

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO SIGN AN INTERGOVERNMENTAL AGREEMENT WITH THE TUALATIN BASIN NATURAL RESOURCES COORDINATING COMMITTEE) RESOLUTION NO 02-3195) Introduced by Councilor Susan McLain, Chair Natural Resources Committee and Presiding Officer, Carl Hosticka

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 State Goal 5 administrative rule as the framework for identifying regionally significant fish and wildlife habitat areas; and

WHEREAS, on December 13, 2001, the Metro Council adopted Resolution No. 01-3141C for the purpose of establishing criteria to define regionally significant fish habitat, and

WHEREAS, Resolution No. 01-3141C indicated that the Council would consider a "basin approach" to conducting the ESEE and program components of the Fish and Wildlife Habitat Conservation program in the Tualatin Basin, and

WHEREAS, the Metro Policy Advisory Committee ("MPAC"), the Water Resources Policy Advisory Committee ("WRPAC"), Metro Technical Advisory Committee ("MTAC"), Goal 5 Technical Advisory Committee and Tualatin Basin Coordination Committee provided comment and recommendations to the Natural Resources Committee and Metro Council during in January, 2002; and

WHEREAS, at its January 30, 2002 meeting, the Natural Resources Committee recommended that the Council consider entering into an intergovernmental agreement ("IGA") with Washington County, cities, and special districts in the Tualatin River Basin as conceptually explained in the document entitled "Tualatin Basin Approach" which is attached as Exhibit A to this resolution; and

WHEREAS, the Council at its January 31, 2002 meeting accepted the Natural Resources Committee recommendation and requested that the Executive Officer and staff work with staff of the Tualatin Basin Natural Resources Coordinating Committee ("TBNRCC") to bring forward a proposed IGA for Council approval in order to authorize and allow the use of a Basin Approach as a component of Metro's Fish and Wildlife Habitat Program; and

WHEREAS, at its April 17 and May 1, 2002 meetings, the Natural Resources Committee considered the draft IGA, and recommended that the Metro Council adopt the IGA attached as Exhibit B to this resolution; now, therefore, BE IT RESOLVED:

- 1. The Council authorizes the Executive Officer to sign the Intergovernmental Agreement entitled "Intergovernmental Agreement TBNRCC/Metro Regional Resource Planning Project" in Exhibit B.

ADOPTED by the Metro Council this 16th day of May, 2002.

Carl Hosticka, Presiding Officer

Approved as to Form: Daniel B. Cooper, General Counsel

Tualatin Basin Approach
1/30/02 Draft

What The basin approach is a proposal that local governments take responsibility as described in Steps 1 and 2, below, within the greater part of the Tualatin River basin for the next phases (ESEE and program development) of the region's fish and wildlife habitat program, subject to coordination with, and final product approval by, the Metro Council. Riparian corridors and wildlife habitat determined to be regionally significant consistent with State Goal 5, and Clean Water Act requirements and Endangered Species Act listings would all have to be addressed in a basin approach.

Where The basin proposal could apply to any large whole watershed within the region, if approved by Metro. For the Tualatin Basin, the general geographic extent is that area draining the Tualatin River. The basin consists of areas inside of the current Metro urban growth boundary and Metro jurisdictional boundary, Metro UGB alternatives analysis areas and rural, farm and forest lands beyond. Regional resources determined by Metro, potential regional resources identified in areas studied by Metro in its UGB Alternatives Analysis and the rural, farm and forest lands beyond identified by Washington County as significant resources shall be addressed in the Tualatin Basin Approach.

Who Currently, a consortium of local governments including the cities of Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, Sherwood, Tigard and Tualatin, as well as Washington County, Clean Water Services and Tualatin Hills Parks and Recreation District have expressed a willingness to address the Tualatin Basin. Inclusion of, or coordination with, other jurisdictions with responsibilities within the Tualatin Basin such as Clackamas County and the cities of Lake Oswego and Portland are underway. Individual property owners, interest groups, local government advisory committees and other interested parties would also be provided opportunities to participate during this work effort. In addition, Metro would participate in the Basin Approach through Council representation on the Tualatin Basin Coordinating Committee, through project updates to, and feedback from the Natural Resource Committee, MPAC, MTAC, Goal 5 TAC, WRPAC, and through the Metro staff. The Metro Council would make recommendations about the ESEE decision to delineate areas to "prohibit" or "limit" conflicting uses and make the final decision about whether a basin approach met regional standards after consultation with its advisory committees.

Why The Basin Approach proposal has been made in part because of a concurrent, joint efforts by the Tualatin Basin governments, the Washington County Clean Water Services and others to address Federal Clean Water Act requirements and Endangered Species Act listings that likely will affect the same areas as Metro's fish and wildlife habitat protection plan. In addition to reducing the number of times that the same areas are analyzed and public outreach provided and applying more detailed information than is readily available region-wide, this Basin Approach allows for coordination among similar, but distinct Federal, State and regional requirements. The basin approach can also provide local governments with an opportunity to shape a basin-wide program that is tailored to local conditions within the Tualatin River basin while addressing regional Goal 5 objectives. Because the Basin Approach is proposed as being completed concurrently with Metro's regional tasks, the Tualatin Basin is most likely to be implemented sooner than other portions of the region if the non-basin jurisdictions wait for the Metro regional safe harbor to be completed and acknowledged by the state before they begin local implementation tasks.

When The basin proposal would complete this work parallel to the rest of Metro's fish and wildlife habitat program region-wide. Both the region's work effort as well as the Basin Approach work products would be timed to allow for Metro Council consideration of the data and likely capacity consequences of a regional fish and wildlife protection plan in order to make decisions about the region's urban growth boundary by December 31, 2002. To accomplish this, materials defining the impact on the UGB buildable land inventory would need to be readied by Metro staff by August 1, 2002. The Tualatin Basin Approach has proposed to meet Metro's decision timeline. The Tualatin Basin Coordinating Committee would formally provide a Basin Approach timeline and work completion schedule.

How The basin approach will be accomplished by setting goals and standards, providing legal structure for coordination, establishing a process and monitoring and evaluation.

Goals. The adopted Regional Framework Plan states that the region shall manage watersheds to protect, restore and ensure to the maximum extent practicable the integrity of streams, wetlands and floodplains, and their multiple biological, physical and social values. Metro's fish and wildlife vision articulates the overriding goal of the Basin Approach:

"The overall goal is to conserve, protect and restore a continuous ecologically viable streamside corridor system, from the streams' headwaters to their confluence with other 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."

Improvement of habitat health within each of the Region's 27 hydrologic units including the eleven hydrologic units inside the Tualatin Basin shall be a primary objective of the Basin Approach. The following objectives within Metro's Fish and Wildlife Habitat Vision Statement shall be pursued by the Basin Approach: to sustain and enhance native fish and wildlife species and their habitats; to mitigate high storm flows and maintain adequate summer flows; to provide clean water; and to create communities that fully integrate the built and natural environment. The region wide system of linked significant fish and wildlife habitats will be achieved through preservation of existing resources and restoration to recreate critical linkages, as appropriate and consistent with ESEE conclusions about whether to prohibit, limit or allow conflicting uses within a regionally significant resource site. Avoiding any future ESA listings is another primary Basin Approach objective. The sentences quoted above from the Vision Statement as the overall goal shall be the goal against which the Tualatin Basin Approach will be reviewed. Objectives cited above provide additional guidance as to how the Tualatin Basin Approach should be completed and an intergovernmental agreement between the consortium and Metro will provide additional working details.

Legal Structure. Intergovernmental agreements will be used to ensure Basin Approach coordination among the affected local governments, and Metro. In addition, staff level memoranda of understanding will be used to assure coordination between consortium members, Metro and those relevant jurisdictions not directly participating in the Tualatin Basin Approach.

Process. The Metro-Tualatin Basin Approach coordination process would have two-steps. The first step would be a check-in by the Tualatin Basin Approach with Metro before making ESEE decisions for the Basin for Metro input and advice. The second step would be Metro Council review of Basin Approach program recommendations and determination of program

conformance with the Basin Approach review criteria described above. In addition, ongoing coordination between the Tualatin Basin Approach staff and Metro staff would occur as work on the Basin Approach proceeds. A public involvement plan meeting the region's goals for providing substantial opportunities for participation by the public would be completed for the region (including how the Tualatin Basin would be addressed) after coordination with the Metro Committee on Citizen Involvement.

Step 1. The ESEE Decision. Metro, local governments and other interested parties will work to establish a regional ESEE method. One possible method would be to design regional ESEE parameters for application within 27 hydrologic units throughout the Region. The Tualatin Basin would develop basin-wide and local ESEE parameters for the Tualatin Basin. Both sets of ESEE parameters shall guide the identification of areas for prohibiting, limiting or allowing conflicting uses within the Tualatin Basin. The results of applying these parameters within the Basin would be mapped.

