applied the criteria identified in Exhibit C to the information in Exhibits A and B to define the regionally significant riparian corridors on a draft map in Exhibit D.~~

**NOTE: If the Metro Council selects Natural Resource Committee Choice #1, then it should adopt the following:**

- 7a. That the Metro Council has applied the criteria identified in Exhibit C to the information in Exhibits A and B to define regionally significant riparian corridors as all areas identified as having primary or secondary function for: 1) microclimate and shade, 2) stream flow moderation and water storage, 3) bank stabilization, sediment and pollution control, 4) large wood and channel dynamics, and 5) organic material sources, as amended in Exhibit A are significant “riparian corridor” resources. The map “Attachment B” to the Staff Report to this resolution illustrates the approximate land coverage of those primary and secondary functions.

**NOTE: If the Metro Council selects Natural Resource Committee Choice #2, then it should adopt the following:**

- 7b. That the Metro Council has applied the criteria identified in Exhibit C to the information in Exhibits A and B to define regionally significant riparian corridors as all areas identified as having primary or secondary function for: 1) microclimate and shade, 2) stream flow moderation and water storage, 3) bank stabilization, sediment and pollution control, 4) large wood and channel dynamics, and 5) organic material sources, as amended in Exhibit A are significant “riparian corridor” resources. The map “Attachment B” to the Staff Report to this resolution illustrates the approximate land coverage of those primary and secondary functions.

Metro Council will consider the “basin approach” as described in Exhibit “D” as an optional approach for achieving the region’s goals for regionally significant riparian corridors. The Metro Council will conclude its consideration of the “basin approach” on or before January 31, 2002.



**NOTE: If the Metro Council selects Natural Resource Committee Choice #3, then it should adopt the following:**

- 7c. That the Metro Council has applied the criteria identified in Exhibit C to the information in Exhibits A and B to define regionally significant riparian corridors as all areas providing at least one primary ecological function as described in Exhibit A, Table 1. The map "Attachment C" to the Staff Report to this resolution illustrates the approximate land coverage of those primary and secondary functions. In addition, the Metro Council directs staff to prepare a map of all secondary features and to identify these areas as potential impact areas for consideration during the economic, social, environmental and energy analysis.
8. That staff is directed to produce a map reflecting the Metro Council's regionally significant riparian corridor decision for Council review prior to identifying conflicting uses in the ESEE analysis.
69. That the map of regionally significant riparian corridors that staff has been directed to produce in Exhibit D is a will be a draft map which will be the basis for conducting subsequent steps in the Goal 5 process including the Economic, Social, Environmental and Energy consequences analysis and the Program to Achieve Goal 5.
710. The Metro Council reserves the opportunity to minimally or substantially alter the draft map ~~in Exhibit D~~ prior to adoption of a final map of regionally significant fish and wildlife habitat areas and Program to Achieve Goal 5, after public comment and review.
811. The draft map ~~in Exhibit D~~ will be is subject to correction for accuracy until the Council reaches a final decision which is anticipated in 2002. The Council directs the staff to adapt its current map correction procedures to respond to new information and to develop a post adoption map correction process that may be adopted as an amendment to the UGMFP.
912. The Metro Council directs staff to complete additional work necessary to map regional wildlife habitat and present that information to the Council in early 2002.
1013. The Metro Council directs staff to prepare a draft map of areas that have the potential to impact ~~the identified regionally significant fish and wildlife habitat regional resources identified in Exhibit D.~~ The map should at a minimum include developed and undeveloped areas that have the potential to positively or negatively influence the identified regional resources. These areas will be considered in Metro's analysis of Economic, Social, Environmental and Energy consequences and may also be subject to a regional program that includes education, incentives, acquisition or regulation.



~~11~~14. That the Metro Council's actions in this resolution are not final actions designating regionally significant fish and wildlife habitat areas or a final action to protect those areas through a Program to Achieve Goal 5.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_ 2001.

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

Approved as to Form:

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



## PERKINS COIE LLP

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December 13, 2001

Honorable David Bragdon, Presiding Officer  
Metro Council  
600 Grand Avenue  
Portland, OR 97232-2736

**Re: Metro's Regionally Significant Riparian Corridor and Wildlife  
Habitat Criteria and Mapping (Resolution No. 01-3141A)**

Dear Presiding Officer Bragdon and Council Members:

This letter has been prepared at the request of TMT, Inc. and the owners of Portland Meadows. It is intended as testimony on Resolution No. 01-3141A and should be included in the record for this matter. In addition, material and technical analysis referenced herein should also be incorporated into Metro's record in this matter. At this time, TMT and the owners of Portland Meadows oppose adoption of the proposed criteria and maps presently before the Metro Council. Although we recognize the importance of protecting valuable habitat and natural resources and the need to preserve the quality of life in the region, we do not believe that the proposed criteria and maps have been subjected to sufficient scrutiny to eliminate all concerns as to their applicability or ability to be used to make such important environmental decisions.

After reviewing the technical analysis prepared by Paul Fishman of Fishman Environmental Services for the City of Hillsboro, we have serious concerns about whether Metro has applied relevant scientific principals correctly when developing the proposed criteria. Until those concerns are resolved, any decision to adopt criteria or maps resulting from application of such criteria is premature and should be postponed.

Further, reviewing Metro's preliminary maps raises additional concerns about the practicable application of the criteria and whether the criteria which were intended to protect natural resources actually serve that purpose. Using Portland Meadows,

[37840-0004/PA013470.043]



December 13, 2001

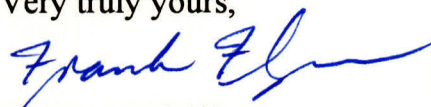
Page 2

which is located at 1001 N. Schmeer Street in Portland, and the Hayden Island Shopping Center, located immediately north of Portland Meadows, as an example, we have serious concerns about how these criteria are being applied in highly urban areas. Metro's preliminary maps for this area show a portion of the infield of Portland Meadows racetrack, that is, the area inside the oval track itself, as a "riparian area important to habitat (adjacent to water bodies)." This particular area has no obvious connection to any river or stream or other water body and is surrounded by the track and other development.

