

A G E N D A

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METRO

Agenda

MEETING: METRO COUNCIL REGULAR MEETING
DATE: August 8, 2002
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. AUDITOR COMMUNICATIONS

- **SOLID WASTE MANAGEMENT FRAMEWORK IS SOUND**

4. CONSENT AGENDA

4.1 Consideration of Minutes for the June 20, 2002 Metro Council Regular Meeting.

5. ORDINANCES - SECOND READING

5.1 **Ordinance No. 02-950B**, For the Purpose of Amending the Metro Code Chapter 7.01 to Increase the Credits Available Against the Solid Waste Excise Tax and Making Other Related Changes. Atherton

5.2 **Ordinance No. 02-951B**, For the Purpose of Amending Metro Code Chapter 5.02 to Modify the Regional System Credit Fee Program. Atherton

6. RESOLUTIONS

6.1 **Resolution No. 02-3176**, For the Purpose of Adopting a Draft Map of Regionally Significant Fish Habitat Pursuant to Resolution No. 01-3141C. McLain

6.2 **Resolution No. 02-3177A**, For the Purpose of Establishing Criteria to Define and Identify Regionally Significant Wildlife Habitat and Adopting a Draft Map of Regionally Significant Wildlife Habitat Areas. McLain

- 6.3 **Resolution No. 02-3218**, For the Purpose of Combining Metro's Draft Inventory Maps of Regionally Significant Riparian Corridors and Wildlife Habitat for the Goal 5 ESEE Analysis and Approving Metro's Local Plan Analysis. Natural Resources Committee
- 6.4 **Resolution No. 02-3209**, For the Purpose of Issuing a Final Order in the Matter of the Imposition of a Civil Penalty against Speyfly, Inc. dba Roofgone and the Revocation of Roofgone's Solid Waste Facility License. Atherton
- 6.5 **Resolution No. 02-3217**, For the Purpose of Authorizing Release of RFB #03-1028-REM for the Construction of a Maintenance Building at the St. John's Landfill, and Authorizing the Executive Officer to Execute a Contract with the Lowest Bidder. Monroe

7. **COUNCILOR COMMUNICATION**

ADJOURN

Cable Schedule for Week of August 8, 2002 (PCA)

	Sunday (8/11)	Monday (8/12)	Tuesday (8/13)	Wednesday (8/14)	Thursday (8/8)	Friday (8/9)	Saturday (8/10)
CHANNEL 11 (Community Access Network) (most of Portland area)		4:00 PM				2:00 PM (previous meeting)	
CHANNEL 21 (TVTV) (Washington Co., Lake Oswego, Wilsonville)						7:00 PM 11:00 PM	3:30 PM
CHANNEL 30 (TVTV) (NE Washington Co. - people in Wash. Co. who get Portland TCL)						7:00 PM 11:00 PM	3:30 PM
CHANNEL 30 (CityNet 30) (most of City of Portland)	8:30 PM	8:30 PM					
CHANNEL 30 (West Linn Cable Access) (West Linn, Rivergrove, Lake Oswego)	4:30 PM			5:30 AM	1:00 PM 5:30 PM	3:00 PM	
CHANNEL 32 (ATT Consumer Svcs.) (Milwaukie)		10:00 AM 2:00 PM 9:00 PM					

PLEASE NOTE THAT ALL SHOWING TIMES ARE TENTATIVE BASED ON THE INDIVIDUAL CABLE COMPANIES' SCHEDULES. PLEASE CALL THEM OR CHECK THEIR WEB SITES TO CONFIRM SHOWING TIMES.

Portland Cable Access	www.pcatv.org	(503) 288-1515
Tualatin Valley Television	www.tvca.org	(503) 629-8534
West Linn Cable Access	www.ci.west-linn.or.us/CommunityServices/htmls/wltvsked.htm	(503) 650-0275
Milwaukie Cable Access		(503) 652-4408

Agenda items may not be considered in the exact order. For questions about the agenda, call Clerk of the Council, Chris Billington, 797-1542. Public Hearings are held on all ordinances second read and on resolutions upon request of the public. Documents for the record must be submitted to the Clerk of the Council to be considered included in the decision record. Documents can be submitted by email, fax or mail or in person to the Clerk of the Council. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

Agenda Item Number 3.0

SOLID WASTE MANAGEMENT FRAMEWORK IS SOUND

Auditor Report

Metro Council Meeting
Thursday, August 8, 2002
Metro Council Chamber

METRO

**Regional Environmental
Management Department**

Solid Waste Management Framework is Sound

July 2002

A Report by the Office of the Auditor



METRO

PEOPLE PLACES
OPEN SPACES

Alexis Dow, CPA
Metro Auditor



METRO
OFFICE OF THE AUDITOR

July 2, 2002

To the Metro Council and Executive Officer:

Metro is responsible for planning and managing the recycling and disposal of solid waste generated within Clackamas, Multnomah and Washington counties. In accordance with our annual audit plan, we undertook a survey to develop an understanding of how Metro manages this important regional system.

Based on our survey, we conclude that Metro's framework for managing the region's solid waste contains the elements of a sound management system - including an established organization structure, a defined mission and strategic plan for carrying out the mission, and processes for evaluating the effectiveness of plans and programs.

To reach this conclusion, we first had to compile a description of the management framework, as it was not documented. Accordingly, we worked extensively with Metro staff to determine the participants, their roles and relationships and how Metro's solid waste programs and processes are planned, administered and evaluated.

Because many people will find this description useful, we are presenting it in this report and are recommending that Metro keep it updated. The Executive Officer has agreed to do this. His written response in is the last section of the report.

We appreciate the cooperation and assistance provided by the many Metro staff we worked with during this survey, particularly the staff from the Regional Environmental Department, Council Analyst John Houser and Senior Assistant Counsel Marvin Fjordbeck.

Very truly yours,

Alexis Dow, CPA
Metro Auditor

Auditor: James McMullin, CPA

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Executive Summary

Metro is the regional government responsible for managing the recycling and disposal of more than 2 million tons of solid waste generated annually within Clackamas, Multnomah and Washington counties and the 24 cities in the Portland metropolitan area. A steady stream of discards from the 1.3 million people in the area flows into the regional solid waste system each day. From varied points of origin – single-family homes, offices, shopping malls, parks, construction sites and grocery stores – an array of materials are generated, collected, processed for recovery or disposal, then hauled to an end-use or disposal site.

The Metro Auditor's Office undertook a survey to develop an understanding of how Metro manages this important regional system. The results of this survey show that Metro's framework for managing the region's solid waste contains the elements of a sound management system. These elements are:

- An organizational structure with clearly established participants, roles and relationships
- A clearly defined mission and a strategic plan for carrying out the mission – including goals, objectives and core business services and programs
- Processes for evaluating the effectiveness of plans and programs in achieving goals and objectives

Metro's solid waste management framework is a dynamic system where plans do not sit on a shelf gathering dust. Metro's participants are continually reviewing and updating plans and programs to reflect progress toward goals and to respond to emerging issues.

During the survey, it became evident that this framework is not documented, including who the participants are, what roles they play, what goals and programs are in place and how performance is evaluated. Because many people will find a description of the framework useful, it is documented in this report.

As the framework likely will change over time, it is recommended that Metro keep the framework up to date.

Recommendation

Metro, through its Regional Environmental Management (REM) Department, should assume responsibility for keeping up-to-date the solid waste management framework outlined in this report.

Many people inside and outside of Metro have a need to understand Metro's solid waste management framework so they can effectively carry out their responsibilities including:

- Metro Councilors**
- New Metro employees**
- Local government officials**
- Members of the solid waste industry**
- Members of the media**
- Interested citizens**
- Auditors and consultants**

This report documents this complex framework so that persons unfamiliar with it can more quickly understand how Metro develops and manages its programs and activities.

REM should keep this information up to date as the framework likely will change over time. For example, Metro will have a new organization structure in January 2003 that changes the structure of the Metro Council and abolishes the elected Executive Officer position. These changes may affect the solid waste management framework.

Introduction and Background

Metro is the regional government responsible for planning and managing the recycling and disposal of solid waste¹ generated within the region – Clackamas, Multnomah and Washington counties and the 24 cities in the Portland metropolitan area. These are serious responsibilities as 1.3 million people in the Portland area discard 2 million tons into the regional solid waste system each year – enough to fill the Rose Garden Arena 15 times.

Metro's solid waste activities generate revenues of about \$50 million annually. This revenue pays for disposing of waste brought to Metro-owned facilities and funds Metro's waste reduction and other solid waste related programs. Metro's excise tax on solid waste revenue collects about \$6 million annually that goes into Metro's General Fund. Beginning July 1, 2002, Metro will collect an additional \$1.2 million annually (\$1 per ton) to pay for operations at Metro's regional parks and maintenance of land acquired through the Open Spaces Program.

Solid Waste Flow

To understand Metro's activities, it helps to understand how solid waste is handled and moved in the region. From many points of origin in the region – single-family homes, offices, shopping malls, parks, construction sites and grocery stores – an array of materials are generated, collected, processed for recovery or disposal, then transported to an end-use or disposal site.

This waste is generally handled as follows:

- Consumers, manufacturers, and other generators of solid waste set it out for collection
- Commercial haulers and private individuals collect the waste and transport it to one of the following:
 - Waste processors (recovery and recycling facilities, composting facilities)
 - Hazardous waste facilities
 - Transfer stations (where some waste is recovered and the remainder hauled to landfills)
 - Energy recovery facilities (where power is generated by burning waste)

¹ Solid waste includes all putrescible (decayed or rotten) and non-putrescible wastes, including garbage, rubbish, refuse, ashes, waste paper and cardboard; discarded or abandoned vehicles; sewage sludge, septic tanks and cesspool pumpings; commercial, industrial, demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; manure, vegetable or animal wastes, dead animals, infectious waste, and petroleum-contaminated soils. Solid waste does not include explosives, materials used for agricultural fertilizer or hazardous and radioactive wastes as defined in Oregon law (Metro Code Chapter 5.01.010).

- Landfills

Many companies and facilities are involved in handling the region's solid waste:

- About 100 haulers collect waste
- 15 "non-system licensees"² haul directly to designated landfills
- 2 facilities recover and 24 centers recycle waste
- 13 facilities transfer or compost yard debris
- 2 facilities (Metro-owned) collect and process household hazardous waste
- 3 regional transfer stations (two Metro-owned and one privately owned) process waste for recovery and disposal
- 3 local transfer stations, privately owned, process waste for recovery and disposal
- 5 landfills outside the region are designated to accept waste.