This map could be constructed for the entire region, using the selected regional ESEE parameters and the mapped results of the Tualatin Basin Approach ESEE analysis, further informed by any other local considerations. This information would be used for two purposes. First, it would provide the foundation of the ESEE decision. Second, the map could also be used to estimate the influence of the region's fish and wildlife habitat program on the housing and job capacity calculations for the region's periodic review of its urban growth boundary. The Tualatin Basin ESEE decision about which areas to prohibit, limit or allow conflicting uses within the Tualatin Basin would be made by the local participating governments, through the Tualatin Basin Natural Resource Coordinating Committee, after consideration of public comments, including Metro Council input and recommendations.

Step 2 Program Design and Adoption. Region-wide, Metro will prepare a regional Goal 5 program (regional safe harbor, riparian district plan and local discretionary review options) for the entire region which, for the Tualatin Basin, would reflect the program developed through the Basin Approach. Regional and Basin program elements, including incentives, acquisition, education and regulatory tools would then be prepared. The region would prepare its regional safe harbor, riparian district plan specifications and the local discretionary review options. The Tualatin Basin would design its program. For example, the Tualatin Basin Approach could include, but would not be limited to the following kinds of program elements:

- Revised and new land use "goal 5 overlay" mapped areas and new regulatory language for all land use authorities within the Basin;
- Clean Water Services (CWS) Design & Construction standards (possible revisions);
- Review and possible revisions to CWS maintenance programs (possibly maintenance programs for all jurisdictions including park district);
- Identification and prioritization of restoration sites and financial plan ("Environmental CIP");
- Coordination with Metro Greenspaces program for targeted acquisitions; and
- Possible incorporation of "green street" optional standards into all local codes (project currently underway being funded by Tualatin Valley Water Quality Endowment Fund)

After taking public testimony, the Tualatin Basin would forward a recommended program to Metro. After its own review process using agreed upon review standards, the Metro Council

would determine whether the Basin Approach substantially complies and whether to approve the Tualatin Basin Approach.

Monitoring and Evaluation. Metro Code requires that performance measures be used to evaluate the success and effectiveness of its functional plan to realize regional policies. In addition, the National Marine Fisheries Service 4(d) rule calls for monitoring and evaluation. After local programs have been enacted and some time period passes to allow for programs to take hold, Metro should evaluate its policies and their implementation to compare goals with actual outcomes. If a basin approach significantly lagged region-wide efforts, as a last resort, regional safe harbor provisions could be applied to the basin area until a basin approach is completed and approved by the Metro Council.

**INTERGOVERNMENTAL AGREEMENT
TBNRCC/METRO REGIONAL RESOURCE PLANNING PROJECT**

This Agreement is entered into between the Tualatin Basin Natural Resources Coordinating Committee ("TBNRCC"), an ORS Chapter 190 intergovernmental association and the Portland Metropolitan Service District ("Metro").

WHEREAS:

1. Metro has adopted Resolution 01-3141C establishing criteria to define and identify regionally significant riparian corridors relating to the inventory phase of the Goal 5 aspects of its Fish and Wildlife Habitat Protection Program, has adopted Resolution 02-3195 supporting a "Tualatin Basin Approach" to complete the Goal 5 ESEE and program development steps for regional resources in the Tualatin Basin and is continuing to inventory regionally significant wildlife habitat and conduct its regional ESEE analysis, program and related work.

2. The TBNRCC was formed by its members ("Basin governments") primarily to pursue a coordinated Basin approach to responding to the Goal 5 work performed by Metro and to conduct ESEE analysis and program development for the regional resource sites identified by the Metro Council in its draft inventory of Goal 5 regional resources, subject to final action by Metro to include the program decisions in Metro's functional plan. Signatories to the intergovernmental agreement entitled "Formation of the Tualatin Basin Natural Resources Coordinating Committee," attached (without its exhibits) as Exhibit "A", identify the "Basin governments" for the purposes of this Agreement. Staff of individual Basin governments acting as staff to the TBNRCC, as well as consultants (other than attorneys) working on contract with the TBNRCC, are referred to in this Agreement as "TBNRCC staff."

3. This approach will enable the parties to better coordinate their efforts, maximize efficiencies, better interrelate on-going efforts to address Clean Water Act, Endangered Species Act and other requirements and provide local governments with an opportunity to shape a basin-wide program tailored to local conditions while addressing regional objectives and retaining Metro's authority.

NOW, THEREFORE, IT IS AGREED:

1. The document entitled 'Tualatin Basin Approach' (dated January 30, 2002 and adopted by Metro Council Resolution No. 02-3195), attached as Exhibit "B", describes the basis for the agreement of the parties and may be used in construing and implementing this Agreement. The parties shall cooperate in good faith to follow the process and meet the objectives set forth therein.

2. The TBNRCC shall fund and undertake staff analysis, conduct hearings, make ESEE decisions, and formulate programs to be recommended to Metro for the regional resource sites identified by the Metro Council in its draft inventory of Goal 5 regional resources. Metro anticipates identifying the draft inventory by resolution in Summer 2002. Metro shall transmit to

TBNRCC its draft inventory maps of regional resources and inventory narrative upon approval of that resolution. The TBNRCC shall develop a record¹ of its proceedings to submit to Metro in support of its ESEE decisions and program recommendations. Metro shall coordinate GIS information and provide technical support as may be agreed to by TBNRCC and Metro staff. Metro and the TBNRCC shall coordinate on notice and public outreach as may be agreed to by TBNRCC and Metro staff in a Memorandum of Understanding consistent with provision #9 of this agreement.

3. TBNRCC staff will develop a draft map identifying locations to allow, limit or prohibit conflicting uses for the regional resource sites identified by the Metro Council in its draft inventory of Goal 5 regional resources. The TBNRCC will then provide notice and public outreach and begin hearings on the map. The TBNRCC will approve a map identifying locations to allow, limit or prohibit conflicting uses for the regional resource sites identified by the Metro Council in its draft inventory of Goal 5 regional resources and submit the map to Metro. As part of its ESEE analysis, TBNRCC shall coordinate with Metro and consider Metro's regional ESEE analysis.²

4. The TBNRCC will develop proposed programs to implement the ESEE determinations identified in its map, provide notice and public outreach, and conduct hearings on the proposed programs. TBNRCC will adopt recommended programs for the regional resource sites identified by the Metro Council in its draft inventory of Goal 5 regional resources and submit them, together with supporting ESEE analyses, to Metro by June 15, 2003.

5. The Metro Council will consider and conclude review of the TBNRCC recommended programs and supporting record, and take action on the recommended programs and supporting ESEE analyses, within a total of 120 60 days of submission. Metro shall provide notice, hold public hearings, and shall have 60 days from the date the TBNRCC recommendations are submitted to review solicit comment on the recommended programs and supporting ESEE analyses, initiate solicitation of public comments and solicit comment from the public and appropriate advisory committees including the Metro Policy Advisory Committee ("MPAC"), Metro Technical Advisory Committee ("MTAC"), Water Resources Policy Advisory Committee ("WRPAC"), Economic Technical Advisory Committee ("ETAC") and Goal 5 Technical Advisory Committee ("G5TAC") consistent with Metro's citizen involvement program.

Consistent with the Tualatin Basin Approach document, Metro shall apply the "overall goal" (quoted in full in this paragraph) of the Streamside CPR Program Outline – Purpose, Vision, Goal Principles and Context" ("Vision Statement") recommended to the Metro Council by MPAC on October 4, 2000 as the standard for determining whether to include the TBNRCC's

¹ For the purposes of this agreement a "record" is defined as all oral or written testimony received by the TBNRCC and its findings explaining its program decisions. Data sources for identifying conflicting uses, data supporting the identification of impact areas, data sources supporting the economic, social, environmental and energy consequences analysis and other documents created by TBNRCC staff in developing the ESEE analyses or program decisions, but not received by the TBNRCC, shall be available to Metro staff for review.

² For the purposes of this agreement "regional ESEE analysis" is defined as the general consideration of economic, social, environmental and energy consequences developed by Metro for the Metro region as a whole. "Regional ESEE analysis" does not include the results of the application of that regional analysis to the 27 individual resource sites identified by Metro in Resolution 01-3141C.

recommended programs and supporting ESEE analyses in the Urban Growth Management Functional Plan. The entire Vision Statement is attached as Exhibit "C" to this document to provide context for understanding the terms of the following "overall goal" standard:

"The overall goal is to conserve, protect and restore a continuous ecologically viable streamside corridor system, from the streams' headwaters to their confluence with other 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."