Perhaps even more startling is the mapping for the shopping area located north of Portland Meadows. Although our personal knowledge is that this area is developed to urban levels with parking lots, streets and buildings, it is also mapped as "riparian area important to habitat (adjacent to water bodies)." We believe that designation of such areas as "riparian" under criteria intended to protect natural resource and habitat is incorrect. Although we are contacting Metro staff to initiate the process to correct these maps, such mapping raises questions about the validity of the criteria being considered and whether the criteria meet the purpose for which they are intended.

We request that the Metro Council postpone adoption of the criteria and maps until the issues raised by Mr. Fishman are resolved fully and until the criteria and maps are developed that actually protect habitat. If you have any questions, please feel free to contact me at your convenience.

Very truly yours,

  
for Steven L. Pfeiffer

SLP:bmw

cc: Tom Moyer



# ZIAN, INC.

PO Box 6712  
Portland, OR 97228

December 13, 2001

Honorable David Bragdon, Presiding Officer  
METRO COUNCIL  
600 Grand Avenue  
Portland, OR 97232-2736

**Re: Metro's Regionally Significant Riparian Corridor and Wildlife Habitat Criteria and Mapping**

Dear Presiding Officer Bragdon and Council Members:

I represent the ZIAN Limited Partnership, which was formed to develop a 135-acre tract of land in Tualatin, Oregon.

This property was developed after approximately 10 years of public process with the City of Tualatin, Washington County, the Division of State Lands, the Army Corps of Engineers, and others.

The final product as it stands today is a mixed-use development on approximately 88 acres of land. The remaining 42 acres is parks, protected wetlands, and roads. It is in the 100-year flood plain and abuts a critical piece of wetlands, which acts as the final drain field for all uplands activity in the Hedges Creek drainage area.

The project has approximately 900 apartment units, an 80,000 SF Kaiser Permanente Medical Office Building, a regional Post Office, the City of Tualatin's police station, a 172,000 SF shopping center, in addition to the 33 acres of protected wetlands and approximately 7 acres of nature parks.

Additionally, a major North South Collector, which is a lifeline for Tualatin in flood conditions, runs North South through the site.

This private investment is a cornerstone for the City of Tualatin and represents an investment over \$100 Million Dollars. However, by your proposed standards, this type of project would be unbuildable. Additionally, under the current criteria you are considering it should revert to its natural state. This, quite frankly, is ridiculous and shows how far off base your approach is to the whole Goal 5 process.

Your "Science" paper has covered protection of every species known to humankind except humankind, and is out of touch with the practical, not practicable decisions which need to be made in today's environment.

I have attached a pictorial history of the site along with a description of the property for review, including an analysis by Fishman Environmental Services on the impacts of Goal 5, without uplands.

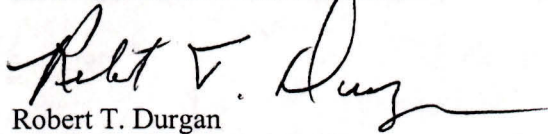


Currently, as I read your "Science" this project should go away and be restored to natural pre-European times. Since we all know this outcome is unlikely, might I suggest this project be used as a base study for a practical Goal 5 approach to an Urban Development approach rather than the current approach you are moving towards.

Please feel free to contact me at any time for any additional information you might need.

Sincerely,

ZIAN LIMITED PARTNERSHIP

A handwritten signature in black ink, appearing to read "Robert T. Durgan", with a long horizontal flourish extending to the right.

Robert T. Durgan  
Development & Acquisition



# ZIDELL TUALATIN PROPERTY PLAN

## PLAN BLENDS COMMUNITY VALUES WITH ECONOMIC OPPORTUNITIES

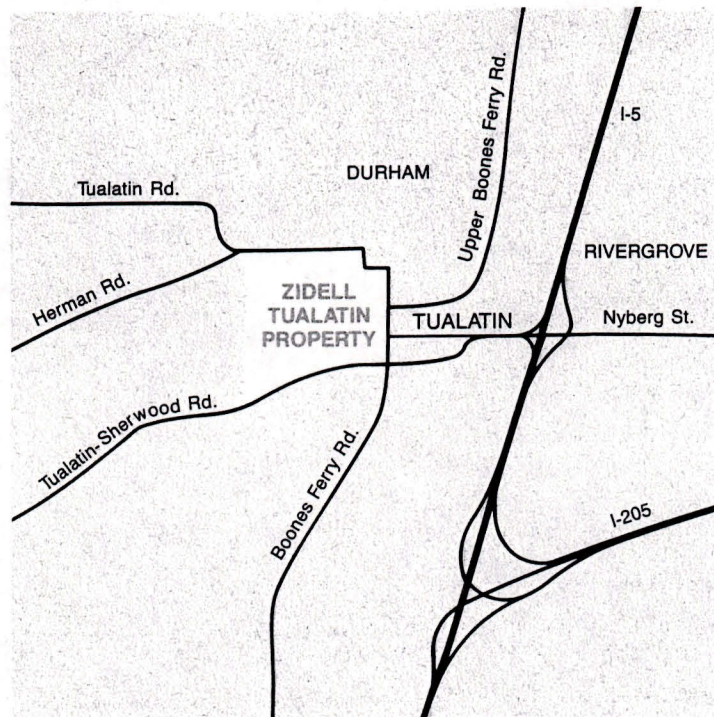
A vision of the future for a 140-acre site in the heart of Tualatin—the Zidell Tualatin Property Plan—reflects the diversity of the community's economic, environmental and livability goals.

This vision illustrates Zidell's strong, ongoing commitment to quality development. A commitment which initiated a dynamic, two-year planning process.