The remainder of this introduction provides an overview of solid waste activities from a state and regional perspective, including an explanation of Metro's role. It also explains why we prepared this report.

**Solid Waste
Management
Framework in
Oregon**

Oregon Revised Statutes (ORS) provide the legal basis for Metro's solid waste planning and management activities. ORS Chapters 459 and 459A establish an intricate framework of disposal and recovery (reuse and recycling) requirements that Metro and other local governments follow in determining their solid waste roles and responsibilities.

This framework sets forth:

- Statewide solid waste policy emphasizing conservation and waste reduction
- A solid waste management "hierarchy" that favors, in order of preference, waste reduction, reuse, recycling, composting, energy recovery, and, finally, disposal
- Specific roles and responsibilities for the State, Metro, cities, and counties
- Waste reduction and recovery goals to be achieved in "wastesheds"³, including the Metro region
- Requirements for handling household hazardous wastes

² Metro authorizes some haulers to dispose of waste at out-of-district landfills under a "non-system" license. Under the license, they pay Metro fees and excise taxes on the amount of waste they dispose.

³ The State established solid waste planning areas or "wastesheds" across the State. Local government units in these wastesheds are responsible for developing and managing local solid waste programs.

- Requirements for siting and operating landfills, including requirements on governments that use landfills sited in exclusive farm use areas.

Although Oregon law sets some specific requirements that local governments must meet, local governments have broad authority to manage solid waste in their jurisdictions.

The Oregon Department of Environmental Quality (DEQ) is responsible for regulating solid waste facilities and writing rules to administer Oregon's solid waste statutes.⁴

Factors Shaping Metro's Solid Waste Roles

Major considerations that have shaped Metro's solid waste roles include:

- Metro is the designated local government unit responsible for solid waste planning in the region.⁵ As such, Metro is required to develop and implement a Regional Solid Waste Management Plan (RSWMP). Metro adopted the RSWMP as a functional plan⁶, thereby giving Metro authority to require local governments to comply with the plan, if necessary.
- State law⁷ requires Metro and local governments to provide the "Opportunity to Recycle" to the region's citizens. The rationale for this requirement is to reduce reliance on landfills and to conserve energy and natural resources.
- State law⁸ requires the region to achieve a 62 percent recovery rate⁹ during calendar year 2005. The latest information available shows that the region was at a 51 percent rate in 2000.
- State law¹⁰ requires Metro to establish and promote the use of household hazardous waste collection services.
- Metro has authority to construct and operate solid waste facilities, such as transfer stations and material recovery facilities.¹¹
- Metro has authority¹² to regulate privately owned solid waste processing and disposal facilities.

⁴ Relevant state administrative rules are contained in Oregon Administrative Rules - OAR 340.

⁵ ORS Chapter 459.017(b) states, "local government units have the primary responsibility for planning for solid waste management." Metro was designated the local government unit responsible for solid waste planning for the local area under State of Oregon Executive Order 78-16.

⁶ As specified in ORS Chapter 268.390, a functional plan is one that sets out detailed information, policies and standards for a specific function of government, such as transportation or solid waste.

⁷ ORS Chapter 459.015

⁸ ORS Chapter 459A.010(6)(a)

⁹ The State grants up to 6% in credits toward this goal for programs of waste prevention, reuse and home composting (2% for each program). These credits recognize the fact that if waste is prevented or reused (two things that are superior to recycling or recovery), the recovery rate suffers.

¹⁰ ORS Chapter 459.413

¹¹ ORS Chapter 268.317(1)

¹² ORS Chapter 268.317(5)

Metro's Charter gives Metro broad authority to engage in solid waste activities. The Charter authorizes Metro to:

- Acquire, develop, maintain and operate solid waste disposal facilities
- Engage in any other function required by state law or assigned to the Metropolitan Service District or Metro by the voters.¹³

The Metro Code, Chapter 2.19, Chapters 5.01 through 5.09, and Chapter 7.01, provides the legal basis for the solid waste related programs and activities Metro engages in under the Charter.

Metro Solid Waste Roles

The factors shaping Metro solid waste activities have resulted in Metro assuming four basic roles in managing the region's solid waste system:

- Promoting waste reduction
- Providing waste disposal services
- Regulating private facilities
- Providing environmental stewardship

Role 1 - Waste reduction

Metro's waste reduction activities have two orientations:

- Programs that target waste reduction in specific sectors, such as residential and commercial
- Educational and outreach programs that inform customers and encourage changes in behavior.

All of these activities are focused on achieving the State-mandated goal of achieving a 62% regional waste recovery rate during calendar year 2005. Some key points about these activities:

- The cornerstone of current State and Metro waste reduction policy is providing the opportunity to recycle.
- Metro has assumed the leadership role in waste reduction efforts in the region. For example, the State's 62% mandated recovery rate for the region is based on the self-imposed goal Metro had already set.
- Metro coordinates local government waste reduction efforts through an annual planning process. Metro and local governments are currently targeting three sectors whose recovery rates are lagging: commercial, construction and demolition, and commercial organics.

Role 2 - Waste disposal services

Metro is in the business of disposing of solid waste. Metro owns two transfer stations, two hazardous waste collection and processing facilities, and a paint recycling facility. To handle the waste coming into its own transfer stations, Metro entered into three large, multi-year

¹³ Metro Charter, Chapter 2, Section 6

contracts for processing, transporting and landfill disposal of the waste:

- Transfer station operations contract – the contractor processes waste received, conducts material recovery and loads the remaining waste into trucks; Metro paid the contractor \$5.5 million in fiscal year 2001; total amount of the seven year contract is \$37.8 million.
- Waste transport contract – the contractor provides equipment and drivers to haul compacted waste from Metro’s transfer stations to the Columbia Ridge Landfill, about 150 miles east of Portland; Metro paid the contractor \$7.1 million in fiscal year 2001; total amount of the 20-year contract not to exceed \$287 million.
- Waste disposal contract – the contractor unloads trucks and disposes of the waste in its landfill (Columbia Ridge); Metro paid the contractor \$11.8 million in fiscal year 2001; total amount of the 25-year contract not to exceed \$562 million.

Role 3 – Regulating private facilities

Metro regulates private solid waste facilities to:

- Ensure that solid waste is handled in appropriate and environmentally sound ways
- Create incentives and disincentives to further waste reduction policy goals
- Ensure that Metro fees and excise taxes are paid.

Even though Metro has authority to regulate all solid waste facilities in the region, Metro has exempted facilities that handle only source-separated recyclable materials and a variety of other “low impact” facilities. Metro issues a certificate, license or franchise to all other solid waste facilities, depending on the magnitude and potential environmental impact of their activities.

Metro’s regulatory activities include:

- Inspecting, auditing and monitoring private facilities to assure compliance with Metro-issued authorizations and Metro Code provisions and assuring that waste hauled out of the district only goes to disposal facilities that have agreed to collect Metro’s fees and excise taxes
- Taking enforcement actions, including issuing monetary penalties, against non-compliant operators and operations.

**Role 4 -
Environmental
steward**

Metro's activities in this area involve:

- Managing two closed landfills – the Metro-owned St. Johns landfill and, by agreement with the City of Portland, the Killingsworth Fast Disposal landfill
- Investigating, cleaning up and prosecuting incidents of illegal dumping
- Providing grants to enhance communities impacted by solid waste facilities.

**Roles of Other
Local
Governments in
the Region**

Local government solid waste activities generally involve:

- Developing and implementing residential and business waste reduction programs in cooperation with Metro; these programs are generally spelled out in a "Partnership Plan for Waste Reduction"
- Regulating haulers that collect waste from residences and businesses.

The three counties and most cities in the region regulate private haulers through franchise agreements.

- Cities in Washington and Clackamas counties franchise garbage service for residential and commercial customers, while the counties administer franchises in unincorporated areas.
- Most cities in Multnomah County franchise residential and commercial haulers, but commercial garbage service is not regulated in Portland.

**Regional Solid
Waste
Management Plan
(RSWMP)**

The RSWMP is the key planning and policy document that establishes a framework for managing and reducing waste within Metro's jurisdiction for the ten-year period 1995 to 2005¹⁴. The plan assumes that the region's population will increase significantly during this period and that solid waste services must be available to support this growth.

The RSWMP:

- Establishes 16 regional solid waste goals and related objectives and a benchmark system to monitor progress toward the goals.
- Spells out government roles and responsibilities and assumes that local governments will work cooperatively with Metro in implementing the plan
- Provides a prioritized program of solid waste system improvements
- Recommends practices to accomplish goals and objectives.

¹⁴ Metro's Solid Waste Advisory Committee developed the Plan. The Metro Council adopted the Plan in November 1995 as a functional plan via Ordinance No. 95-624. The DEQ approved the Plan in January 1996.

The RSWMP recommended practices embody six broad, integrated strategies relating to residential, business and building industries waste reduction; solid waste facilities regulation and siting; and transfer and disposal facilities. The strategies are to:

- Invest in waste reduction before building additional transfer and disposal capacity
- Expand the opportunity to recycle
- Emphasize the waste reduction hierarchy
- Maintain flexibility and encourage innovation
- Set interim target dates, define roles and responsibilities and focus on implementation issues
- Advance cost-effective practices for managing the region's waste.

Metro administers the RSWMP to ensure that:

- Proposed new policies, programs or procedures are consistent with the RSWMP
- The RSWMP remains current and relevant by proposing amendments for Council approval that reflect new developments and directions.

The RSWMP commits to reporting on the qualitative and quantitative aspects of the regional solid waste system "on a regular basis." Accordingly, Metro prepared three "State-of-the-Plan" reports covering fiscal years 1996 through 1999 and evaluating whether the region's solid waste system is generally on track with respect to:

- RSWMP goals
- Waste processing and disposal capacity
- Compliance with environmental regulations

In June 2002, Metro updated key status information for fiscal years 2000 and 2001.

Objectives, Scope and Methodology

The objective of this project was to obtain a broad-based understanding of Metro's solid waste activities to provide a basis for planning future audit work. Specifically, the focus was to understand REM's goals, major programs and activities, how it is organized and how it measures its performance.

Early on in the project, we broadened the scope of the project beyond a focus on the department's activities to include Metro's overall solid waste policymaking and planning processes. It became evident that while the decisions and results of these processes are generally documented, Metro's structure for making these decisions is not. Accordingly, it was

necessary to develop a description of Metro's solid waste management framework, including the elements of oversight, policymaking, planning and performance evaluation. Because Metro management and the public would find this description useful, it is summarized in this report.