If, after receiving comment from the public and Metro advisory committees, the Metro Council concludes that the TBNRCC's recommended programs comply or substantially comply with the above standard, Metro shall, ~~within 60 days of concluding its review, initiate and complete the~~ process to adopt the recommended programs and supporting ESEE analyses, in substantially the same form as submitted, as its functional plan element for the regional resource sites identified in the recommendations. Metro review for compliance with the above standard will ~~be evaluate the~~ program for potential to improve regional resource conditions basin-wide, addressing the entire Tualatin Basin system, as well as addressing each regional resource site identified by the Metro Council in its draft inventory of Goal 5 regional resources within the jurisdiction of the Basin governments.

6. If Metro adopts the recommendations of the TBNRCC in substantially the same form as submitted, each member of TBNRCC shall file ordinances, provide notice, conduct hearings to amend their respective applicable plans and related regulations, and otherwise take actions within the time-frames and as set forth in the agreement forming the TBNRCC.

7. If any of the Basin governments adopt ordinances that vary significantly from TBNRCC's recommended programs and supporting ESEE analyses, as adopted by Metro, then that Basin government shall develop a record explaining any variance from the Metro-adopted recommendations and submit it to Metro for review.

8. Metro shall review any such variations to determine whether such variations are significant enough to result in a determination that the jurisdiction is not in substantial compliance with the functional plan.

9. The Washington County Planning Division Manager for TBNRCC and the Transportation and Planning Director for Metro are authorized to enter into Memoranda of Understanding to coordinate staff work and citizen participation matters and otherwise ensure efficient and effective communication and cooperation.

10. The signatories, including each basin government, are the only entities or persons entitled to enforce its terms. Nothing in this IGA gives or is intended to provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the

terms of this contract. This agreement may be amended by written agreement between TBNRCC and Metro. TBNRCC shall promptly notify Metro of amendments to the IGA entitled "Formation of the Tualatin basin Natural Resources Coordinating Committee."

11. No person shall be denied or subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this IGA on the grounds of race, color, religion, gender, sexual orientation, national origin, disability, age, or marital status.

12. Subject to the limitations in the Oregon Tort Claims Act and the Oregon Constitution, each signatory agrees to hold harmless, indemnify and defend the other, including each other's officers, employees and agents, against all claims, demands, actions suits and appeals (including attorney fees and costs) arising from the indemnitor's acts or omissions under this Agreement.

13. Notwithstanding paragraph 12, if any claim, demand, action, suit, or appeal is filed against the TBNRCC or Metro in connection with matters addressed by this Agreement, the parties agree to cooperate in good faith in defending or otherwise addressing the challenge.

14. This Agreement is intended as the complete, exclusive and final expression of the Agreement among the parties.

15. This Agreement shall terminate June 1, 2004 unless first extended by the parties. It may also be terminated by one party providing the other with 60 days written notice of termination.

**TUALATIN BASIN NATURAL
RESOURCES COORDINATING
COMMITTEE**

METRO

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

**INTERGOVERNMENTAL AGREEMENT
TBNRCC/METRO REGIONAL RESOURCE PLANNING PROJECT**

This Agreement is entered into between the Tualatin Basin Natural Resources Coordinating Committee ("TBNRCC"), an ORS Chapter 190 intergovernmental association and the Portland Metropolitan Service District ("Metro").

WHEREAS:

1. Metro has adopted Resolution 01-3141C establishing criteria to define and identify regionally significant riparian corridors relating to the inventory phase of the Goal 5 aspects of its Fish and Wildlife Habitat Protection Program, has adopted Resolution 02-3195 supporting a "Tualatin Basin Approach" to complete the Goal 5 ESEE and program development steps for regional resources in the Tualatin Basin and is continuing to inventory regionally significant wildlife habitat and conduct its regional ESEE analysis, program and related work.

2. The TBNRCC was formed by its members ("Basin governments") primarily to pursue a coordinated Basin approach to responding to the Goal 5 work performed by Metro and to conduct ESEE analysis and program development for the regional resource sites identified by the Metro Council in its draft inventory of Goal 5 regional resources, subject to final action by Metro to include the program decisions in Metro's functional plan. Signatories to the intergovernmental agreement entitled "Formation of the Tualatin Basin Natural Resources Coordinating Committee," attached (without its exhibits) as Exhibit "A", identify the "Basin governments" for the purposes of this Agreement. Staff of individual Basin governments acting as staff to the TBNRCC, as well as consultants (other than attorneys) working on contract with the TBNRCC, are referred to in this Agreement as "TBNRCC staff."

3. This approach will enable the parties to better coordinate their efforts, maximize efficiencies, better interrelate on-going efforts to address Clean Water Act, Endangered Species Act and other requirements and provide local governments with an opportunity to shape a basin-wide program tailored to local conditions while addressing regional objectives and retaining Metro's authority.

NOW, THEREFORE, IT IS AGREED:

1. The document entitled 'Tualatin Basin Approach' (dated January 30, 2002 and adopted by Metro Council Resolution No. 02-3195), attached as Exhibit "B", describes the basis for the agreement of the parties and may be used in construing and implementing this Agreement. The parties shall cooperate in good faith to follow the process and meet the objectives set forth therein.

2. The TBNRCC shall fund and undertake staff analysis, conduct hearings, make ESEE decisions, and formulate programs to be recommended to Metro for the regional resource sites identified by the Metro Council in its draft inventory of Goal 5 regional resources. Metro anticipates identifying the draft inventory by resolution in Summer 2002. Metro shall transmit to

TBNRCC its draft inventory maps of regional resources and inventory narrative upon approval of that resolution. The TBNRCC shall develop a record¹ of its proceedings to submit to Metro in support of its ESEE decisions and program recommendations. Metro shall coordinate GIS information and provide technical support as may be agreed to by TBNRCC and Metro staff. Metro and the TBNRCC shall coordinate on notice and public outreach as may be agreed to by TBNRCC and Metro staff in a Memorandum of Understanding consistent with provision #9 of this agreement.

3. TBNRCC staff will develop a draft map identifying locations to allow, limit or prohibit conflicting uses for the regional resource sites identified by the Metro Council in its draft inventory of Goal 5 regional resources. The TBNRCC will then provide notice and public outreach and begin hearings on the map. The TBNRCC will approve a map identifying locations to allow, limit or prohibit conflicting uses for the regional resource sites identified by the Metro Council in its draft inventory of Goal 5 regional resources and submit the map to Metro. As part of its ESEE analysis, TBNRCC shall coordinate with Metro and consider Metro's regional ESEE analysis.²

4. The TBNRCC will develop proposed programs to implement the ESEE determinations identified in its map, provide notice and public outreach, and conduct hearings on the proposed programs. TBNRCC will adopt recommended programs for the regional resource sites identified by the Metro Council in its draft inventory of Goal 5 regional resources and submit them, together with supporting ESEE analyses, to Metro by June 15, 2003.

5. The Metro Council will consider and conclude review of the TBNRCC recommended programs and supporting record, and take action on the recommended programs and supporting ESEE analyses, within a total of 120 days of submission. Metro shall have 60 days from the date the TBNRCC recommendations are submitted to review the recommended programs and supporting ESEE analyses, initiate solicitation of public comments and solicit comment from appropriate advisory committees including the Metro Policy Advisory Committee ("MPAC"), Metro Technical Advisory Committee ("MTAC"), Water Resources Policy Advisory Committee ("WRPAC"), Economic Technical Advisory Committee ("ETAC") and Goal 5 Technical Advisory Committee ("G5TAC") consistent with Metro's citizen involvement program.

Consistent with the Tualatin Basin Approach document, Metro shall apply the "overall goal" (quoted in full in this paragraph) of the Streamside CPR Program Outline – Purpose, Vision, Goal Principles and Context" ("Vision Statement") recommended to the Metro Council by MPAC on October 4, 2000 as the standard for determining whether to include the TBNRCC's

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² For the purposes of this agreement "regional ESEE analysis" is defined as the general consideration of economic, social, environmental and energy consequences developed by Metro for the Metro region as a whole. "Regional ESEE analysis" does not include the results of the application of that regional analysis to the 27 individual resource sites identified by Metro in Resolution 01-3141C.

recommended programs and supporting ESEE analyses in the Urban Growth Management Functional Plan. The entire Vision Statement is attached as Exhibit "C" to this document to provide context for understanding the terms of the following "overall goal" standard:

"The overall goal is to conserve, protect and restore a continuous ecologically viable streamside corridor system, from the streams' headwaters to their confluence with other 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."

If, after receiving comment from the public and Metro advisory committees, the Metro Council concludes that the TBNRCC's recommended programs comply or substantially comply with the above standard, Metro shall complete the process to adopt the recommended programs and supporting ESEE analyses, in substantially the same form as submitted, as its functional plan element for the regional resource sites identified in the recommendations. Metro review for compliance with the above standard will evaluate the program for potential to improve regional resource conditions basin-wide, addressing the entire Tualatin Basin system, as well as addressing each regional resource site identified by the Metro Council in its draft inventory of Goal 5 regional resources within the jurisdiction of the Basin governments.