The process involved city and regulatory agency staff, research and consulting firms, the City's Urban Renewal Advisory Committee, its Planning Advisory Committee and the newly formed Wetlands Advisory Committee.

The result of everyone's cooperative efforts is a comprehensive approach to development involving the entire site, rather than developing the site in an unorganized, piecemeal fashion.

The Zidell Tualatin Property Plan takes into account the relationships between the various planning districts within the site, their impact on each other and any potential impact on the surrounding area and the community. It reduces any negative impact factors and enhances positive relationships.



**The Zidell Tualatin Property is bounded by Boones Ferry Road, Tualatin Road and Tualatin-Sherwood Road. The site's size almost equals that of downtown Tualatin.**

## MIXED USE ENHANCES SITE

The Plan proposes mixed use development of the site. The various uses are:

- Wetlands protection.
- Retail and office use on the southeast portion of the site.
- A mix of light manufacturing and office use on the southwest portion of the site.
- Multifamily residential use on the northern portion.

## MYRIAD OF BENEFITS

The Zidell Tualatin Property Plan includes many advantages. It will:

- Protect Hedges Creek Wetlands.

## Support Downtown and Village Square Development.

The Plan expands the commercial core of Tualatin. This expansion is designed to bring attention to the entire downtown and Village Square areas.

Zidell encourages development coordination of its site and Village Square to ensure that the areas complement each other.

Zidell's vision also includes joint marketing and advertising efforts and even a pedestrian bridge over Boones Ferry Road to physically join the retail and office areas near downtown Tualatin.

## • Bring New Jobs and Services.

It is estimated that the development can create 1,700 new jobs which are broken down into the following areas: 900 industrial, 400 office and 400 retail.

## • Create Housing Opportunities.

Approximately 1,200 garden-style and 150 high-rise residences could be built, along with recreational and daycare facilities.

## • Increase Tax Revenue and Land Value.

About one-third of the Zidell Tualatin property is included in Tualatin's Central Urban Renewal Area.

## • Address Traffic Challenges.

Zidell is an active partner in solving the area's transportation problems. The Zidell Plan meets traffic challenges head-on with its proposal that a north-south road be built. This road will relieve traffic congestion on Boones Ferry Road and in the downtown core area.

A traffic analysis conducted by the Tualatin Development Commission states that "considering traffic, there are few, if any, disadvantages to developing a north-south road through the property. Tualatin-Sherwood Road is designed to handle a large quantity of traffic, especially when the proposed changes to the I-5 interchange are incorporated."

## • Create Opportunities for Historic Preservation.





***The Hedges Creek Wetlands is a vital component of the Zidell Tualatin Property Plan.***

## **WETLANDS PLAN STRIVES TO BALANCE ECONOMIC AND ENVIRONMENTAL VALUES**

The Hedges Creek Wetlands is a pivotal piece in the Zidell Plan. Much hinges on the balancing of the environmental, economical and aesthetic interests and values associated with this area.

Zidell initiated the development of a Wetlands Advisory Committee early in the planning process. The committee's membership includes representation from public and private regulatory agencies and resource groups.

The committee acts as a vehicle for creative problem-solving. It creates an opportunity for

adversaries with different positions to come together and develop a consensus concerning the wetlands' future. This balancing act is facilitated by a mediator.

The identified issues of discussion relating to environmental and planning concerns include:

- Long-term protection of the wetlands.
- Incentives for site development.
- Financial vehicle to manage and maintain the wetlands.
- Preservation of the integrity of the regional permit issued by the City of Tualatin and the Corps of Engineers.

## **WETLANDS ADVISORY COMMITTEE**

The 15-member committee includes representatives from regulatory agencies, resource organizations and the private sector. Represented are:

- Audubon Society of Portland
- Benkendorf Associates Corporation
- City of Tualatin
- Corps of Engineers
- Division of State Lands
- Environmental Protection Agency
- 1000 Friends of Oregon
- IES Associates
- Oregon Department of Fish and Wildlife
- U.S. Department of Fish and Wildlife
- Wetland Conservancy
- Zidell Resources