To accomplish the project, the following steps were undertaken:

1. Identified and reviewed key documents relating to Metro's solid waste role, responsibilities and activities, including:
 - Metro Charter, Metro Code, REM budgets
 - Council's Solid Waste and Recycling Committee minutes
 - State of Oregon legislation relating to solid waste
 - Regional Solid Waste Management Plan (RSWMP)
 - REM's Strategic Plan and other planning documents
2. Interviewed Metro officials and staff, including:
 - Two Metro Councilors with solid waste oversight responsibilities
 - The Metro Council Analyst responsible for assisting the Council in its solid waste related responsibilities
 - Metro's Chief Operating Officer, Office of the Executive
 - REM's department director, policy manager, five division managers and other REM staff.
 - Metro's General Counsel and two staff attorneys responsible for solid waste matters
3. Used two questionnaires to obtain basic information about REM's programs and activities, including legal and policy requirements, planning documents, basis for resource allocations, performance monitoring and reports.
4. Developed charts to illustrate the roles and relationships of the major participants involved in managing Metro's solid waste system.
5. Toured Metro owned waste facilities, including:
 - Metro Central and Metro South transfer stations
 - Hazardous waste facilities located at the two transfer stations
 - St. John's landfill
 - Latex paint recycling facility located at Metro South.
6. Reviewed prior Metro Auditor reports on Metro solid waste matters.

This survey was conducted between November 2001 and May 2002 in accordance with generally accepted government auditing standards.

METRO HAS A SOUND SOLID WASTE MANAGEMENT FRAMEWORK

Metro's framework for managing the region's solid waste contains the elements of a sound management system. These elements are:

- An organizational structure with clearly established participants, roles and relationships
- A clearly defined mission and a strategic plan for carrying out the mission – including goals, objectives and core business services and programs
- Processes for evaluating the effectiveness of plans and programs in achieving goals and objectives.

Metro's solid waste management framework is a dynamic system where plans do not sit on a shelf gathering dust. Metro's participants are continually reviewing and updating the RSWMP, the Metro Code and solid waste programs to reflect progress toward goals and to respond to emerging issues.

Organization Structure, Roles and Relationships Are Clearly Established

Many participants are involved in addressing and managing Metro's solid waste mission, goals, programs and activities. The participants are listed below in relation to their responsibilities.

Policymaking and oversight –

- Metro Council
- Metro Council's Solid Waste and Recycling Committee
- Council Analyst

Management oversight – Office of the Executive Officer

- Executive Officer
- Chief Operating Officer

Departmental management –

- Director of the REM Department

Advisors/Reviewers –

- Solid Waste Advisory Committee (SWAC)
- Rate Review Committee (RRC)
- Metro Committee for Citizen Involvement (MCCI)

- REM Budget Advisory Committee
- Metro Office of General Counsel

The ways in which these participants generally interact and relate are illustrated in Chart 1.

The roles and activities of Metro's policymaking and management participants are discussed immediately below. The roles and activities of the advisors/reviewers are discussed under the caption: "Performance Is Monitored, Evaluated And Reported". Additional information on the participants, their roles and activities are contained in Appendix A.

**Council Policy Making
And Oversight** **Participants**

Metro Council, Council's Solid Waste and Recycling Committee and Council Analyst

Responsibilities

Metro's seven-member elected Council establishes policies for the operation of Metro's solid waste programs and provides oversight to ensure that these policies and programs are properly carried out. The Council's role includes:

- Approving the Regional Solid Waste Management Plan
- Authorizing solid waste programs and activities and approving plans for carrying them out
- Assuring that resources are available to pay for the programs and activities
- Assuring that programs are achieving intended results
- Reviewing and approving major solid waste contracts.¹⁵

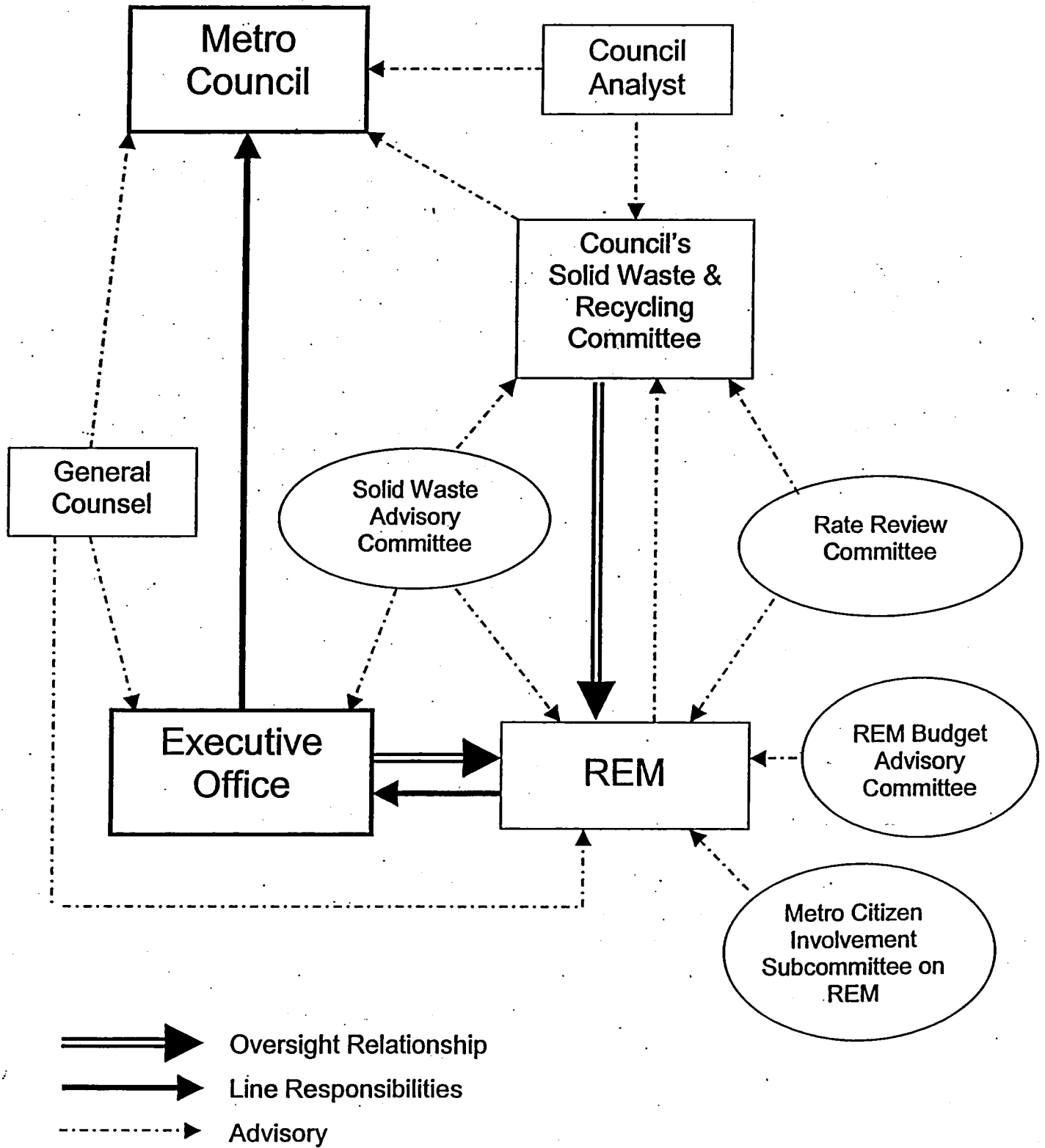
Solid waste policies set by the Council are contained in the Metro Code, as follows:

- Metro Code, Chapters 5.01 through 5.07 and 5.09 deal with matters such as facility regulation, disposal charges, user fees and illegal dumping
- Metro Code, Chapter 7.01 provides for an excise tax on solid waste
- Metro Code, Chapter 2.19 establishes functions and responsibilities for advisory committees created by the Council

The Council's Solid Waste and Recycling Committee is primarily

¹⁵ The Council does this acting in its role as the Metro Contract Review Board.

Metro Solid Waste Participant Relationships



responsible for on-going policymaking and oversight activities. The Committee makes recommendations to the full Council on a wide range of matters for final approval.

A Council Analyst assists the Council and the Council's Solid Waste and Recycling Committee by researching a wide range of solid waste issues; developing policy alternatives; assisting in the development of Council initiatives; and drafting resolutions, ordinances and internal work programs.

Activities

Policymaking and oversight activities of the Council's Solid Waste and Recycling Committee include:

- Developing an annual Work Plan – the plan identifies and schedules a wide range of policy and program matters for the Committee's consideration
 - The calendar year 2002 work plan lists 28 matters for consideration and review; it also schedules REM staff and Solid Waste Advisory Committee reports, progress reports, and Committee actions
 - The annual Work Plan includes reviewing the:
 - o Status of REM's implementation of its Strategic Plan
 - o REM's financial position quarterly report
 - Examples of Work Plan topics/subjects include:
 - o Regulation of private facility rates
 - o Transfer station operations contract
 - o Recycling Business Assistance Program
 - o RSWMP updates
 - o REM budget issues
- Conducting bi-monthly Committee meetings - Minutes of these meetings are excellent sources of information on solid waste issues being considered by the Metro Council and REM staff. The meetings include:
 - REM Director updates discussing the status of REM operations, emerging issues and proposed legislation
 - Staff reports on proposed legislation
 - Progress reports on programs and activities

- Committee guidance to REM
- Considering reports and recommendations of the Solid Waste Advisory and the Rate Review Committees
 - These committees provide input to policy and program issues
 - These committees have members representing other local governments, the solid waste industry and citizens
- Reviewing and making recommendations to the full Council on REM's annual budget

*Executive Office
Management
Oversight*

Participants

Executive Officer, Chief Operating Officer

Responsibilities

The elected Executive Officer oversees the staff and programs at Metro and is responsible for implementing Council solid waste policy, maintaining oversight of solid waste programs managed by the REM, and identifying and resolving major solid waste issues.

The Executive Officer meets with the Council and deals directly with the Council's Presiding Officer on solid waste policy matters. The Executive Officer also presents Metro's annual budget to the Council for approval.

Activities

- As a practical matter, the Executive Officer relies on the Chief Operating Officer (COO) and the Director of REM to keep him informed of significant solid waste issues.
- The COO meets regularly with REM's Director to keep informed of budget, legal, technical, and personnel management issues involving the Department.
- The Executive Officer designated REM's Director to represent him before the Council's Solid Waste and Recycling Committee and the Solid Waste Advisory Committee (SWAC).
- The Executive Officer and COO review and approve legislative proposals and policy recommendations that REM's Director plans to discuss with these committees.
- Metro's General Counsel is consulted on such matters as needed.