6. If Metro adopts the recommendations of the TBNRCC in substantially the same form as submitted, each member of TBNRCC shall file ordinances, provide notice, conduct hearings to amend their respective applicable plans and related regulations, and otherwise take actions within the time-frames and as set forth in the agreement forming the TBNRCC.

7. If any of the Basin governments adopt ordinances that vary significantly from TBNRCC's recommended programs and supporting ESEE analyses, as adopted by Metro, then that Basin government shall develop a record explaining any variance from the Metro-adopted recommendations and submit it to Metro for review.

8. Metro shall review any such variations to determine whether such variations are significant enough to result in a determination that the jurisdiction is not in substantial compliance with the functional plan.

9. The Washington County Planning Division Manager for TBNRCC and the Transportation and Planning Director for Metro are authorized to enter into Memoranda of Understanding to coordinate staff work and citizen participation matters and otherwise ensure efficient and effective communication and cooperation.

10. The signatories, including each basin government, are the only entities or persons entitled to enforce its terms. Nothing in this IGA gives or is intended to provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the

terms of this contract. This agreement may be amended by written agreement between TBNRCC and Metro. TBNRCC shall promptly notify Metro of amendments to the IGA entitled "Formation of the Tualatin basin Natural Resources Coordinating Committee."

11. No person shall be denied or subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this IGA on the grounds of race, color, religion, gender, sexual orientation, national origin, disability, age, or marital status.

12. Subject to the limitations in the Oregon Tort Claims Act and the Oregon Constitution, each signatory agrees to hold harmless, indemnify and defend the other, including each other's officers, employees and agents, against all claims, demands, actions suits and appeals (including attorney fees and costs) arising from the indemnitor's acts or omissions under this Agreement.

13. Notwithstanding paragraph 12, if any claim, demand, action, suit, or appeal is filed against the TBNRCC or Metro in connection with matters addressed by this Agreement, the parties agree to cooperate in good faith in defending or otherwise addressing the challenge.

14. This Agreement is intended as the complete, exclusive and final expression of the Agreement among the parties.

15. This Agreement shall terminate June 1, 2004 unless first extended by the parties. It may also be terminated by one party providing the other with 60 days written notice of termination.

**TUALATIN BASIN NATURAL
RESOURCES COORDINATING
COMMITTEE**

METRO

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

**INTERGOVERNMENTAL AGREEMENT
FORMATION OF TUALATIN BASIN NATURAL RESOURCES COORDINATING
COMMITTEE; METRO REGIONAL RESOURCE PLANNING PROJECT**

This Agreement is entered into by the cities, counties and special districts (collectively "Basin governments") that are signatories to this Agreement.

WHEREAS, ORS 190.010 - .110 authorizes units of local government to enter into agreements for the performance of any functions and activities that a party to the agreement, its officers or agencies have authority to perform;

WHEREAS, an agreement under ORS 190.010 shall specify the functions or activities to be performed and by what means they shall be performed;

WHEREAS, the Basin governments have responsibilities and authority under State law and/or their local charters to conduct comprehensive planning and to administer implementing land use regulations within their respective jurisdictions, or have regulatory authority and provide services that are connected with these land use planning responsibilities;

WHEREAS, the Portland Metropolitan Service District ("Metro") has undertaken the responsibility to prepare a regional Goal 5 program which would affect existing and developing policies of the Basin governments.

WHEREAS, the Basin governments have determined that it is in their best interests to jointly prepare and coordinate planning and regulatory programs concerning State Goal 5, Title 3, Section 5 of Metro's Urban Growth Management Functional Plan, the federal Clean Water Act and related state regulations, the Endangered Species Act, and other regional natural resource related matters,

NOW, THEREFORE, in consideration of the mutual covenants herein, the parties to this Agreement hereby agree to undertake the following actions:

1. Formation; Scope of Authority

The parties hereby establish the Tualatin Basin Natural Resources Coordinating Committee ("TBNRCC"), and delegate to the TBNRCC the authority that each party has within its jurisdictional territory to perform the following functions and exercise the following powers for and on behalf of the parties and their jurisdictional territories within the Tualatin Basin area to achieve the purpose and objectives of this Agreement:

1.1 Expend funds contributed by the parties to this joint Tualatin Basin response to the Metro regional Goal 5 project pursuant to Section 3 of this Agreement.

1.2 Enter into contracts with consultants and other parties necessary to the completion of this project, subject to compliance with the Washington County public contracting rules and regulations.

1.3 Enter into an Intergovernmental Agreement with Metro ("Metro-TBNRCC IGA") to perform and submit to the Metro Council the regional Goal 5 ESEB and Program Development steps of the Metro Goal 5 Program for the Goal 5 resources within the jurisdictions of the Basin governments.

1.4 Further develop, refine and carry out the tasks and responsibilities of the Basin governments described in the "Tualatin Basin Approach" attached hereto as Exhibit "A".

1.5 Appear on behalf of the parties in Metro Goal 5 legislative, administrative and other proceedings and speak for the parties and their jurisdictional territories on matters that concern potential effects of the Metro Goal 5 program on the parties.

1.6 Consider unique circumstances identified by Basin governments in developing Goal 5 ESEB and Program decisions and alternatives suggested by such governments to address these circumstances in ways that conform with the Basin ESEB and Program decisions.

1.7 Review Healthy Streams Plan proposals and recommendations developed by Clean Water Services in response to the Clean Water Act and Endangered Species Act, coordinate Goal 5 ESEB and Program decisions with the Healthy Streams Plan, and recommend actions to achieve such coordination to the Clean Water Services District.

1.8 Appoint TBNRCC subcommittees, task forces or other advisory groups as may be required by the Metro-TBNRCC IGA or deemed appropriate by the TBNRCC.

1.9 Conduct public outreach required by the Metro-TBNRCC IGA or otherwise relating to a proposed coordinated Tualatin Basin Goal 5 program that would be adopted by Metro as an element of its Urban Growth Management Functional Plan.

1.10 Undertake other actions needed to perform TBNRCC responsibilities under the Metro-TBNRCC IGA or to formulate the coordinated Tualatin Basin Goal 5 program.

The TBNRCC shall not have authority, delegated or otherwise, to adopt final land use decisions on behalf of, or binding upon, any Basin government.

2. Governance

The TBNRCC shall consist of the chief elected officer of the governing body of each Basin government or his/her alternate from that governing body. Notwithstanding the foregoing, the member and alternate from Clean Water Services shall be a person other than the chair and alternate representing the Washington County Board of Commissioners on the TBNRCC. In addition, the Metro Council may appoint from

INTERGOVERNMENTAL AGREEMENT FORMING THE TBNRCC

Page 2 of 7

among its members two ex-officio non-voting members to the TBNRCC. All these appointments to the TBNRCC should be made within 30 days of the effective date of this Agreement.

2.1 Each TBNRCC member except ex-officio members shall have one vote. A TBNRCC meeting quorum shall consist of a majority of all voting members. The TBNRCC shall establish bylaws setting forth meeting times and rules of procedure as it deems necessary to carry on its business.

2.2 Meetings of the TBNRCC and its subcommittees shall be open to the public, subject to the provisions of the Oregon Public Meetings Law.

2.3 Washington County shall provide staff services to schedule meetings, keep minutes, administer consultant contracts, pay approved expenses and such other administrative matters necessary to conduct TBNRCC business.

3. Funding

3.1 The estimated total cost for services needed to enable the TBNRCC and its staff to perform the work tasks and activities described in this Agreement will be \$100,000. There will be additional costs up to \$50,000 for public notice and public outreach. The total costs will be shared as set forth below. Upon execution of this Agreement, as its pro rata share contribution to this joint effort, each party to the Agreement shall pay to Washington County an amount calculated as follows:

- a. The percentage of the total current population (2000 U.S. Census) of Washington County within incorporated and unincorporated areas shall be calculated.
- b. Washington County, Clean Water Services and the Tualatin Hills Park and Recreation District, individually, shall each pay 1/3 of the percentage of the cost representing the total unincorporated population.
- c. The percentage representing the total incorporated population shall be divided among the signatory cities based on each respective city's population as a percentage of the total incorporated population.

Based on the above, Exhibit B attached hereto specifies the amount each party is to contribute for services and for public notice and outreach.

3.2 Washington County shall separately account for the funds and provide appropriate documentation as reasonably requested by the TBNRCC or any individual TBNRCC member.