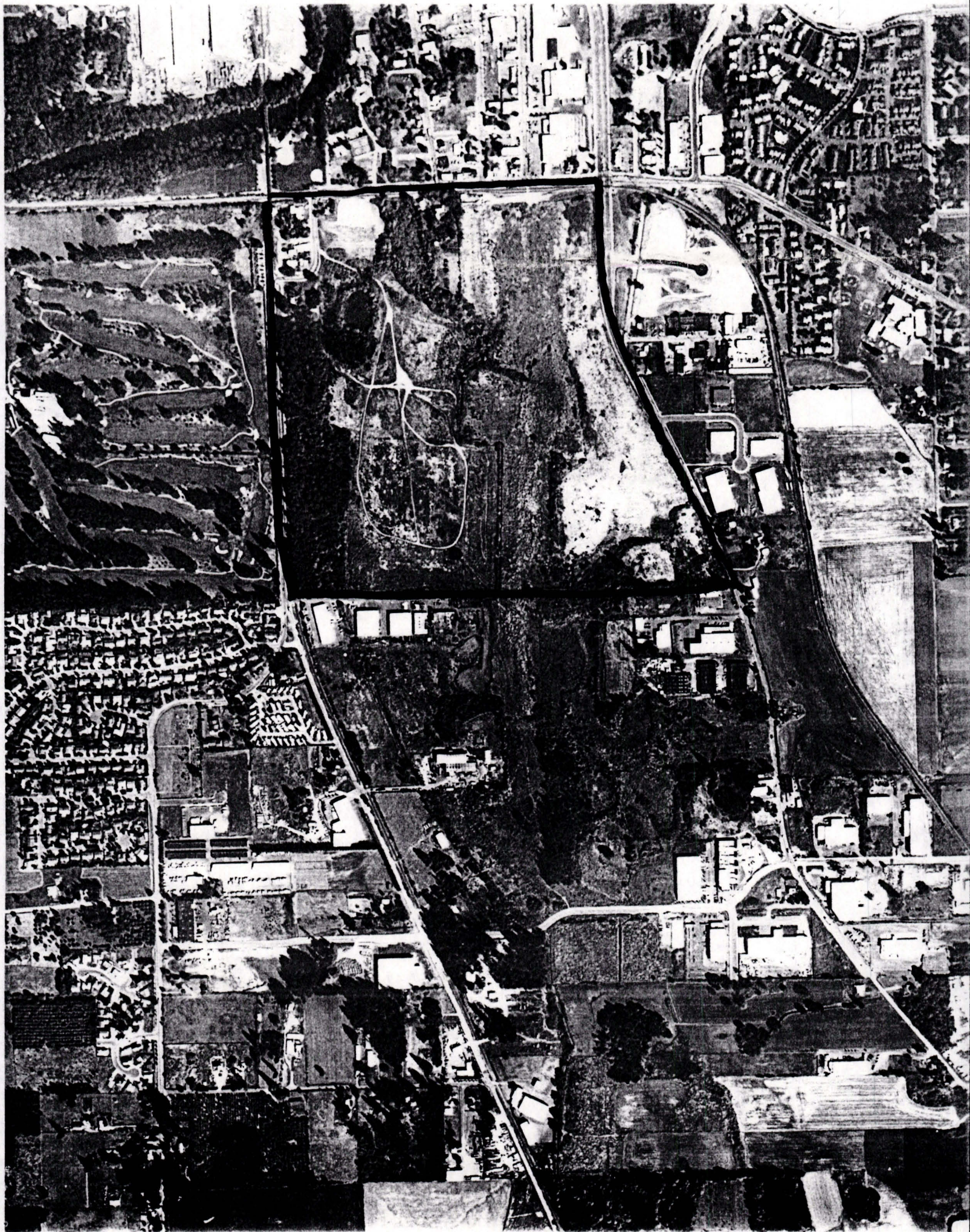
## **PLAN READY FOR NEXT PHASE**

The Plan now is ready for the next step. It has been submitted to the City of Tualatin for review and will receive further input during the public hearing process.



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May 1989*











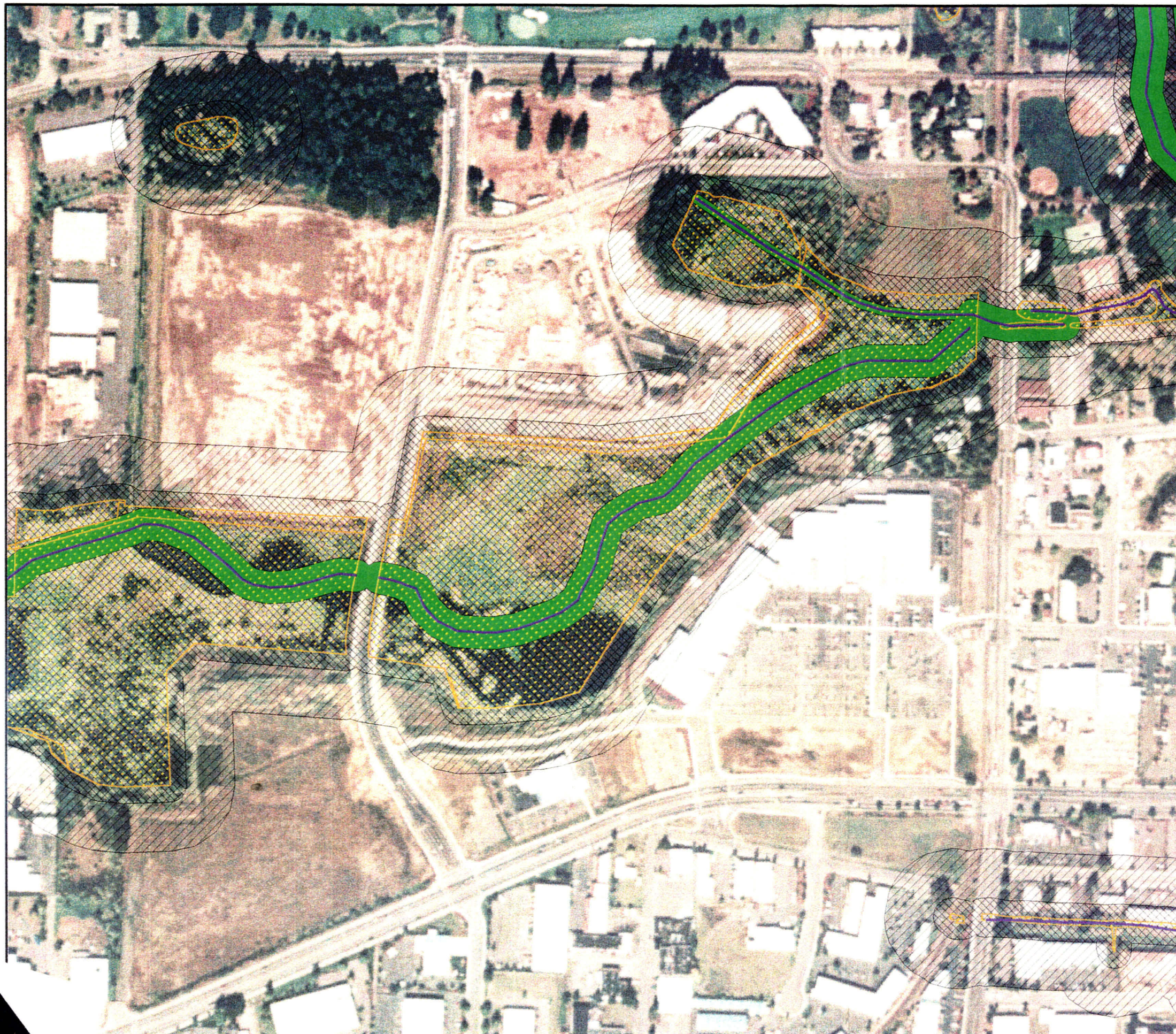
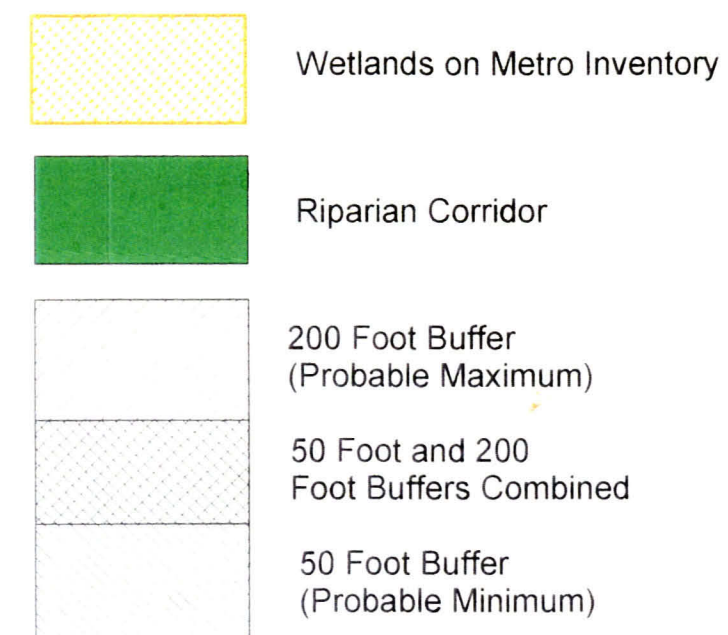