Under a voter approved Metro Charter revision, the elected Executive Officer position will be abolished January 6, 2003. The Metro Council has created the Office of Chief Operating Officer that will be responsible to the Council for administering all Metro affairs. However, its specific

role in administering solid waste matters is yet to be defined.

**REM Management of
Metro's Solid Waste
System**

Participants

REM Department

Responsibilities

REM is responsible for managing the region's solid waste system – including administering the RSWMP and managing Metro's solid waste programs and activities.

REM Organization

The REM Department consists of the Office of the Director and five divisions. Chart 2 provides an overview of the Department's organizational structure, programs and budget.

REM Planning Framework

REM's planning framework is spelled out in the Department's "Unified Work Plan for the REM Department Management Team". The Unified Work Plan is a compilation of the major plans that affect REM's management of solid waste. Incorporating these plans in one document provides REM's Director a management tool for assuring that all important planning elements are considered. The Unified Work Plan contains:

- Council and Executive Officer priorities for the year, if any
- REM's priorities, consisting of:
 - The Council's Solid Waste and Recycling Committee annual Work Plan
 - REM's Strategic Plan
 - REM's Strategic Plan implementation plans – plans for accomplishing objectives in the Strategic Plan
 - The Director's priority list for each REM division
 - Each Division manager's 6-month work plan
 - Performance indicators for the Department, the Office of the Director and each of the five Divisions.

REM Director's Oversight Activities

REM's Director reviews, evaluates and reports on the department's operations in many ways, including having frequent meetings with division managers, reviewing work plans, reviewing the financial and operational status of the department and communicating the results of

these oversight activities to the Executive Office, the Council's Solid Waste and Recycling Committee and the SWAC. The Director stated that he routinely engages in the following activities:

Every week:

- Meets with all managers to review progress on priority projects

Every 2 weeks:

- Reviews each manager's 6-month performance plan focusing on strategic objectives and priority projects

Monthly:

- Reviews REM Department expenses/revenues/reserve accounts

Quarterly:

- Submits a financial report from Executive Officer to the Council's Presiding Officer
- Makes an oral report to the Council Solid Waste and Recycling Committee on financial and program status
- Conducts an REM Managers/Supervisors Meeting including review of key projects

Every 6-months:

- Develops Division work plans including deliverables and dates

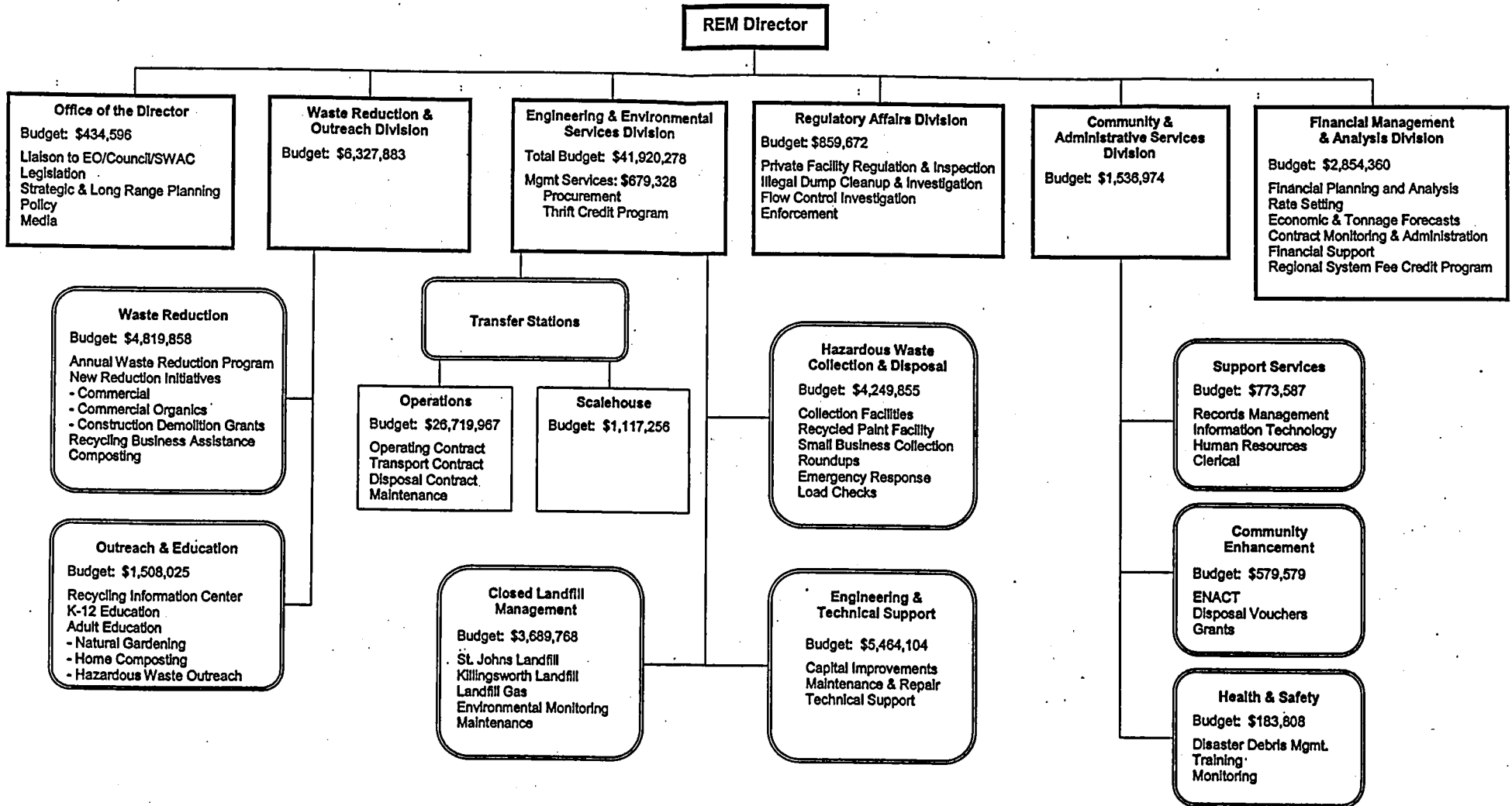
Annual:

- Establishes Department priorities (coordinated with Council work plan)
- Evaluates REM performance in relation to performance measures (annual analysis and report)

Multi-year:

- Reviews REM Strategic Plan objectives, RSWMP objectives and the Unified REM Work Plan

CHART 2
Metro Regional Environmental Management Department
(Adopted Budget Fiscal Year 2003)



Summary of Fiscal Year 2003 Adopted Budget

Total Revenues	\$50,865,849
Total Expenditures	\$61,157,750
Total FTE	109.15

**Strategic Plan
Defines Mission,
Goals And
Objectives**

REM, in conjunction with the Council's Solid Waste and Recycling Committee, developed a Strategic Plan that defines Metro's mission, goals, objectives, strategies and actions in relation to the region's solid waste system. The Plan is, in part, Metro's plan for fulfilling the roles laid out for it in the RSWMP¹⁶. The Metro Council approved the Plan in August 2001.

The Plan lays out a clear strategic direction for Metro's future efforts and relates existing "core business" services and programs to specific goals. The Plan includes a vision of success, a mission statement, two primary goals, 9 strategic goals and 35 objectives.

The mission statement:

"Metro's Regional Environmental Management Department contributes to the livability of the region by taking actions that reduce and manage the region's solid waste in an effective, economical and environmentally sound manner."

The Plan defines two primary goals to carry out the mission:

- Reduce the toxicity and amount of solid waste generated and disposed.
- Develop an efficient, economical and environmentally sound solid waste disposal system.

Importantly, all of the department's core business services relate to these two goals. Chart 3 illustrates the "fit" of core business services with the primary goals.

As shown, four of the core business services address both goals. The following examples illustrate how both goals are served by a particular service:

- Through its regulation of private solid waste transfer facilities, Metro encourages the facilities to reduce waste disposed by requiring them to recover at least 25% of the dry waste they receive and by levying a regional system fee only on waste actually sent to a landfill.
- Through its hazardous waste collection programs, Metro reduces the amount of costly hazardous waste disposed by recycling latex paint and making some other products available for reuse. In addition, Metro educates citizens at the collection sites on how to reduce their

¹⁶ The Strategic Plan and the RSWMP are mutually supportive, but different. The Strategic Plan is a plan for Metro. It deals with matters directly under Metro's control and that primarily affect Metro. The RSWMP, on the other hand, is a plan for the region, managed by Metro. It relies on the cooperation and coordinated action among residents, businesses and the public sector to achieve objectives, strategies and actions.

use of hazardous products in the first place.

The Strategic Plan also addresses the following matters that provide context and direction for Metro's solid waste activities:

- "Where We Are Now"
 - Statements of Metro's four roles in regional solid waste management – discussed in the Introduction to this report
 - REM's primary goals and core business services
 - An assessment of REM's operating environment
 - Issues confronting Metro
- "Where We Want To Be"
 - An action agenda and recommendations for each of the issues identified
- "How We Plan To Get There"
 - Nine strategic goals and 35 objectives related to accomplishing the two primary goals
- "How We Will Measure Our Results"
 - Provides for developing implementation plans for each strategic goal and related objective, including specific action steps, completion dates, roles and responsibilities, resource requirements, and, in many instances, monitoring systems such as performance measures.
 - Provides for REM to review and revise the Strategic Plan and implementation plans as necessary to respond to changes in the operating environment
 - Provides for REM to report to Metro's elected officials, the Solid Waste Advisory Committee and its own staff on progress in achieving strategic goals and objectives.

REM developed implementation plans for 16 of the 35 strategic objectives. The remaining objectives did not require implementation plans because they either affirmed the continuation of existing operations, programs, procedures and policies or the objective had already been met.

Performance Is Monitored, Evaluated and Reported

Metro has provided for monitoring, evaluating and reporting the performance of its solid waste programs and activities:

- The RSWMP contains a chapter on performance monitoring and three "State of the Plan" reports have been prepared assessing the region's status in achieving RSWMP goals.