3.3 If the initial \$100,000 plus \$50,000 for public notification and outreach costs is insufficient to complete the TBNRCC tasks described in this Agreement, the TBNRCC, by 2/3 majority vote of the Committee members, may authorize additional expenditures without action by the governing bodies of the members. If additional expenditures are authorized, the TBNRCC shall calculate the additional amount of funds needed from

INTERGOVERNMENTAL AGREEMENT FORMING THE TBNRCC

Page 3 of 7

each party to the Agreement, based on the formula in item 3.1 above, and request payment of such additional amount from each party to complete the tasks. At that time a party may elect to withdraw from the TBNRCC rather than contribute such additional funds to the project. If a party withdraws pursuant to this Section or Section 6, any excess funds already contributed by that party shall not be returned to the withdrawing party unless the TBNRCC determines that such a refund is equitable and appropriate. If unexpended funds remain after completion of the TBNRCC tasks described in this Agreement, each party shall receive a share of such unexpended funds proportional to its contribution.

4. Other members

The TBNRCC may permit additional local governments to join as full-members or as non-voting associate members. Additional full voting members shall make pro-rata contributions as described in Paragraph 3, and the contributions of all full voting members shall be adjusted accordingly.

5. Responsibilities of Participating TBNRCC Members

5.1 Each Basin government member shall contribute, at its own reasonable expense, such staff work, documents and other resources as may reasonably be requested by the TBNRCC in order to carry out the TBNRCC's responsibilities, and its own responsibilities under this Agreement. Each Basin government shall cooperate fully with the TBNRCC during the performance of these responsibilities.

5.2 The TBNRCC shall work generally to implement the "Tualatin Basin Approach" attached hereto as Exhibit A. The TBNRCC shall provide opportunities for public involvement, conduct a Tualatin Basin Goal 5 ESEE analysis, and formulate a coordinated Goal 5 Program for regionally significant Goal 5 resources within the jurisdictions of Basin governments for resources identified in the riparian corridor and wildlife habitat inventories accepted by the Metro Council. It shall submit its analyses and decisions on these matters to Metro for consideration.

5.3 If Metro includes these TBNRCC decisions in its adopted functional plan provisions in substantially the same form as submitted by the TBNRCC, the city and county Basin governments shall initiate, provide notice, and hold hearings on proposed ordinances amending their comprehensive plans and land use regulations to implement the Metro functional plan components submitted by the TBNRCC. Each city and county Basin government will conclude hearings and adopt, adopt with amendments, or reject the proposed ordinances to amend comprehensive plans and land use regulations within 180 days after the Metro Council's final decision adopting the TBNRCC decisions as part of the Metro functional plan. Each Basin government shall take final action adopting or rejecting any other program or regulation necessary to implement the adopted Metro functional plan provisions submitted by the TBNRCC within 180 days after the Metro Council's final decision, or as soon as possible thereafter if its charter or other notice and hearing requirements prevent final action within 180 days. Nothing in this Agreement or

INTERGOVERNMENTAL AGREEMENT FORMING THE TBNRCC

the Metro-TBNRCC IGA shall obligate any Basin government to adopt the proposed ordinances or other programs or regulations necessary to implement the adopted Metro functional plan provisions. However, each Basin government shall adopt findings explaining its decision to reject or vary from ordinances, programs, or other actions necessary to implement the adopted Metro functional plan provisions submitted by the TBNRCC. Failure to adopt ordinances or other programs or actions necessary to implement the Metro functional plan provisions submitted by the TBNRCC may result in a determination by Metro that plans or land use regulations do not substantially comply with the Metro functional plan.

6. Term

The Agreement shall terminate on June 30, 2004, unless terminated earlier or extended by action of the governing bodies of a 2/3 majority of Basin governments that are then voting members. Any Basin government may withdraw from the TBNRCC upon 60 days written notice to the TBNRCC. Within 30 days of withdrawal, the Basin government may be refunded a prorated return of any remaining funds it contributed to this project in accordance with Section 3.3 of this Agreement and provided copies of any documents or other resource materials prepared prior to withdrawal.

7. Amendment

Amendments to this Agreement may be proposed by any member of the TBNRCC and shall be incorporated into the Agreement if approved by an affirmative vote of the governing bodies of 2/3 of all the voting TBNRCC members.

8. Miscellaneous

8.1 The parties to this Agreement are the only entities or persons entitled to enforce its terms. Nothing in this IGA gives or is intended to provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

8.2 No person shall be denied or subjected to discrimination by any Basin government in receipt of the benefits of any services or activities made possible by or resulting from this IGA on the grounds of race, color, religion, gender, sexual orientation, national origin, disability, age, or marital status.

8.3 The TBNRCC has no employees. Each basin government shall be solely responsible for its own employees, including but not limited to compensation for and supervision of work performed by its employees in connection with any matter described in this Agreement.

8.4 Subject to the limitations in the Oregon Tort Claims Act and the Oregon Constitution, each party agrees to hold harmless, indemnify and defend each other, including each other's officers, employees and agents against all claims, demands, actions, suits and appeals (including attorney fees and costs) arising from the indemnitor's acts or omissions under this Agreement. In addition, each party shall be solely responsible only for its proportional share established in this Agreement of any contract claims, delay damages or similar monetary claims arising from or caused by the action or inaction of the party or of any other party in the administration of this Agreement. Each party shall give the other immediate written notice of any action or suit filed or any claim made against that party that may result in litigation in any way related to this Agreement. However, each party shall be solely responsible for the defense of any action, claim, suit, or appeal (including land use appeal) arising out of that party's actions pursuant to Section 5.3 to implement adopted Metro functional plan provisions. Each party agrees to maintain insurance levels or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.270.

8.5 If any claim, demand, action, suit or appeal is filed against the TBNRCC, the parties agree to cooperate in good faith in defending or otherwise addressing it.

8.6 This Agreement is intended as the complete, exclusive and final expression of the Agreement among the parties to this Agreement.

8.7 If any terms or provisions of this Agreement or the application thereof to any person or circumstance shall, to any extent, be determined by a court to be invalid or unenforceable, the remainder of this Agreement and the application of those terms and provisions shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

9. Effective Date

The TBNRCC shall be deemed formed, and this Agreement be effective, on the date it is executed by Washington County and seven others of the following Basin governments:

- Washington County
- Clean Water Services
- Tualatin Hills Parks and Recreation District
- City of Beaverton
- City of Hillsboro
- City of Tigard
- City of Tualatin
- City of Sherwood
- City of Cornelius
- City of Forest Grove
- City of Durham
- City of King City
- City of North Plains

INTERGOVERNMENTAL AGREEMENT FORMING THE TBNRCC

Page 6 of 7

This Agreement consists of seven pages (including this signature page) plus Exhibits A and B. A separate signature page is included for each participating government; the compilation of all final (signed) signature pages with a single copy of the preceding 6 pages and Exhibits A and B shall represent the final agreement.

Each participating government shall provide a signed original of this page to Washington County for compilation and recording of the final agreement.

WASHINGTON COUNTY


By: Tom Brinn
Title: Chairman Board of Commissioners
Date: 4-16-02

APPROVED WASHINGTON COUNTY
BOARD OF COMMISSIONERS
RESOLUTION # 02-104
DATE 4-16-02
BY Barbara Hejmanek
CLERK OF THE BOARD

This Agreement consists of seven pages (including this signature page) plus Exhibits A and B. A separate signature page is included for each participating government; the compilation of all final (signed) signature pages with a single copy of the preceding 6 pages and Exhibits A and B shall represent the final agreement.

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CITY OF BEAVERTON

By: 
Title: Mayor
Date: 4/2/02

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PLANNING DIVISION
Land Use & Transportatio

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CITY OF DURHAM

By: *John Schrick*
Title: *Mayor*
Date: *4/18/02*

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CITY OF FOREST GROVE

By: *Vergie L. Ries*
Title: *City Manager*
Date: *4/25/02*

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CITY OF KING CITY

By: Jan Drangsholt
Title: Mayor
Date: 4-8-02

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Land Use & Transportatio

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CITY OF SHERWOOD

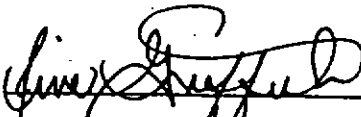
By: Ron E. Schultz
Title: City Manager
Date: 4/19/02

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MAY 03 2002
PLANNING DIVISION
Land Use & Transportation

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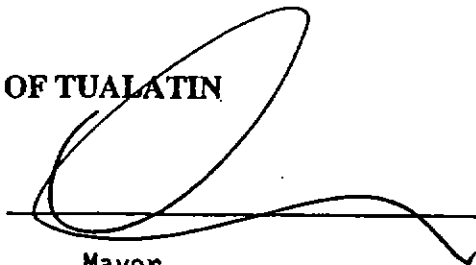
CITY OF TIGARD

By: 
Title: MAYOR
Date: April 23, 2002

This Agreement consists of seven pages (including this signature page) plus Exhibits A and B. A separate signature page is included for each participating government; the compilation of all final (signed) signature pages with a single copy of the preceding 6 pages and Exhibits A and B shall represent the final agreement.

Each participating government shall provide a signed original of this page to Washington County for compilation and recording of the final agreement.