Figure 1 ZIAN Hedges Creek Site:  
METRO's Proposed Goal 5  
Regulated Area

The most current discussion of the Goal 5 program at Metro proposes a graduated regulated area that may vary from a 50' minimum to 200' in some cases.



Fishman Environmental Services LLC  
434 NW 6th Ave Ste 304  
Portland, OR 97209  
503 - 224 - 0333  
[www.fishenserv.com](http://www.fishenserv.com)

Date: 10/25/2000  
FES #99123  
g:\1999\99123\zian.apr  
GIS: DJS

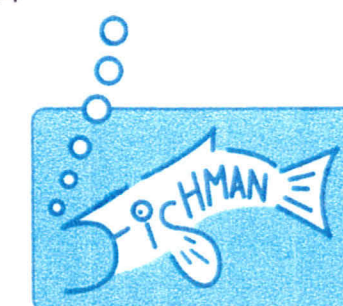






Figure 1 ZIAN Hedges Creek Site:  
Wetland Mitigation  
Opportunity Areas

Mitigation Opportunity  
Areas, By Unit,  
Measured in Acres

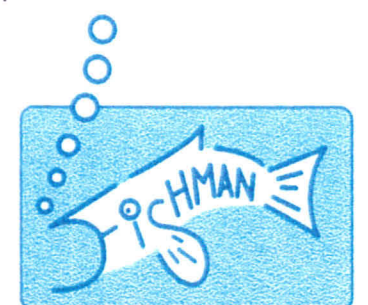
	Wetland Mitigation Enhancement	Potential Creation
1: 3.9	2.0	0.0
2: 0.8	0.5	0.0
3: 1.1	0.3	0.8
4: 0.5	0.5	0.0
5: 2.3	1.5	0.0
6: Islands:0.3	0.0	0.0
7: 0.8	0.6	0.0
8: 1.6	0.0	1.5
9: 2.1	1.5	0.0
total	6.9	2.3

Acres in Numbered Units: 13.4 Acres  
Acres in Study Area: 29



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[www.fishenserv.com](http://www.fishenserv.com)

Date: 2/17/2000  
FES #99123  
g:\1999\99123\zian.apr  
GIS: DJS







December 13, 2001

Honorable David Bragdon, Presiding Officer  
METRO COUNCIL  
600 Grand Avenue  
Portland, OR 97232-2736

**Re: Metro's Regionally Significant Riparian Corridor and Wildlife Habitat Criteria and Mapping**

Dear Presiding Officer Bragdon and Council Members:

Anderson Construction is well known in this area as a provider of excellent contracting and construction services. In that role, Andersen Construction recognizes the need to protect valuable habitat and natural resources and to preserve the quality of life of the region while also providing an opportunity for economic growth and the development of homes and buildings to serve that growth and the citizens of the region.

This letter is intended as testimony on Resolution No. 01-3141A relating to the establishment of criteria to define and identify regionally significant fish habitat and approve a draft map of regionally significant fish habitat areas. As such, this letter and all referenced documents should be included in Metro's record on this matter. As explained below, I have significant reservations not just about the criteria under consideration and the application of the scientific principles used to support those criteria, but also about the extent of the mapping and Metro's apparent decision to exclude local governments from the final process that will dictate the purposes for which particular lots and parcels in the Metro region may be used.

With respect to the scientific basis for the criteria proposed for adoption, I suggest that Metro Council give serious consideration to the analysis conducted by Paul Fishman of Fishman Environmental Services for the City of Hillsboro. Mr. Fishman raises numerous serious concerns relating to misapplication of basic scientific principles and research during development of Metro's criteria. Adoption of those criteria and the resulting mapping should not proceed until those concerns are resolved fully.

There are more fundamental concerns that Metro Council must resolve before adopting protective criteria for natural resources or mapping of those resources. I understand from listening to Metro staff and others, that Metro is required by Statewide Planning Goal 5 to identify regional resources. After reviewing Goal 5, in particular OAR 660-023-080, Metro Regional Resources, it is not clear to me that Metro's adoption of regional resources is required by the Goal 5 rule. What is required by the actual text of the Goal 5 rule is that local governments must complete the Goal 5 process should Metro adopt an inventory of regional resources unless Metro chooses to adopt one or more regional functional plans to address the applicable requirements of Goal 5 itself. The Goal 5 rule appears to allow Metro to identify regional resources but does not require it to do so. Although this may seem to be a minor issue, the policy basis for Metro Council's actions should be clearly understood by not just Metro



staff but by the public and local governments commenting on the process. Without a clear understanding of the policy decisions driving the process, meaningful public comment and participation is missing.