CHART 3

TWO PRIMARY GOALS AND "FIT" WITH CORE BUSINESS SERVICES

1. Reduce toxicity and amount of solid waste

2. Efficient, economical, environmentally sound disposal

Administer Regional Solid Waste Management Plan

Own and regulate solid waste facilities

Manage fiscal resources

Collect hazardous waste

Lead, coordinate and support waste reduction programs

Administer transport and landfill contracts

Maintain closed landfill

Clean up illegal dumps

- REM's Strategic Plan contains a section on how REM will measure results and provides for annual progress reviews
- REM's Strategic Plan implementation plans contain specific targets and milestones that are monitored by the Department Director and division managers.
- The REM Budget contains performance indicators for the department, the Office of the Director and each division. REM tracks actual performance against these indicators and prepares interim and annual status reports that are reported to REM managers and the Council's Solid Waste and Recycling Committee.
- One of REM's major objectives for fiscal year 2003 is to reevaluate its performance measures to assure they align with the department's strategic plan.
- The indicators tracked for the REM department as a whole are:
 - Regional recovery rate (DEQ) – goal is to achieve 62% during 2005
 - Per Capita Recovery (tons)
 - Per Capita Disposal (tons)
 - Metro Recycling Information phone inquiries
 - Households served by hazardous waste program
 - Student/adult participants in waste reduction classes
 - Solid Waste Revenue Tons
 - Variance between tonnage forecast and actual tonnage
- The Council's Solid Waste and Recycling Committee and REM provide for measuring and evaluating the performance of specific programs and projects. For example:
 - REM's Waste Reduction and Outreach Division, guided by the Council's Solid Waste and Recycling Committee, developed new performance indicators to evaluate results of Metro assisted local government efforts to reduce waste (Year 13 Plan)
 - REM's fiscal year 2003 budget provides \$91,000 to design evaluation instruments and assess the progress of Metro's waste reduction programs and projects.
 - REM's fiscal year 2003 budget provides for hiring a contractor to assess one of Metro's major waste reduction initiatives – commercial organics. The contractor will evaluate results of the first three years of the program and provide recommendations for developing the next three-year plan.

- REM's Targeted Competitive Grant Program requires applicants to establish clear goals, measurement tools and intended results and report on the project's results in meeting goals.

Metro has provided for many organizational participants to monitor and review solid waste plans, programs and activities.

- The Metro Council maintains policy and program oversight through its Solid Waste and Recycling Committee
- The Executive Office maintains management oversight of major issues
- The REM Director maintains a planning and review system for monitoring and reviewing REM programs and operations
- The Solid Waste Advisory Committee¹⁷:
 - Evaluates existing policies and practices and makes recommendations for improvement
 - Advises on the implementation of existing solid waste plans and policies
 - Makes recommendations on planning processes and compliance with the RSWMP and state requirements
- The Rate Review Committee reviews the assumptions and processes for setting solid waste disposal rates and fees to ensure that rates comply with 11 criteria¹⁸ established by the Metro Council, such as whether the rates and fees are equitable and provide incentives to reduce waste
- The Metro Committee on Citizen Involvement, Subcommittee on REM:
 - Evaluates whether REM's projects provide for adequate citizen involvement, focusing on education and public involvement projects
 - Advises REM on improving public involvement of its projects
- The REM Budget Advisory Committee:
 - Reviews the assumptions behind REM's planned programs and expenditures
 - Advises REM staff during the formulation stage of the budget, and
 - Makes recommendations to the Executive Officer on budget

¹⁷ SWAC's purpose and composition are described in more detail in Appendix A.

¹⁸ Council Resolution No.93-1824A, adopted July 22, 1993

policies, programs, and practices.

- Metro's Office of the General Counsel:
 - Reviews and provides legal advice on a wide range of solid waste related matters to the Metro Council, the Executive Officer, REM, and the Solid Waste Advisory Committee, as requested.
 - Reviews proposed solid waste policies and programs to assure they comply with state law and that Metro has authority to adopt them.
 - Reviews ordinances and resolutions presented to the Metro Council.
 - Reviews and advises on Metro's three large disposal contracts, including change orders.
 - Reviews requests by private firms to operate solid waste facilities.

REM staff support all of the above participants by preparing reports and providing information to them on a wide range of policy, program and financial matters.

**Emerging Issues
Are Proactively
Addressed**

Metro takes a proactive approach to managing the region's solid waste by identifying emerging issues that can influence and impact plans and operations. For example:

- REM's Strategic Plan defines six issues emanating from trends and situations REM tracks. The Strategic Plan defined an action agenda and recommendations for each issue.
- Minutes of the Council's Solid Waste and Recycling Committee meetings contain discussions of emerging issues and plans for dealing with them.

Metro was recently considering the following issues, among others, which illustrate Metro's proactive approach to planning:

1. Will mandatory recycling be necessary to achieve the 62% regional recovery goal for 2005?
2. Can alternatives to disposal be found for old electronics in the region's waste stream?
3. What level of Metro fees and taxes should be assessed on disposed dredge spoils if the Columbia River and other areas are approved for dredging?
4. Should Metro be prepared to regulate rates at private sector disposal facilities if these facilities become large enough players to influence

regional rates?

5. Should Metro increase tonnage allocations to local transfer stations to provide haulers greater disposal access?
6. Will Metro supported financial incentives for the private sector boost regional waste recovery rates?

APPENDIX A – DUTIES AND RESPONSIBILITIES OF PARTICIPANTS

Metro Council Metro's seven-member elected council establishes policies for the operation of Metro's solid waste programs and provides oversight to ensure that these policies and programs are properly carried out. The Council's role includes:

- Approving the Regional Solid Waste Management Plan
- Authorizing solid waste programs and activities
- Approving plans for carrying these out
- Assuring that resources are available to pay for the programs and activities
- Assuring that programs are achieving intended results

In its role as the Metro Contract Review Board, the Council reviews and approves major solid waste contracts, including Metro's contracts for operating its two transfer stations, hauling waste and disposing of it in the Columbia Ridge Landfill.

Council Solid Waste and Recycling Committee The Council fulfills most of its solid waste related roles through its Solid Waste and Recycling Committee – a standing committee composed of three to five councilors. The Committee develops and reviews solid waste related resolutions and ordinances before they are brought to the full Council for consideration. The Committee meets bi-monthly to:

- Review and make recommendations to the Council on policies and programs relating to the RSWMP, the operation of solid waste disposal facilities, and Metro's waste reduction efforts.
- Review and make recommendations to the Council on the duties, functions and work of the REM Department to ensure that adopted policies and program goals and objectives are carried out or met.
- Review and make recommendations to the Council on other matters, such as appointments to committees dealing with solid waste

As part of its planning process, the Committee annually adopts a work plan for the calendar year that lays out the significant issues the Committee plans to consider during the year.

Council Analyst The Council and the Council's Solid Waste and Recycling Committee are assisted by a Council Analyst who researches a wide range of solid waste issues; develops policy alternatives; assists in developing Council initiatives and drafts resolutions, ordinances and internal work programs.

Executive Office The elected Executive Officer oversees the staff and programs at Metro and is responsible for implementing Council solid waste policy, maintaining oversight of solid waste programs managed by REM, and identifying and resolving major solid waste issues. The Executive Officer meets with the Council and deals directly with the Council's Presiding Officer on solid waste policy matters. The Executive Officer also presents Metro's annual budget to the Council for approval.

As a practical matter, the Executive Officer relies on the Chief Operating Officer (COO) and the Director of REM to keep him informed of significant solid waste issues. The COO meets regularly with REM's Director to keep informed of budget, legal, technical, and personnel management issues involving the Department.

The Executive Officer designated REM's Director to represent him before the Council Committee on Solid Waste and Recycling and the SWAC. The Executive Officer and COO review and approve legislative proposals and policy recommendations that REM's Director plans to discuss with these committees. Metro's General Counsel is consulted on such matters as needed.

Under a November 2000 voter-approved amendment to the Metro Charter, the elected Executive Officer position will be abolished January 6, 2003. The Metro Council has adopted Ordinance No. 02-942A creating the Office of Chief Operating Officer that will be responsible to the Council for administering all Metro affairs after that date. The Chief Operating Officer's specific role in relation to administering solid waste matters is yet to be defined.

Regional Environmental Management (REM) Department The REM department's mission is to contribute to the livability of the region by taking actions that reduce and manage the region's solid waste in an effective, economical and environmentally sound manner.

The Department is organized into the Office of the Director and five divisions. The Director:

- Coordinates and directs work of the Department's five divisions
- Acts as liaison to Metro Council, SWAC, and other departments
- Serves as REM contact for news media, local governments, the solid waste industry and other stakeholders
- Develops and manages strategic planning and communications strategies
- Coordinates REM's legislative and regulatory agenda

Three REM divisions are primarily responsible for managing the department's waste reduction, disposal and regulatory services. The other two divisions primarily provide financial and administrative support, but have some programmatic responsibilities as well.

**Office of the
General Counsel
(OGC)**

The OGC provides legal advice and counsel to:

- The Metro Council, the Executive Officer, REM, and other Metro officers and departments regarding Metro's solid waste activities.
- The Solid Waste Advisory Committee (SWAC) upon request, although that advice is usually provided either to the Council member that serves as the chair of SWAC, or to REM, which provides staff support to the SWAC.

OGC's responsibilities include:

- Advising the Council, the Executive Officer, and REM on state law and the authority Metro has to adopt and enact various policies and programs related to solid waste management in the region
- Reviewing ordinances and resolutions presented to the Metro Council
- Providing legal advice on Metro's three large disposal contracts, including preparing and reviewing contracts, negotiating with legal counsel representing the contractors on contract terms; and enforcing contract terms
- Reviewing requests by private firms to operate solid waste facilities
- Drafting certificates, licenses, and franchises
- Assisting in the prosecution of enforcement actions brought under the Metro Code.

The OGC does not advise local governments or private parties, but works with their legal counsel on both cooperative and adversarial matters.

**Solid Waste
Advisory
Committee (SWAC)**

SWAC'S purpose is to advise the Metro Council, Executive Officer and the REM Department on ways to improve solid waste management and planning and on compliance with the RSWMP and state requirements. Specifically, Metro Code Chapter 2.19.130 states that the purpose of SWAC is to:

1. Evaluate policy options and present policy recommendations to the Metro Council and Executive Officer regarding regional solid waste management and planning.
2. Advise Metro on the implementation of existing solid waste plans and policies.
3. Provide recommendations concerning the solid waste planning

process to ensure adequate consideration of regional values such as land use, economic development, and other social, economic and environmental factors.

4. Provide recommendations on compliance with the Regional Solid Waste Management Plan and applicable state requirements.
5. Provide recommendations on alternative solid waste policies and practices developed by subcommittees of the SWAC.
6. Recommend needs and opportunities to involve citizens in solid waste issues.
7. Recommend measures to build regional consensus for the management of solid waste.

The Committee has 23 voting members composed of representatives from the recycling, hauling, and disposal business communities, local governments and citizen ratepayers. In addition, there are three non-voting members consisting of the REM Department Director, a DEQ representative and a representative from Clark County, Washington. The SWAC Chairperson can establish subcommittees to study specific issues. The Committee meets monthly.