CITY OF TUALATIN

By: 
Title: Mayor
Date: April 8, 2002

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PLANNING DIVISION
Land Use & Transportatio

Tualatin Basin Approach

1/30/02 Draft

What The basin approach is a proposal that local governments take responsibility as described in Steps 1 and 2, below, within the greater part of the Tualatin River basin for the next phases (ESEE and program development) of the region's fish and wildlife habitat program, subject to coordination with, and final product approval by, the Metro Council. Riparian corridors and wildlife habitat determined to be regionally significant consistent with State Goal 5, and Clean Water Act requirements and Endangered Species Act listings would all have to be addressed in a basin approach.

Where The basin proposal could apply to any large whole watershed within the region, if approved by Metro. For the Tualatin Basin, the general geographic extent is that area draining the Tualatin River. The basin consists of areas inside of the current Metro urban growth boundary and Metro jurisdictional boundary, Metro UGB alternatives analysis areas and rural, farm and forest lands beyond. Regional resources determined by Metro, potential regional resources identified in areas studied by Metro in its UGB Alternatives Analysis and the rural, farm and forest lands beyond identified by Washington County as significant resources shall be addressed in the Tualatin Basin Approach.

Who Currently, a consortium of local governments including the cities of Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, Sherwood, Tigard and Tualatin, as well as Washington County, Clean Water Services and Tualatin Hills Parks and Recreation District have expressed a willingness to address the Tualatin Basin. Inclusion of, or coordination with, other jurisdictions with responsibilities within the Tualatin Basin such as Clackamas County and the cities of Lake Oswego and Portland are underway. Individual property owners, interest groups, local government advisory committees and other interested parties would also be provided opportunities to participate during this work effort. In addition, Metro would participate in the Basin Approach through Council representation on the Tualatin Basin Coordinating Committee, through project updates to, and feedback from the Natural Resource Committee, MPAC, MTAC, Goal 5 TAC, WRPAC, and through the Metro staff. The Metro Council would make recommendations about the ESEE decision to delineate areas to "prohibit" or "limit" conflicting uses and make the final decision about whether a basin approach met regional standards after consultation with its advisory committees.

Why The Basin Approach proposal has been made in part because of a concurrent, joint efforts by the Tualatin Basin governments, the Washington County Clean Water Services and others to address Federal Clean Water Act requirements and Endangered Species Act listings that likely will affect the same areas as Metro's fish and wildlife habitat protection plan. In addition to reducing the number of times that the same areas are analyzed and public outreach provided and applying more detailed information than is readily available region-wide, this Basin Approach allows for coordination among similar, but distinct Federal, State and regional requirements. The basin approach can also provide local governments with an opportunity to shape a basin-wide program that is tailored to local conditions within the Tualatin River basin while addressing regional

Goal 5 objectives. Because the Basin Approach is proposed as being completed concurrently with Metro's regional tasks, the Tualatin Basin is most likely to be implemented sooner than other portions of the region if the non-basin jurisdictions wait for the Metro regional safe harbor to be completed and acknowledged by the state before they begin local implementation tasks.

When The basin proposal would complete this work parallel to the rest of Metro's fish and wildlife habitat program region-wide. Both the region's work effort as well as the Basin Approach work products would be timed to allow for Metro Council consideration of the data and likely capacity consequences of a regional fish and wildlife protection plan in order to make decisions about the region's urban growth boundary by December 31, 2002. To accomplish this, materials defining the impact on the UGB buildable land inventory would need to be readied by Metro staff by August 1, 2002. The Tualatin Basin Approach has proposed to meet Metro's decision timeline. The Tualatin Basin Coordinating Committee would formally provide a Basin Approach timeline and work completion schedule.

How The basin approach will be accomplished by setting goals and standards¹, providing legal structure for coordination, establishing a process and monitoring and evaluation.

Goals. The adopted Regional Framework Plan states that the region shall manage watersheds to protect, restore and ensure to the maximum extent practicable the integrity of streams, wetlands and floodplains, and their multiple biological, physical and social values. Metro's fish and wildlife vision articulates the overriding goal of the Basin Approach:

"The overall goal is to conserve, protect and restore a continuous ecologically viable streamside corridor system, from the streams' headwaters to their confluence with other 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."

Improvement of habitat health within each of the Region's 27 hydrologic units including the eleven hydrologic units inside the Tualatin Basin shall be a primary objective of the Basin Approach. The following objectives within Metro's Fish and Wildlife Habitat Vision Statement shall be pursued by the Basin Approach: to sustain and enhance native fish and wildlife species and their habitats; to mitigate high storm flows and maintain adequate summer flows; to provide clean water; and to create communities that fully integrate the built and natural environment. The region wide system of linked significant fish and wildlife habitats will be achieved through preservation of existing resources and restoration to recreate critical linkages, as appropriate and consistent with ESEE conclusions about whether to prohibit, limit or allow conflicting uses within a regionally significant resource site. Avoiding any future ESA listings is another primary Basin

Approach objective. The sentences quoted above from the Vision Statement as the overall goal shall be the goal against which the Tualatin Basin Approach will be reviewed. Objectives cited above provide additional guidance as to how the Tualatin Basin Approach should be completed and an intergovernmental agreement between the consortium and Metro will provide additional working details.

Legal Structure. Intergovernmental agreements will be used to ensure Basin Approach coordination among the affected local governments, and Metro. In addition, staff level memoranda of understanding will be used to assure coordination between consortium members, Metro and those relevant jurisdictions not directly participating in the Tualatin Basin Approach.

Process. The Metro-Tualatin Basin Approach coordination process would have two-steps. The first step would be a check-in by the Tualatin Basin Approach with Metro before making ESEE decisions for the Basin for Metro input and advice. The second step would be Metro Council review of Basin Approach program recommendations and determination of program conformance with the Basin Approach review criteria described above. In addition, ongoing coordination between the Tualatin Basin Approach staff and Metro staff would occur as work on the Basin Approach proceeds. A public involvement plan meeting the region's goals for providing substantial opportunities for participation by the public would be completed for the region (including how the Tualatin Basin would be addressed) after coordination with the Metro Committee on Citizen Involvement.

Step 1. The ESEE Decision. Metro, local governments and other interested parties will work to establish a regional ESEE method. One possible method would be to design regional ESEE parameters for application within 27 hydrologic units throughout the Region. The Tualatin Basin would develop basin-wide and local ESEE parameters for the Tualatin Basin. Both sets of ESEE parameters shall guide the identification of areas for prohibiting, limiting or allowing conflicting uses within the Tualatin Basin. The results of applying these parameters within the Basin would be mapped.

This map could be constructed for the entire region, using the selected regional ESEE parameters and the mapped results of the Tualatin Basin Approach ESEE analysis, further informed by any other local considerations. This information would be used for two purposes. First, it would provide the foundation of the ESEE decision. Second, the map could also be used to estimate the influence of the region's fish and wildlife habitat program on the housing and job capacity calculations for the region's periodic review of its urban growth boundary. The Tualatin Basin ESEE decision about which areas to prohibit, limit or allow conflicting uses within the Tualatin Basin would be made by the local participating governments, through the Tualatin Basin Natural Resource Coordinating Committee, after consideration of public comments, including Metro Council input and recommendations.

Step 2 Program Design and Adoption. Region-wide, Metro will prepare a regional Goal 5 program (regional safe harbor, riparian district plan and local discretionary review options) for the entire region which, for the Tualatin Basin, would reflect the program developed through the Basin Approach. Regional and Basin program elements, including incentives, acquisition, education and regulatory tools would then be prepared. The region would prepare its regional safe harbor, riparian district plan specifications and the local discretionary review options. The Tualatin Basin would design its program. For example, the Tualatin Basin Approach could include, but would not be limited to the following kinds of program elements:

- Revised and new land use “goal 5 overlay” mapped areas and new regulatory language for all land use authorities within the Basin;
- Clean Water Services (CWS) Design & Construction standards (possible revisions);
- Review and possible revisions to CWS maintenance programs (possibly maintenance programs for all jurisdictions including park district);
- Identification and prioritization of restoration sites and financial plan (“Environmental CIP”);
- Coordination with Metro Greenspaces program for targeted acquisitions; and
- Possible incorporation of “green street” optional standards into all local codes (project currently underway being funded by Tualatin Valley Water Quality Endowment Fund)

After taking public testimony, the Tualatin Basin would forward a recommended program to Metro. After its own review process using agreed upon review standards, the Metro Council would determine whether the Basin Approach substantially complies and whether to approve the Tualatin Basin Approach.

Monitoring and Evaluation. Metro Code requires that performance measures be used to evaluate the success and effectiveness of its functional plan to realize regional policies. In addition, the National Marine Fisheries Service 4(d) rule calls for monitoring and evaluation. After local programs have been enacted and some time period passes to allow for programs to take hold, Metro should evaluate its policies and their implementation to compare goals with actual outcomes. If a basin approach significantly lagged region-wide efforts, as a last resort, regional safe harbor provisions could be applied to the basin area until a basin approach is completed and approved by the Metro Council.