The same is true for Metro's apparent reliance of the federal Endangered Species Act and National Marine Fisheries Service's 4(d) Rule. Although Metro may act to protect resources under the text of these laws, it is not required to do so. Further, it appears that Metro's proposed actions far exceed federal and state requirements. Discretionary decisions, such as those being made by Metro, that exceed legal requirements should be subject to a full and complete public debate not just because of the importance to natural resources but also because of the effect protective regulations will have on the regions economic viability and stability. This debate is more fundamental than the analysis that is involved in the economic, social, environmental and energy ("ESEE") analysis associated with the Goal 5 process and involves questions of basic policy not at issue in an ESEE analysis.

The text of the Goal 5 rule explicitly provides Metro with choices on how the Goal 5 process should be implemented. It appears from the discussion conducted thus far that Metro has made a unilateral decision to exclude local governments from the final Goal 5 decision making process, that is, from the ESEE consequences analysis that will ultimately determine uses allowed on parcels and lots within the particular jurisdictions. The Goal 5 rule allows local governments to be included in these critical decisions but also gave Metro discretion to complete the Goal 5 process on its own. OAR 660-023-080 states:

**"Local governments shall complete** the Goal 5 process in this division for all regional resources prior to or during the first periodic review following Metro's adoption of regional resource map, unless Metro adopts a regional functional plan by ordinance to establish a uniform time for all local governments to complete the Goal 5 process for particular regional resource sites.

(3) Metro **may** adopt one or more regional functional plans to address all applicable requirements of Goal 5 and this division for one or more resource categories and to provide time limits for local governments to implement the plan." (Emphasis added)

Goal 5 specifically allows local governments to be involved after Metro identifies regional resources. Their involvement would include conducting the required ESEE analysis and preparing the program to achieve the purpose of Goal 5. However, Metro has opted to exclude them from that process without discussion or debate. Since it is not clear that a recognizable decision has been made by the Metro Council with respect to this matter. Given the importance of local governments in planning land use activities within their jurisdictions, a clear decision subject to public notice and comment on this matter is essential before Metro moves further in this process.

Three options have been presented today to the Metro Council for consideration. One such option put forward by the Tualatin Basin Coordinating Committee involves a basin wide approach to the ESEE consequence analysis. While this is a start, it does not go far enough to recognize the importance of the role of local government in such decisions. This issue is fundamental given the importance of the role of local governments, cities and counties, to the integrity of the Oregon land use process. Consequently, the Council be polled as to whether or not local government should be deliberately excluded from final decision making on these matters.

Having been both a participant and a spectator in land use matters for a number of years, it is not clear to me how the process enacted by Metro provides sufficient notice to citizens relative to the scope and importance of the issues at hand. For example, by implementing the Goal 5 process in a piecemeal fashion, it will not be clear to the public exactly what the possible outcome of the present decision will be. It appears to me that the inventory processes, ESEE analysis and development and adoption of



regulations should be presented to the public and the Metro Council at one time. That way, the total nature and potential outcomes of the planning process can be evaluated and debated in the public forum. Because of the piecemeal nature of the process being conducted by Metro, affected property owners are left without meaningful notice or opportunity to participate.

I oppose the option that Metro Council accept "everything as regionally significant." Such an approach trivializes the concept of significance and creates an enormous category of resources to be evaluated through the remaining Goal 5 process. Further, such an approach may duplicate or undercut many Goal 5 inventory decisions being made by local governments.

Metro Council should postpone adoption of criteria and mapping until the technical issues raised by Mr. Fishman are resolved. Before proceeding with its Goal 5 process, Metro Council should initiate a full public discussion on the role to be played by local governments including whether to participate in the ESEE consequence analysis. Metro Council should also engage in a full public debate on the extent of its Goal 5 program, for example whether it should exceed, as a matter of discretion and policy, by such a great degree the safe harbors established in the Goal 5 rule for riparian corridors and other resources. Metro should as part of that debate provide the public with a clear and complete explanation of the policy and discretionary choices being made implicitly by Metro in these critical decisions.

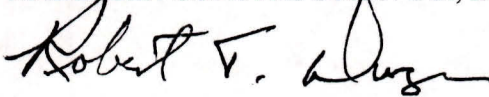
The options before Metro Council should include a fourth option, which is consistent with OAR 660-023-080(2), and which would allow local governments to complete the Goal 5 process including the ESEE consequences analysis and development of regulations once Metro has identified regional resources. I believe that this would be the best approach because it would put local planning decisions in the hands of local governments and would allow local government to direct future growth and resource protection decisions within their own boundaries.

Until all of the above is done, Metro Council should not move forward to adopt any part of its Goal 5 program.

If you have any questions regarding these matters, please feel free to contact me at your convenience.

Sincerely,

ANDERSEN CONSTRUCTION CO., INC.

A handwritten signature in black ink, appearing to read "Robert T. Durgan". The signature is fluid and cursive, with the first name "Robert" and last name "Durgan" clearly distinguishable.

Robert T. Durgan  
Development & Acquisition





COLUMBIA CORRIDOR  
ASSOCIATION

December 13, 2001

Councilor and Presiding Officer David Bragdon  
And Metro Councilors  
Metro  
600 NE Grand Avenue  
Portland, OR 97232

SUBJECT: Metro Decisions on Goal 5 Riparian "Significant Resources" and "Regional Resources"  
RES. NO. 01-3141A

Dear David and Metro Councilors:

The Columbia Corridor Association appreciates this opportunity to comment on the decisions you are about to make regarding the "significant resources" and the "regional resources" that will be the focus of your Goal 5 riparian planning process.