Rate Review Committee

The Rate Review Committee (RRC) is an independent committee created by Metro Code Chapter 2.19.170 to provide an independent review of Metro's rate setting processes. The Committee is composed of seven members including industry representatives, citizens, and a member of the Metro Council who serves as committee chair.

The Committee is responsible for assuring that disposal fees and rates comply with criteria established by Council Resolution No.93-1824A, adopted July 22, 1993. The criteria consist of 11 elements, including:

- Consistency with the RSWMP provisions dealing with rate setting
- Adequacy of revenue generated to cover the costs of the solid waste system
- Equity of charges to users of the solid waste system
- Incentives to encourage waste reduction, reuse and recycling
- Relative cost and effort of implementing and enforcing the rates
- Stability of anticipated revenues
- Ability of affected parties to predict the impacts of rate adjustments to their business plans

Members of the Committee also form the core membership of the REM Budget Advisory Committee. This dual membership enables RRC

members to better understand the expenditure component of the rate setting process, which under the Metro Code the RRC does not have explicit authority to do.

The Council's Solid Waste and Recycling Committee reviews RRC recommendations before they are sent to the full Council for final decisions.

**Metro Committee
For Citizen
Involvement (MCCI)**

The MCCI is a permanent committee created by the 1992 Metro Charter. The Metro Code Chapter 2.19.100 states that the purpose of the MCCI, among other things, is to advise the Metro Council and Executive Officer on programs and procedures to aid communication between citizens, the Metro Council and the Executive Officer.

The MCCI has 27 members composed of three citizen representatives from each of Metro's Council districts, one representative from each of the areas outside of the Metro boundaries of Clackamas, Multnomah, and Washington Counties, and one representative from each of these county's Citizen Involvement committees.

The MCCI has a three-member subcommittee that evaluates whether REM projects provide for adequate citizen involvement, focusing on education and public involvement projects. The subcommittee may request REM to prepare a Public Involvement Plan reflecting a project's goals, audiences, methods of communicating and key public involvement dates. The subcommittee meets with an REM liaison for an hour each month and orally advises an REM department liaison person on matters of public involvement.

**REM Budget
Advisory
Committee**

The Executive Officer directed Metro departments to employ Budget Advisory Committees to assist in the development of their budgets beginning with fiscal year 1999. These Committees are charged with reviewing budget issues and providing written input on program direction, issues, and broad financial structure.

REM's Committee has been specifically instructed to identify and comment on major policy issues. To assist the Committee, REM staff prepares a series of issue papers on budget policies, programs or practices. The end product is a letter from the Committee to the Executive Officer containing comments and recommendations.

The Committee has eight members composed of the six Rate Review Committee members, one member of the Metro Committee for Citizen Involvement, and one at-large solid waste expert on recycling. The committee meets from two to four times each year before the budget is developed.

Response to the Report



METRO

June 25, 2002

The Honorable Alexis Dow
Metro Auditor
600 NE Grand Avenue
Portland, OR 97232

Re: Metro's Solid Waste Management Activities

Dear Ms Dow:

Thank you for the opportunity to review your June 14, 2002 draft report on Metro's Solid Waste Management Activities.

The report is an informative and useful overview of Metro's solid waste management framework. It will be the best single source of information for persons inside or outside of Metro who want to learn about Metro's role in solid waste.

I agree with your observation that Metro's framework for managing the region's solid waste contains the elements of a sound management system.

I also agree with your one recommendation that REM should document Metro's solid waste management framework and keep it up to date. REM will adopt your report after it becomes final and will update it as changes occur.

Sincerely,

A handwritten signature in cursive script that reads "Mike Burton". The signature is written in black ink and is positioned above the printed name.

Mike Burton
Executive Officer



METRO

Metro Auditor Report Evaluation Form

**Fax... Write... Call...
Help Us Serve Metro Better**

Our mission at the Office of the Metro Auditor is to assist and advise Metro in achieving honest, efficient management and full accountability to the public. We strive to provide Metro with accurate information, unbiased analysis and objective recommendations on how best to use public resources in support of the region's well being.

Your feedback helps us do a better job. If you would please take a few minutes to fill out the following information for us, it will help us assess and improve our work.



Metro Regional Environmental Management Department Solid Waste Management Framework Is Sound

Please rate the following elements of this report by checking the appropriate box.

	Too Little	Just Right	Too Much
Background Information	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Details	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Length of Report	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Clarity of Writing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Potential Impact	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Suggestions for our report format: _____

Suggestions for future studies: _____

Other comments, ideas, thoughts: _____

Name (optional): _____

Thanks for taking the time to help us.

Fax: 503.797.1831
Mail: Metro Auditor, 600 NE Grand Avenue, Portland, OR 97232-2736
Call: Alexis Dow, CPA, Metro Auditor, 503.797.1891
Email: dowa@metro.dst.or.us

Suggestion Hotline: 503.230.0600, MetroAuditor@metro.dst.or.us

Consideration of the August 1, 2002 Regular Metro Council Meeting minutes.

**Metro Council Meeting
Thursday, August 8, 2002
Metro Council Chamber**

MINUTES OF THE METRO COUNCIL MEETING

Thursday, August 1, 2002
Metro Council Chamber

Councilors Present: Carl Hosticka (Presiding Officer), Susan McLain, Rod Park, Bill Atherton, David Bragdon, Rod Monroe

Councilors Absent: Rex Burkholder (excused)

Presiding Officer Hosticka convened the Regular Council Meeting at 2:04 p.m.

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

There were none.

3. EXECUTIVE OFFICER COMMUNICATIONS

RECOMMENDATIONS ON TASK 2 OF URBAN GROWTH BOUNDARY PERIODIC REVIEW

Mike Burton, Executive Officer, said this was the second time he has had to recommend a major Urban Growth Boundary amendment and to present a growth management report and the first time to this Council (a copy the Growth Management of the Metropolitan Region is included in the meeting record). This was not about numbers but about form. He was here again today because we still had what he considered to be an inadequate method of having to plan in the region and in this state. Our state land use laws had served us well in the past. They formulated a value system for us that were of extreme usefulness in value to the people in the state. But at this point in our history he believed that we were unable to meet the overall concept that we had as a region when we adopted the Charter for a metropolitan area and that was to do long range thoughtful design of an urban area. He would be doing two things today; one was to try to meet the requirements of law that the State gave to us. He would be explaining what he was recommending being brought in and why and what has not and why. He said they would be going into detail at Community Planning Committee next Tuesday. He would further recommend suggestions on where we want this region to go. Why do people keep moving here and staying here? It was the place itself, the green structure, the air and water quality and the way we use land. He cited an article in the Oregon Business Magazine on where do we go from here. He said Phil Ramero, Dean of the University of Oregon's Lundquist College of Business and the former chief economist for a California governor commented on investment of Oregon dollars to ensure an healthy economy. Mr. Ramero made two points, one, was we needed to have a richer higher education system and two, an attractive location where successful people will want to live. Mr. Burton said his second round of recommendations had to do with being able to find employment land that gave them the opportunity to discuss the overall ability for this region to maintain both of its extremely valuable current economies. These economies included agricultural and horticulture as well as the intensive new economy that brought people into the area and provided jobs for them. Both were competing for the same soil. He thought they could deal with those

questions if they could engage both the local jurisdictions and the governments in the counties surrounding Metro.

The base question: state law required that they had a 20-year land supply of residential property available within the boundary based on projected population. He explained further population estimates and that we were short on residential property. Over a 20-year period they could anticipate 700,000 people moving into the statistical area that included Clark County. They estimated the 500,000 would be within our jurisdictional boundary. He gave an overview of what land the state allowed to satisfy the residential needs over the 20-year period of time. He said the total need was about 17,000 acres with the constraints of that acreage. The design for the future would be different than in the past. We wanted to protect the natural areas, which had not always been done in the past. He talked about the employment land. There was no state law requirement to provide for that land. We have a need of 5700 of industrial land and a surplus of 760 commercial acres. There had been a tendency to convert industrial into commercial land. We were short industrial lands in the region. He could find 2200 acres of that land but the rest would be on agriculture or horticulture land. He was not willing to recommend utilizing that land. He reviewed the report, which included the need for residential land, industrial land and protection of existing natural resources. We also needed to study the larger area. A way to protect the existing farmland may be better if you had it inside the Urban Growth Boundary (UGB) rather than outside. He suggested looking at urban reserves to plan for future needs and protecting important lands. He reviewed the state goals for decision making. He suggested possible policy changes, which could include regulations or incentives.

He said the benchmarks provided for 74 indicators. He spoke to the technical analyses including the Urban Growth Report, land outside the boundary, current policies and how they apply inside the boundary. The residential land need analysis was 220,800 dwelling units. He talked about redevelopment, infill, and the employment land need analyses. He suggested a conversation on conversion of industrial to commercial land, was it appropriate. An overall strategy needed to be in place. There was a need for larger lot industrial areas.

He said they had looked at 2040 policies including centers, demand and supply of employment land as well as conversion of land. He talked about which lands should be brought into the Urban Growth Boundary including Damascus, the Gresham, Oregon City, Wilsonville, Sherwood, Tigard/Beaverton/King City, Hillsboro, and Bethany area. He then talked about areas that were excluded such as Stafford Basin.

He suggested studying urban reserve areas for long term planning, urban expansion, which included protection of some of those areas and long term funding. He reminded Council to keep in mind their main responsibility was to the public itself. He talked about balance and reconstruction of what we currently have. He handed out "It takes a Team to Move the UGB" which included Metro's team for the UGB Periodic Review.

Councilor Park said he appreciated Mr. Burton's recommendation and his adherence to Council policy. He said it supported the 2040 Growth Concept and centers. It pointed out a strong coordination between Mr. Burton's staff, Council and Council staff. He acknowledged the needs of the land to be included, the need for protection, the ability to get around the region, the centers, the partnerships with cities and counties, jobs, the need for balance and trade-offs. He agreed with Mr. Burton's recommendations about having an economic strategy, doing long term planning, and protecting natural habitat. We needed to continue to look at keeping this region special. He thanked staff for their efforts.

Councilor Atherton spoke to the region's need, carrying capacity and the need to eliminate the 20-year land supply state law. Councilor McLain thanked Mr. Burton and staff. She made a commitment to travel the area and look at the recommended properties. She said the two major issues were employment land, trumping EFU land and the sub-regional issue as well as finite trade-offs. She talked about regional tax base sharing and the need for that discussion. She suggested guidance from the State on urban reserves. It was important that we remember that they were talking about people, we needed to put it on a personal level. Councilor Bragdon said this all starts with the next 4 months. It was all about having this as a good place to live. This was a time of change and uncertainty. He reminded people why we were here, for safe and stable neighborhoods, openspaces, and a willingness to work together. Presiding Officer Hosticka said the team owners were the people of the region.