Final DRAFT
October 4, 2000
Streamside CPR*
Program Outline

Purpose, Vision, Goal, Principles and Context

Metro Regional Services
600 NE Grand Avenue
Portland, OR 97232-2736
503-797-1726
contact: Paul Ketcham, Principal Regional Planner
ketcham@metro.dst.or.us

*CPR = Conserve, Protect and Restore

Purpose, Vision, Goal, Principles and Context

I. INTRODUCTION

A. PURPOSE

This document provides the organizational, definitional and policy approach that will apply to the creation and implementation of Metro's Goal 5 – Fish and Wildlife Program decision. This Purpose, Vision, Goal and Principles document is intended to guide, inform, and be the philosophical underpinnings of the Goal 5 Streamside CPR program. It is not a regulatory document.

The purpose is to develop a streamside conservation, protection and restoration program that balances the goals of:

- building livable, Region 2040 communities and implementing the Regional Urban Growth Goals and Objectives (RUGGO);
- protecting and enhancing fish and wildlife habitat as required by the Metro Urban Growth Management Function Plan;¹
- supporting a strong economy;
- meeting State Land Use Planning Goal 5 standards and procedures;
- addressing Federal Endangered Species Act (ESA) requirements;
- adding to the progress already made by the implementation of Title 3, regional water quality and flood protection requirements; and
- providing the organizational, definitional and policy approach that will apply to the creation and implementation of Metro's Goal 5 – Streamside Fish and Wildlife Program decision.

Cities and counties, as general-purpose governments, are responsible for comprehensive planning including completion of a generalized coordinated land use map and policy statements that interrelate all functional and natural systems and activities relating to the use of land. Cities and counties also are responsible for implementing ordinances, especially zoning ordinances, to regulate land uses. Metro, a regional government, is responsible for addressing issues of metropolitan concern and the Metro Council may determine such issues and adopt regulations directing local governments to change their comprehensive plans and implementing ordinances to address identified regional issues. The Vision Statement, Regional Goal and Program Principles contained in this document provide overall direction to preparation and implementation of the regional safe harbor, local discretionary and riparian district plan option approaches to Metro Goal 5 compliance that will be available to local governments.

B. VISION STATEMENT

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 RUGGO 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." The streamside program will contribute to these objectives by balancing, economic, social, environmental and energy considerations as will future efforts to address watershed and upland habitats.

C. OVERALL 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.

D. PROGRAM PRINCIPLES

The program will be designed to achieve the following future conditions:

Areas of existing forest cover or areas where it is appropriate to restore forest cover. Conserve, protect and restore the biological, physical and social values of streams, wetlands, riparian areas and floodplains, by encouraging the growth and management of mature forest conditions composed of native forest tree species, appropriate for specific site conditions, mixed with native shrubs and herbaceous species, and containing ample standing snags and downed woody debris. Forest conditions will be managed, where appropriate to address public safety concerns.

Areas where forest cover did not exist historically or where non-forest cover is appropriate, based on a natural resources plan. Conserve, protect and restore the biological, physical and social values of streams, wetlands, riparian areas and floodplains through management of native vegetation appropriate to non-forested conditions.

Developed 2040 Centers and areas where floodplain function is artificially controlled. Contribute to the conservation, protection and restoration of the biological, physical and social values of streams, wetlands, riparian areas and floodplains.

The program will be designed to achieve these future conditions using the following principles:

1. **Ecological Function.** The ecological function of the streamside corridor system will be restored and maintained to the maximum extent practicable given the opportunities and constraints of the urban landscape.
2. **Economically Sound.** Economic vitality and a healthy natural environment are necessary components of sustainable development in the metropolitan area. Investments in protection and restoration of our natural areas contribute significantly to the region's economic health.
3. **Protection and Restoration.**² Given the currently degraded condition of a majority of urban streams, wetlands, riparian areas and floodplains, protection and restoration are of equal importance in order to achieve the region's goals. Both protection and restoration are important in moving toward recovery of threatened and endangered salmonids, and avoiding future endangered or threatened listings of both aquatic and terrestrial species.
4. **Flexible Regulatory Approaches.** Protective regulations shall be based on the best available natural science balanced with economic, environmental, social and energy considerations, and shall provide local governments with flexibility in meeting the overall goals of this program. This

program is also intended to help local governments address the Federal ESA by preventing the need for additional ESA listings and avoiding legal restrictions that may result from current and potential future listings. Implementation of the Federal ESA program for endangered salmonids will need a wide range of actions to be taken by local, state and Federal agencies to recover the species. Metro's requirements are not intended to meet all ESA regulations, but are intended to address recovery obstacles within and along stream corridors. The objective is to obtain Federal approval of this program, so that local governments can use it if they choose. The program is not intended to be the exclusive means available to local governments in the region to address ESA requirements. Local governments can independently seek certification as an alternative.

5. ***Incentives Education and Acquisition.*** Regulatory efforts to conserve, protect and restore natural resources are most effective when combined with incentives, education and acquisition programs that encourage full community participation, therefore, such programs will be an element of the overall program.
6. ***Stewardship Responsibilities.*** All landowners and land users throughout each watershed have an important stewardship responsibility to contribute to the protection and restoration of streams, wetlands, riparian areas and floodplains.
7. ***Urban Form.*** Realization of the region's 2040 Growth Concept requires a compact urban form while protecting natural resources and water quality. This is accomplished in three primary ways:
 - a. Protecting natural areas outside the Urban Growth Boundary (UGB). Accommodate compact development within the UGB in order to minimize land extensive expansion that adversely impacts farm and forest lands and natural areas outside the boundary;
 - b. Accommodating urban growth in a compact form while protecting and enhancing key fish and wildlife habitat, natural areas, and water quality and quantity within the current UGB;
 - c. Protecting and restoring urban stream corridors to provide people with an effective means to access nature, providing ecological linkage to other important fish and wildlife habitats, and compact urban form through integration of the built and natural environments.³
8. ***Measure and Monitor.*** A measuring and monitoring system should be established and should include:
 - Assessment of existing conditions;
 - Use of "properly functioning conditions"⁴ as the description of desired future conditions; and
 - Assessment and regular monitoring over time of streamside conditions to determine progress in achieving the goals of properly functioning conditions.
9. ***Coordination and Cooperation.*** Effective management of the regional streamside resource cannot be achieved without a collaborative approach throughout the region. The Streamside CPR Program will provide local jurisdictions with the flexibility to pursue alternative collaborative management approaches that meet the standards of this programs, such as watershed planning, and will emphasize efforts that ensure coordination and cooperation between and among the region's partners including local governments, business, nonprofits and citizens.

E. CONTEXT

The preamble of Metro's voter-approved 1992 Charter declares that Metro's most important service is to "preserve and enhance the quality of life and the environment for ourselves and future generations. Through its Charter-mandated responsibilities, Metro Council has provided leadership in addressing growth management issues by working with citizens, elected officials and diverse interest groups to

craft a vision of how the region will grow. Through adoption of policies to achieve that vision, Metro Council has identified the need to balance natural resource protection with urban development while the region grows.

How this balancing will take place, and in what form it will be expressed across the urban landscape, is a key question addressed in various documents. For example, the region's 2040 Growth Concept map includes an environmental greenway along streams in the region to ensure connectivity throughout the urban landscape.⁶ The goal of the Greenspaces Master Plan is to create a cooperative regional system of natural areas, open space, trails and greenways for wildlife and people in the four-county metropolitan area.⁷ Other planning documents which speak to urban natural areas and water resources include the Future Vision⁸, the RUGGO, the Regional Framework Plan⁹, and the Urban Growth Management Functional Plan. A unifying feature of all of these documents is to achieve compact urban form and efficient delivery of urban services while at the same time preserving citizen access to nature and community livability.

A cornerstone of these regional policies is protection of natural systems—regionally significant fish and wildlife habitat, streams, rivers, wetlands and floodplains—because their protection and restoration is essential to maintaining and improving the region's livability, economic well-being and environmental health.

In addition to the regionwide policies, there are State and Federal policies which are also important considerations. The purpose of the State's Land Use Planning Goal 5 is "To protect natural resources and conserve scenic and historic areas and open spaces".¹⁰ At the Federal level, for a large part of the Pacific Northwest Coast and associated inland rivers and streams, the National Marine Fisheries Service (NMFS), is acting under the requirements of the Federal ESA. At this time, NMFS has designated four species of Steelhead and eight other species of salmon as either threatened or endangered in the Columbia River Basin. Local governments, through their comprehensive plans, will be implementing requirements to address natural resource protection. In order to address this status, our region will need to take actions that are consistent with the recovery needs of these species. In doing so, the region, its local government partners and the citizens of the metropolitan area can help ensure that one of the defining symbols of our region once again thrives.