We want to reiterate that we support the Columbia Corridor riparian mapping work that has been done, with the Metro-acknowledged inclusion of our corrections into the final maps. We also would like to reiterate the concerns we expressed previously that the public has not been given a reasonable amount of time to review and comment on the consideration of which riparian resources would be designated as "significant resources" and "regional resources." In fact, the hectic events of the last several days, during which MTAC and MPAC considered options that had not been previously publicly considered, is clear evidence of the rush to judgment here. This rushed process prevents the open and informed review and comment that these important decisions warrant.

Despite our belief that your decision is being unreasonably hurried, we offer our comments on the decision before you, based upon the assessment we have had time to prepare.

"Significant Resources"

We have concerns about the legal validity of the recommendation that all the mapped riparian corridors be considered as "significant resources" under Goal 5. OAR 660-023-0090(1)(c) defines "riparian corridor" as "a Goal 5 resource that includes the water areas, fish habitat, adjacent riparian areas, and wetlands within the riparian area boundary." OAR 660-023-0090(1)(b) defines "riparian area" as "the area adjacent to a river, lake, or stream, consisting of the area of transition from an aquatic ecosystem to a terrestrial ecosystem." It is unclear to us how all the primary and secondary widths within the Metro mapped riparian corridors fall within the "area of transition" from an aquatic ecosystem to a terrestrial ecosystem." It appears to us that areas ranging up to 780 feet from a stream include areas that are clearly terrestrial ecosystems, and include far more than just the transitional area between aquatic and terrestrial ecosystems. We believe designating all the mapped areas as significant riparian resource exceeds the letter and intent of Goal 5. We are particularly concerned about not having an over-expansive definition of significant resources because of the huge cloud it places on the transferability of property that is potentially subject to future regulation.



"Regional Resources"

Frankly, with the hectic pace of the last 48 hours, the Columbia Corridor Association is not clear on which options Council will consider today. As such, the Columbia Corridor Association's comments today are a reflection of the options on the table at MTAC yesterday and are as follows:

1. The Columbia Corridor Association does not support Option #1, which considers all significant resources to be regionally significant resources, because we believe the purpose of Goal 5 is to protect significant resources. This option, which essentially recognizes no difference between "significant" resources and "regional" resources, grossly oversteps the State of Oregon's purpose of giving special protection to selected resources, and it preempts local planning work, failing to recognize the sizeable investment already made by the jurisdictions in acknowledged comprehensive plans.
2. The Columbia Corridor Association does not support Option #2, which took Option #1 and expanded on it by incorporating a basin approach as part of the ESEE analysis and program development. In addition to the reasons stated above in the discussion of Option #1, we do not have a clear understanding of the basin approach nor whether the timeline necessary for its implementation can be met in the limited time Metro has designated for the balance of the Goal 5 process.
3. By default, CCA does consider Option #3 to have potential merit, with two critical caveats regarding ESEE analysis. First, the scope of the ESEE evaluation must include site specific analysis (which can also include specific watershed or basin analysis, but must include more than a broad regional analysis). Without an on-the-ground, localized analysis, there can be no informed basis for the public commenting on or the Council balancing the true impacts of alternative regulatory programs. Second, it is essential that the ESEE analysis be given sufficient time and weight to satisfactorily and equitably address the economic, social, environmental and energy consequences. The ESEE evaluation is an essential element to this process. This is a fact that has been made even more clear with the repeated assurances by Metro staff and Councilors in forums and meetings that many of the specific concerns shared by the business community will be addressed in the ESEE phase. ESEE cannot be given short shrift with a truncated or broadly conceptual treatment.
4. Finally, we understand that in yesterday's MTAC meeting, an Option #4 was identified for Council consideration today. It took Option #3 and expanded on it by simultaneously incorporating the basin approach as part of the ESEE analysis and program development. For the reasons stated above in section 3, and with the caveats noted there, the Columbia Corridor Association can support the merits of Option #4 as well.

We thank you for this opportunity to comment on this critical phase of the Goal 5 process. We commit to remain actively engaged in the ongoing process.

Sincerely,



Patti McCoy  
Executive Director



## PERKINS COIE LLP

1211 SOUTHWEST FIFTH AVENUE, SUITE 1500 • PORTLAND, OREGON 97204-3715  
TELEPHONE: 503 727-2000 • FACSIMILE: 503 727-2222

FRANK M. FLYNN  
Phone: (503) 727-2029  
Email: flynf@perkinscoie.com

December 13, 2001

Honorable David Bragdon, Presiding Officer  
Metro Council  
600 Grand Avenue  
Portland, OR 97232-2736

**Re: Metro's Regionally Significant Riparian Corridor and Wildlife  
Habitat Criteria and Mapping (Resolution No. 01-31-41A)**

Dear Presiding Officer Bragdon and Council Members:

This letter was prepared at the request of Bradford H. and Michelle S. Fletcher who own entirely or in part 2.75 acres comprising 5 lots along S.W. Comus Street in the Dunthorpe area of Portland, Oregon. These properties include property at 01537 and 01505 S.W. Comus Street and parcels identified as R232977 and R232997 on Multnomah County Map No. 4030. This letter is intended to be the testimony of Mr. and Mrs. Fletcher on the above referenced matter. As such, they request that it and all referenced material and analysis be included in Metro's record for this matter.

Mr. and Ms. Fletcher recognize the need to protect valuable wildlife and fish habitat and natural resources and to protect the quality of life in the Portland Metropolitan Region. To that end, Mr. and Ms. Fletcher have worked with the City of Portland to develop an environmental overlay that reflects the resource value of the properties in question and is appropriate given the present and future purposes for which these properties are likely to be used. Nevertheless, after reviewing Metro's proposed criteria and mapping for their properties, they have serious concerns regarding the applicability of Metro's proposed criteria to these properties and the far-reaching extent of the Metro's preliminary mapping. Generally, Mr. and Ms. Fletcher oppose adoption of the proposed natural resource criteria and the maps that are currently before the Metro Council for the reasons outlined below.