Mr. Burton concluded by saying that he would be listening to our team owners. This was a tremendous opportunity to do what we could potentially do. He encouraged that the Council asked the local jurisdictions to talk with the Council about their plans for the area.

Councilor Park talked about the process in the next couple of months. He said next Tuesday; August 6th Mr. Burton would be going over the report more thoroughly. In August/September the Council would be reviewing the recommendations and touring the areas. In October there would be a series of listening posts around the region to listen to the public. They would be at 6:00 p.m. with open houses at 5:00 p.m. to view maps. He added that they would also be holding public hearings at Community Planning Committee. They would have a recommendation to Council by November 15th and Council would be reviewing the recommendations in late November and December. Presiding Officer Hosticka said they were hopeful to complete their work by December 5th. Mr. Burton noted that Metropolitan Policy Advisory Committee (MPAC) would also play a key role in this decision process.

4. CONSENT AGENDA

4.1 Consideration of minutes of the July 25, 2002 Regular Council Meeting.

Motion	Councilor Bragdon moved to adopt the meeting minutes of the July 25, 2002, Regular Council meeting
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Vote:	Councilors Bragdon, Atherton, Monroe, Park, McLain and Presiding Officer Hosticka voted aye. The vote was 6 aye, the motion passed.
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5. ORDINANCES – SECOND READING

5.1 Ordinance No. 02-956, Amending the FY 2002-03 Budget and Appropriations Schedule by Recognizing \$28,039 in Additional Grant Funds and Increasing Appropriations in the General Revenue Bond Fund for the Council Chambers Camera Project; and Declaring an Emergency.

Motion	Councilor Bragdon moved to adopt Ordinance No. 02-956.
Seconded:	Councilor Monroe seconded the motion

Councilor Bragdon explained that this ordinance would allow for the chamber to be outfitted with cameras. He explained further the amendment to the budget to recognize receipt of the grant.

Presiding Officer Hosticka opened a public hearing on Ordinance No. 02-956. No one came forward. Presiding Officer Hosticka closed the public hearing.

Councilor Bragdon urged an aye vote.

Vote:	Councilors Park, McLain, Bragdon, Monroe and Presiding Officer Hosticka voted aye. The vote was 5 aye, the motion passed with Councilor Atherton absent from the vote.
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5.2 Ordinance No. 02-960, For the Purpose of Amending Metro Code Chapter 2.19 to Modify the Term Limitation Provisions Applicable to Metro Advisory Committee and to Enlarge the Membership of the Solid Waste Advisory Committee.

Motion	Councilor McLain moved to adopt Ordinance No. 02-960.
Seconded:	Councilor Bragdon seconded the motion

Councilor McLain said there were two portions to this ordinance, the first was to amend the term limits of advisory committees. She explained further the reason for this portion of the ordinance. The second part of the ordinance change was specific to the Solid Waste Advisory Committee (SWAC). They would be adding a Vancouver member. She urged support.

Presiding Officer Hosticka opened a public hearing on Ordinance No. 02-960. No one came forward. Presiding Officer Hosticka closed the public hearing.

Vote:	Councilors McLain, Bragdon, Atherton, Monroe, Park and Presiding Officer Hosticka voted aye. The vote was 6 aye, the motion passed.
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6. RESOLUTIONS

6.1 Resolution No. 02-3213A, For the Purpose of Formalizing Budget Assumption Guidelines for Departmental Use in Preparing the Fiscal Year 2003-2004 Budget, and Directing the Executive Officer and/or Council President to Advise Council of Any Substantive Changes in the Assumptions Prior to the Submission of the Budget to Council for Public Review.

Motion	Councilor Bragdon moved to adopt Resolution No. 02-3213A.
Seconded:	Councilor McLain seconded the motion

Councilor Bragdon said this resolution formalized the collaborative approach to the budget. He spoke to the historical involvement of Metro staff, council and council staff. He said these would assist in assumptions and help direct staff in preparing the budget. If there was a need for changes in assumptions staff must come back to Council. He urged support. Presiding Officer Hosticka said most of the assumptions were the same as the current year. Councilor Bragdon said that was correct, there were some changes such as the question of Public Employees Retirement System (PERS) but most were similar to this year. Councilor Atherton commented on the Cost Of Living Adjustment (COLA). He could support the resolution as it stand but if we have new information that came to us in the next few month he suggested amending the assumptions to consider those issues. He would support the resolution.

Vote:	Councilors Bragdon, Atherton, Monroe, Park, McLain and Presiding Officer Hosticka voted aye. The vote was 6 aye, the motion passed.
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Presiding Officer Hosticka asked Mr. Cooper to brief Council on the rules for the contested case proceeding. Dan Cooper, Metro Attorney, reviewed the rules.

6.2 **Resolution No. 02-3214**, For the Purpose of Approving a Final Order Imposing a Monetary Fine on Michael Reynolds, dba Workhorse Services Inc., for a violation of Section 7.01 of the Metro Code.

Motion	Councilor Atherton moved to adopt Resolution No. 02-3214.
Seconded:	Councilor Bragdon seconded the motion

Councilor Atherton called upon Steve Kraten, Regional Environmental Management Enforcement Administrator, to review the background. Mr. Kraten presented background information on both violations. One of the functions of REM's Regulatory Affairs Division is to help assure that appropriate Metro fees are paid on all solid waste generated within the region. One way in which we monitor this is through periodic review of waste origin reports provided by designated facilities. During routine reviews of such reports from Lakeside Landfill, the Regulatory Affairs Division found that two of the landfill's customers repeatedly listed the same out-of-region addresses for every load they delivered, week after week. This indicated to us that either these companies were working on major demolition projects or they were providing false information.

Our Sheriff's Office detectives investigated and discovered that, in both cases, the waste had not originated from the addresses given. The detectives actually observed one of the suspects pick up a load of solid waste in Milwaukie, deliver it to Lakeside Landfill, and then certify on the reporting form that the load had originated in Nehalem. When confronted by the detectives, the suspects in both cases admitted to falsely listing out-of-region addresses in order to avoid paying Metro fees on waste that had actually been generated within the Metro boundary. As a result, the Executive Officer issued findings of violations and citations to both Michael Reynolds and Warren Biden for violating Section 7.01.020 of the Metro Code which requires users of the system to pay the Metro excise tax.

Pursuant to Metro Code Chapter 2.05, the respondents in these matters were given notice that they could contest the Executive Officer's findings of violation at a hearing before a Metro hearings officer. Each of these respondents requested a contested case hearing, and hearings were held, presided over by attorney Robert Harris, a Metro Hearings Officer. After those hearings, the hearings officer drafted Proposed Orders upholding the Executive Officer's findings of violation. Metro Code Section 2.05.035(b) provides that a hearings officer's Proposed Order shall be forwarded to the Council and considered by the Council at its next scheduled meeting, provided that meeting is at least two weeks after the deadline for filing exceptions. The Hearings Officer's Proposed Orders are therefore before you now for your consideration and neither of the parties have submitted written exceptions to those orders.

In addition, upon review of the hearings officer's Proposed Orders by REM staff and the Office of General Counsel, we noticed some typographical errors and that certain items were apparently inadvertently misidentified in the Proposed Orders. We are therefore now recommending that certain minor edits and clarifications be made to the Proposed Orders, and that you approve Final Orders that reflect those changes. Before you now are both clean copies of the recommended Final Orders and redlined versions of the hearing officer's Proposed Orders.

Robert Harris, Hearings Officer, spoke to his credentials, and then presented information related to the general procedure of the contested case hearing and the contents of the findings of fact and the proposed final order (a copy is included in the resolution). He talked briefly about mitigating circumstances and the proposed fine.

Councilor Atherton asked about the actual costs to taxpayers. Mr. Kraten said they kept track of the investigator's costs. Mr. Harris said, at the very least, he was aware of how many hours the agency staff put into this process. Councilor Atherton asked if they expected collection in this case? Mr. Kraten said Mr. Reynolds had made arrangements to make payments on his fine. Councilor Park asked for clarification on the fine and system fee. Mr. Kraten said the amount of tonnage was 61.182 tons. The regional system fee would \$790.51. Councilor Park said we were asking for \$1500 in fines. He talked further about what the actual fine was. He expressed concern about making sure the fines helped create avoidance of the behavior in the future. Mr. Kraten pointed out that the wording of the Code was such that the excise tax was written very differently than the section on system fees. He explained further the difference and why they couldn't charge for that portion in the violation. Councilor McLain asked about the assessed fine? Mr. Kraten talked about how the original fine was calculated. Presiding Officer Hosticka asked Mr. Cooper about modifications. Mr. Cooper said if they modified it downward they could do that today, if they wanted to modify it upward, they would have to notify the parties and allow for objection.

Presiding Officer Hosticka asked if the party involved or their representative wished to offer any comments. No one came forward.

Councilor McLain suggested that they tighten up the differences between the first, second and third violation. At this time she accepted the Hearings Officer recommendation. Councilor Monroe said he felt the party was getting off easy. He agreed with Councilor Park but would support the current recommendation. Councilor Park said he felt they needed to take up this issue at the Solid Waste and Recycling Committee and further clarified the specifics of that discussion.

Vote:	Councilors Monroe, Park, McLain, Bragdon, Atherton and Presiding Officer Hosticka voted aye. The vote was 6 aye, the motion passed.
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6.3 **Resolution No. 02-3215, For the Purpose of Approving a Final Order Imposing a Monetary Fine on Warren Z. Biden, dba Westmont Properties for a violation of Section 7.01 of the Metro Code.**

Motion	Councilor Atherton moved to adopt Resolution No. 02-3215.
Seconded:	Councilor Bragdon seconded the motion

Councilor Atherton asked for background from Mr. Kraten and a review from Mr. Harris. Mr. Kraten said, the circumstances of this case, was identical to Reynolds case except for the recyclables. Mr. Harris concurred that the case was identical. Councilor McLain asked about the security amount requested. Mr. Kraten said they requested the security amount from both parties. In the case of Mr. Reynolds he said he had no money to pay. Mr. Kraten said he would have to check on what he was paying. Councilor McLain said she wanted to make sure that they had consistent rules on the fines and payment. Mr. Cooper added that there was some confusion on these cases. He talked about the illegal dumping cases and the requirement of security payment. He said the Code in these cases did not require a security payment. Councilor McLain suggested that they needed to look at both situations and update the Code for consistency. Mr. Cooper said they would be having a conversation at the Solid Waste and Recycling Committee. Presiding

Officer Hosticka asked why both of these cases were at Lakeside and was this unusual. Mr. Kraten said that they had an automated system at Lakeside. Councilor Atherton asked what the cost was of prosecuting this case. Mr. Kraten said he didn't have the specifics but said it would be the time of the investigators and the hearings officer. Mr. Harris said it was relatively easy to recommend the fine. Councilors Monroe clarified a point, these people were apprehended because they put down the same location each time. If they had been smarter would they have gotten away with it? Mr. Kraten said maybe for each period of time but they did spot checks. Councilor Monroe summarized that our system was not airtight.