To accomplish the planning work described in these policies, Metro is pursuing adoption and implementation of programs to:

- protect the beneficial uses associated with the region's streams and rivers, including water quality and protect life and property from dangers associated with flooding¹¹
- Protect, conserve and enhance fish and wildlife habitat within regionally significant riparian corridors under Statewide Planning Goal 5¹²
- Protect, conserve and enhance regionally significant upland wildlife habitat under Statewide Planning Goal 5;¹³ and
- Implement the Greenspaces Master Plan.

All of these programs, taken in concert and with full implementation by local governments, will realize the vision for growth enunciated in Metro's Charter, Future Vision and subsequent planning documents described above.

To complete this work effort Metro shall:

1. Establish criteria to define and identify regionally significant fish and wildlife habitat areas;
2. Examine existing Goal 5 data;
3. Identify inadequate or inconsistent data;
4. After considering items 1-3, and after holding public hearings, adopt a map of regionally significant fish and wildlife areas.

II. PROGRAM DESCRIPTIONS (TO BE ADDED)

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¹ The focus of the Purpose, Vision, Goal, Principles and Context Statement is on native species of fish and wildlife whose historic ranges include the metropolitan area and whose habitats are or can be provided for in urban streamside corridors. The Purpose Statement does not intend to include native species such as bear, cougar, lynx and deer, which may be conducive in specific areas such as Portland's Forest Park, but may not be conducive in urban stream corridors elsewhere in the metropolitan area.

² Proposed definition of restoration:

Restoration, in the context of the streamside CPR program, means action taken to return natural riparian functions and values for fish and wildlife. Restoration would be applied where riparian functions are in a degraded condition and are intended to return the riparian functions to good or excellent condition. While there may be instances where restoration to pre-development, natural conditions is possible, in general, restoration should not mean the end-state of re-establishing a totally pristine condition. It should address the improvements or re-introduction of functional values.

Conditions Under Which Restoration Would Occur:

Conditions under which restoration will occur will be established when the program is defined. The current draft of the Goal 5 program does not contemplate that homeowners and other property owners would be required to undertake restoration unless there was a development activity that required a permit for new development, significant modifications to structures, or redevelopment. In the absence of a development permit it is assumed that restoration would be achieved through incentive-based, voluntary, and community-based restoration and enhancement activities. Public education and the promotion of voluntary naturescaping and restoration would be part of the regionwide cooperative effort to improve the existing degraded conditions of our urban waterways.

³ "to provide people with an effective means to access nature" means to help people enjoy, approach or be near to nature. It is not intended to imply the right of any person to enter or make use of private property unless the property owner grants that right of public access.

⁴ Defined by Federal natural resource programs.

⁵ The preamble of Metro's Charter states the following: "We, the people of the Portland area metropolitan service district, [establish an elected regional government] that undertakes, as its most important service, planning and policy making to preserve and enhance the quality of life and the environment for ourselves and future generations." 1992 Metro Charter, page 1.

⁶ The Metro 2040 Growth Concept, acknowledged by the Land Conservation and Development Commission in 1995, states the following: "The basic philosophy of the Growth Concept is: preserve access to nature and build better communities." December 8, 1994, Page 1.

October 4, 2000

⁷ Other goals of the July 1992 Metropolitan Greenspaces Master Plan include 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."

⁸ The Future Vision states the following: "We value natural systems for their intrinsic value, and recognize our responsibility to be stewards of the region's natural resources." March 1995, page 1. In 2045, the region should be characterized by "Improved water quality, and increased biodiversity," and "restored ecosystems protected from future degradation and decline." Page 12. Specific actions identified: "Manage watersheds to protect, restore, and maintain the integrity of streams, wetlands and floodplains, and their multiple biological, physical, and social values." Page 12.

⁹ Chapter 3 of the December 31, 1997 Regional Framework Plan establishes policies for parks, natural areas and open spaces, and identifies the important environmental benefits of maintaining and improving air and water resources, providing flood control, and protecting fish and wildlife habitat. It commits Metro to "develop a strategy and action plan to address inadequacies in the protection of regional Goal 5 resources. This plan will be carried out by Metro." Page 108, see also page 190.

¹⁰ Goal 5 further states that "Local governments shall adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. These resources promote a healthy environment and natural landscape that contributes to Oregon's livability." Procedures and requirements for complying with Goal 5 call for an inventory, a determination of significance, an analysis of the economic, social, environmental and energy consequences of a decision that could allow, limit or prohibit a conflicting use.

¹¹ From Title 3, Sections 1-4 of the 1996 Urban Growth Management Functional Plan

¹² From Title 3, Sections 1, 2 and 5 of the 1996 Urban Growth Management Functional Plan.

¹³ From Title 3, Sections 1, 2 and 5 of the 1996 Urban Growth Management Functional Plan.

METRO NATURAL RESOURCES COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 02-3195, FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO SIGN AN INTERGOVERNMENTAL AGREEMENT WITH THE TUALATIN BASIN NATURAL RESOURCES COORDINATING COMMITTEE

Date: May 16, 2002

Presented by: Councilor McLain

Committee Action: At its May 15, 2002 meeting, the Metro Natural Resources Committee voted 5-0 to recommend Council adoption of Resolution 02-3195. Voting in favor: Councilors Atherton, Bragdon, Hosticka, Park and McLain

Background: Resolution 02-3195 follows up on an aspect of Resolution 01-3141C that accepted consideration of a basin approach to ESEE analysis and program recommendations. In this case, jurisdictions in the Tualatin Basin (most of Washington County) have formed a Natural Resource Steering Committee and applied to Metro to incorporate its work into Metro's Fish and Wildlife Habitat Protection program.

Staff of the Office of General Counsel have been negotiating the terms of the IGA with the basin group, guided by direction and feedback from the Natural Resources Committee.

- **Existing Law:** Metro Resolution 01-3141C establishes criteria to define regionally significant fish habitat.
- **Budget Impact:** Work products from the Tualatin Basin reduces budget/fiscal requirements for completion of Metro's ESEE and program components.
- **Known Opposition:** There is no known opposition to this Resolution and IGA.

Committee Issues/Discussion: Ken Helm, Office of General Counsel made the staff presentation. He reminded the committee that they had seen a draft version of the resolution at their April 17 committee meeting. He highlighted some minor changes from that draft including language in section 5 stating that from the time Metro receives the final recommendations from the Tualatin Basin, it will take action within 120 days. Further language in section 5 indicates that Metro will review the entire basin for resource improvement, not only individual resource sites.

Brent Curtis, representing the Tualatin Basin Committee, agreed with Mr. Helm's presentation, and cited the probable need for Memorandums of Understanding (MOU's) to specify working agreements between the basin and Metro, as a follow up to the IGA.

Responding to a question by Councilor Hosticka, Mr. Helm stated that if Metro is ultimately not satisfied with the Tualatin Basin recommendations, that either party can terminate the IGA. The default position is then where we are today; Metro completes the ESEE and program stages, and adopts a functional plan(s) to which local jurisdictions must comply.

Councilor Atherton raised an issue concerning areas involving public subsidies. How will that be factored in? Mr. Curtis said that could be taken up by the Economic TAC.

Committee members then thanked all involved for moving forward with this cooperative effort.

STAFF REPORT

RESOLUTION NO. 02-3195, FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO SIGN AND INTERGOVERNMENTAL AGREEMENT WITH THE TUALATIN BASIN NATURAL RESOURCES COORDINATING COMMITTEE

Date: May 7, 2002

Prepared by: Ken Helm

On December 13, 2001, the Metro Council adopted Resolution No. 01-3141C for the purpose of establishing criteria to define regionally significant fish habitat. As part of that resolution the Council stated that it would consider a "basin approach" to conducting the ESEE and program components of the Fish and Wildlife Habitat Conservation program in the Tualatin Basin. The basin approach contemplates that Washington County, participating cities, and special districts would conduct an economic, social, environmental and energy ("ESEE") analysis and develop a program for regional resources in the Tualatin River Basin in coordination with Metro's Fish and Wildlife Habitat Conservation Program.

On January 31, 2002, the Metro Council requested that the Executive Officer and staff bring forward a draft intergovernmental agreement between Metro and the Tualatin Basin Natural Resources Coordinating Committee ("TBNRCC") to accomplish ESEE and program work for regional resources in the Tualatin Basin. Metro staff and staff representatives from TBNRCC met through February, March and April to develop a draft intergovernmental agreement (IGA). The Natural Resources Committee reviewed an initial draft of the IGA on April 17, 2002. At its May 6, 2002 meeting, the TBNRCC reviewed and tentatively approved the terms of the draft IGA contingent on Metro Council adoption of a resolution authorizing the Executive Officer to sign the IGA.