[09901-0001/PA013470.052]



December 13, 2001

Page 2

After reviewing the technical analysis prepared by Paul Fishman of Fishman Environmental Services for the City of Hillsboro, the Fletcher's have serious concerns about whether Metro has applied relevant scientific principals correctly when developing the proposed protective criteria. Until the concerns raised by Mr. Fishman are resolved, any decision to adopt criteria or maps resulting from the application of these criteria is premature and should be postponed.

Having spent so much time and effort working with the City of Portland staff to develop an environmental overlay zone appropriate for their properties, the Fletchers object to Metro's implicit decision to exclude local governments including the City of Portland from the economic, social, environmental and energy consequences analysis that constitutes the bulk of the remainder of the Goal 5 process. The Fletcher's believe that local government should be included in these decisions because they are closer to the resource and are better qualified and prepared to make on-the-ground decisions for local parcels and lots.

Having participated in land use matters with the City of Portland, it is clear to the Fletcher's that the process enacted by Metro does not provide sufficient notice to property owners relative to the scope and importance of the issues presently before the Metro Council. Metro has apparently elected to implement the Goal 5 process in a piecemeal fashion, that is, first making decisions about the inventory of natural resources and later conducting the ESEE analysis necessary as part of the final Goal 5 process. By taking this approach, it is not clear to the public exactly what the importance of the present decision will be. Another way to conduct the Goal 5 process involves providing the public and Metro Council with all Goal 5 related decisions, (inventory, ESEE analysis and regulations) at one time. That way, the total nature and the potential outcome of the Metro planning process can be evaluated and debated in the public forum. Because of the piecemeal nature of the process conducted by Metro, affected property owners are left without meaningful notice or opportunity to participate.

The Fletchers believe that it is premature for the Metro Council to adopt the proposed criteria or mapping at this time. Such adoption should be held in abeyance until all issues raised by Mr. Fishman have been resolved fully. In addition, Metro Council should review its apparent decision to exclude local governments from the Goal 5 ESEE process because of the critical role local government plays in the integrity of the Oregon land use process and also because local governments have access to relevant information about the parcels that will eventually be evaluated. In



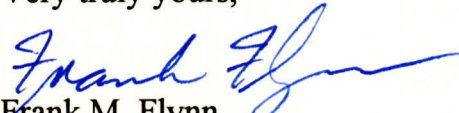
December 13, 2001

Page 3

addition, local governments and property owners have unique and related interest in these decisions not just because of the protection proposed for natural resources but because of the potential economic effects both on local government and property owners. Finally, the Fletcher's believe that the notice by which Metro has initiated public comment is intrinsically flawed because it does not explain the full impact of the decision before Metro Council. By this we mean the exclusion of local governments from the ESEE process (a decision which has yet to be debated publicly) and the discretionary decision to exceed the requirements not just of the Goal 5 rule but also protection ordinances already in effect or being proposed by local government and the requirements of state and federal natural resource protection laws and regulations.

If you have any questions regarding these matters, please feel free to contact me at your convenience.

Very truly yours,

  
Frank M. Flynn

FMF:bmw

cc: Bradford H. and Michelle S. Fletcher  
Mark Whitlow





# Oregon

John A. Kitzhaber, M.D., Governor

## Department of Land Conservation & Development

800 NE Oregon St. # 18  
Portland, OR 97232  
(503) 731-4065  
FAX (503) 731-4068

December 13, 2001

Councilor David Bragdon,  
Presiding Officer  
METRO Council  
600 NE Grand Avenue  
Portland, OR 97210

SUBJECT: Public Hearing and Consideration  
Agenda Item 8.5 December 13, 2001 ✓  
Resolution No. 01-3141A  
Identification of Regionally Significant Fish Habitat;  
Approving Draft Map of Regionally Significant No. 01-3141A.

Dear Councilor Bragdon:

The purpose of this letter is to advise METRO Council that the Department finds the above resolution and the attached exhibits satisfies the applicable provisions in the Goal 5 rule.

Specifically, the identification or regionally significant fish habitat areas (the "resource" or "Goal 5 riparian corridor resources") under of Oregon Administrative Rule Chapter 660, Section-023-0030 (3)] contains adequate information about these potential resource sites. Although the final determination of adequacy of resource inventory information is the responsibility of the Land Conservation and Development Commission or the Land Use Board of Appeals, the Department believes that the METRO inventory meets the adequacy test.

Further, the requirements in the rule under subsections (a), (b), and (c) of Chapter 660, Section-023-0030 (3) relating to the resource's location information, the relative quality of resource sites, and the quantity of sites are meet or exceeded by the products contained in Resolution No. 01-3141A

Therefore, METRO can now proceed to the next step in the standard Goal 5 inventory process, which is the determination of significance (what is regionally significant) of the identified resource sites in Exhibit B of Resolution No. 01-3141A.

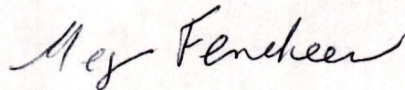




In terms of what significant riparian corridors then become regionally significant, we would agree with our sister state agencies and other the public sector natural resource protection agencies to choose the first option before you as recommended by the Natural Resources Committee. METRO Council is encouraged to make the policy choice that the full universe of the regional resource sites (riparian corridors) is further determined to be regionally significant resources.

The Department therefore recommends that the METRO Council adopt Resolution No. 01-3141A No. 01-929A. We further appreciate your careful consideration of our comments.

Sincerely yours,

A handwritten signature in cursive script, reading "Meg Fernekees".

Meg Fernekees  
Portland Metro Area Regional Representative

cc: Jim Hinman, Urban Planning Coordinator, DLCD Salem  
Richard P. Benner, Office of General Counsel