Vote:	Councilors Park, McLain, Bragdon, Atherton, Monroe and Presiding Officer Hosticka voted aye. The vote was 6 aye, the motion passed.
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7. COUNCILOR COMMUNICATION

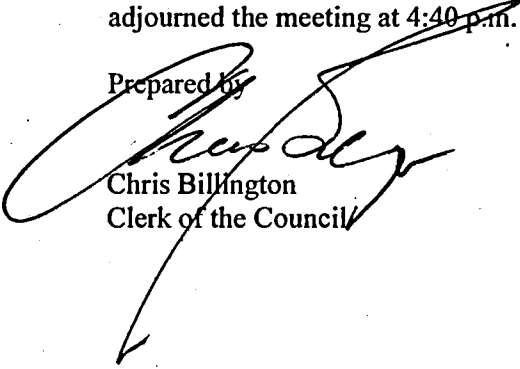
Councilor McLain thanked the Natural Resources members for coming to last night's public hearing. They would take up related issues on August 7th and at Council on August 8th.

Councilor Parks aid they would be look at the Executive Officer's recommendations at the Community Planning Committee next Tuesday. He suggested written testimony at this time if people wished to give their input. They would be announcing when the public hearings will be soon.

8. ADJOURN

There being no further business to come before the Metro Council, Presiding Officer Hosticka adjourned the meeting at 4:40 p.m.

Prepared by



Chris Billington
Clerk of the Council

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF AUGUST 1,
 2002**

ITEM #	TOPIC	DOC DATE	DOCUMENT DESCRIPTION	DOC. NUMBER
4.1	MINUTES	7/25/02	METRO COUNCIL MINUTES OF JULY 25, 2002 SUBMITTED FOR APPROVAL	080102c-01
3	METRO REPORT	AUGUST 2002	GROWTH MANAGEMENT OF THE METROPOLITAN REGION, EXECUTIVE OFFICER RECOMMENDATION TO COUNCIL	080102c-02
3	UGB PERIOD REVIEW TEAM	2002	METRO REGIONAL GOVERNMENT "IT TAKES A TEAM TO MOVE THE UGB" TEAM ROSTER	080102c-03
3	DATES FOR LISTENING POSTS MEMO	8/1/02	URBAN GROWTH BOUNDARY LISTENING POSTS IN OCTOBER 2002 FROM CHAIR PARK, COMMUNITY PLANNING TO METRO COUNCIL	080102c-04
6.2 & 6.3	COUNCIL PROCESS MEMO	8/1/02	COUNCIL PROCESS FOR CONSIDERATION OF RESOLUTIONS NO. 02-3214 & 3215	080102c-05
6.2	LETTER	7/26/02	LETTER FROM CHRIS BILLINGTON, CLERK OF THE COUNCIL TO MICHAEL REYNOLDS CONCERNING COUNCIL CONSIDERATION OF RESOLUTION NO. 02-3214	080102c-06
6.3	LETTER	7/26/02	LETTER FROM CHRIS BILLINGTON, CLERK OF THE COUNCIL TO WARREN BIDEN CONCERNING COUNCIL CONSIDERATION OF RESOLUTION NO. 02-3215	080102c-07

Agenda Item Number 5.1

Ordinance No. 02-950B, For the Purpose of Amending the Metro Code Chapter 7.01 to Increase the Credits Available Against the Solid Waste Excise Tax and Making Other Related Changes.

Second Reading

**Metro Council Meeting
Thursday, August 8, 2002
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO) CODE CHAPTER 7.01 TO INCREASE THE) CREDITS AVAILABLE AGAINST THE SOLID) WASTE EXCISE TAX AND MAKING OTHER) RELATED CHANGES)	ORDINANCE NO. 02-950 <u>AB</u> Introduced by Mike Burton, Executive Officer
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WHEREAS, Chapter 7.01 of the Metro Code provides for Material Recovery Facilities that achieve certain recovery goals to pay reduced Metro excise tax; and,

WHEREAS, pursuant to Ordinance 01-919B the Metro Council established a work group of Metro staff and interested members of the Solid Waste Advisory Committee to make recommendations for improving regional recovery; and,

WHEREAS, the stakeholder work group recommended changes in the amounts of Regional System Fee credits available to Material Recovery Facilities pursuant to Metro Code Chapter 5.02.047; and,

WHEREAS, the Solid Waste Advisory Committee unanimously endorsed the recommendations of the stakeholder work group; and,

WHEREAS, the excise tax credit program of Metro Code Chapter 7.01 is implemented in a substantially similar way as the Regional System Fee credit program of Metro Code Chapter 5.02; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Subsection (g) of Metro Code Chapter 7.01.020 is amended to read:

(g) (1) A solid waste facility which is certified, licensed or franchised by Metro pursuant to Metro Code Chapter 5.01 shall be allowed a credit against the Excise Tax otherwise due under Section 7.01.020(e)(1) for disposal of Processing Residuals from such facility. The Facility Recovery Rate shall be calculated for each six-month period before the month in which the credit is claimed. Such credit shall be dependent upon the Facility Recovery Rate achieved by such facility and shall be equal to the amount resulting from reducing the Excise Tax due by the percentage reduction amount corresponding with the Facility Recovery Rates provided on the following table:

Excise Tax Credit Schedule		
Facility		
Recovery Rate		
From Above	Up To & Including	Excise Tax Credit of no more than
0%	25 <u>29.99</u> 30%	<u>0.00</u> %
25 30%	30%	4%
30%	35%	10 <u>1.92</u>
35%	40%	20 <u>2.75</u>
40%	45 <u>100</u> %	33 <u>3.51</u>

45% 100% 45%

~~(2) During any Fiscal Year, the total aggregate amount of excise tax credits granted under the provisions of this subsection shall not exceed the dollar amount budgeted for such purpose. (2) During any Fiscal Year, the total aggregate amount of excise tax credits granted under the provisions of this subsection shall not exceed the dollar amount budgeted for such purpose without the prior review and authorization of the Metro Council.~~

SECTION 2. Section 3 of this Ordinance is added to and made a part of Metro Code Chapter 7.01

SECTION 3. Excise Tax Credit Program Review.

(a) The Director of the Regional Environmental Management Department shall make a semi-annual report to the Metro Council on the status of the excise tax credit program for which provision is made in Metro Code Section 7.01.020(g). The report shall include the aggregate amount of all excise tax credits granted during the preceding six months and the amount granted to each facility eligible for the credits. The report shall also project if the total aggregate amount of excise tax credits for which the Metro Council has budgeted is expected to be reached.

(b) By March 31, 2004, and every two years thereafter, the Director of the Regional Environmental Management Department shall convene a committee of stakeholders to review and report on the effectiveness of the solid waste excise tax credit program and to recommend to the Metro Council any proposed changes to such programs.

SECTION 4. Section 5 of this Ordinance is added to and made a part of Metro Code Chapter 7.01.

SECTION 5. Administrative Procedures for Excise Tax Credits

The Executive Officer may establish additional administrative procedures regarding the Excise Tax Credits to set forth eligibility requirements for such credits and to provide for incremental Excise Tax Credits associated with Recovery Rates which fall between the ranges set forth in of Metro Code Chapter 7.01.020(g).

SECTION 6. Effective Date, and Repeal of Ordinance.

The provisions of this Ordinance shall become effective on ~~October~~ ~~November~~ December 1, 2002, and are repealed on the effective date of any Ordinance increasing the fee for disposal of solid waste set forth in Metro Code Section 5.02.025(a) to an amount equal to or greater than \$75 per ton. For the purpose of determining whether the fee for disposal of solid waste set forth in Metro Code Section 5.02.025(a) is greater than \$75 per ton, the Transaction Charge provided in Metro Code Section 5.02.025(a)(3) shall be expressed on a per ton basis by dividing such Transaction Charge by the average number of tons per transaction delivered to Metro South and Metro Central transfer stations during the previous calendar year.

ADOPTED by the Metro Council this _____ day of _____, 2002.

Carl Hosticka, Presiding Officer

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, General Counsel

SOLID WASTE AND RECYCLING COMMITTEE REPORT

CONSIDERATION OF ORDINANCE NO. 02-950A, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 7.01 TO INCREASE THE CREDITS AVAILABLE AGAINST THE SOLID WASTE EXCISE TAX AND MAKING OTHER RELATED CHANGES

CONSIDERATION OF ORDINANCE NO. 02-951A, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.02 TO MODIFY THE REGIONAL SYSTEM FEE CREDIT PROGRAM

CONSIDERATION OF ORDINANCE NO. 02-952A, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.01 TO DECREASE THE MINIMUM FACILITY RECOVERY RATE REQUIREMENT

Date: July 18, 2002

Presented by: Solid Waste and Recycling Committee

Committee Recommendation: At its July 17 meeting, the committee considered Ordinances No. 02-950, 02-951, and 02-952 and voted 3-0 to send the ordinances, as amended, to the Council for adoption. Voting in favor: Councilors McLain, Monroe, and Chair Atherton.

Background: Three ordinances (02-950, 02-951, and 02-952) recommend a package of code changes related to the solid waste system fee and excise tax credit programs. Ordinance No. 01-919B, adopted by the Council in October 2001, required the REM Department to establish a workgroup to review Metro Code provisions related to the regional system fee credit program and recommend changes designed to improve recovery and increase the region's recovery rate. A 12-member workgroup made up of SWAC representatives of the various sectors of the solid waste and recycling community represented on the committee examined all facets of the credit program and produced a series of recommended changes in late February 2002.

Changes related to the system fee credit program are addressed in Ordinances 02-951 and 02-952. Changes related to the excise tax credit program are addressed in Ordinance 02-950. The Council has not specifically requested an examination of the excise tax credit program. However, the REM staff believes that the proposed changes will result in greater conformity between the two credit programs.

Committee Discussion: At its June 19 meeting, the committee received a staff presentation on the package of ordinances, heard public testimony, and reviewed a series of amendments to the ordinances that had been prepared on behalf of Councilor Monroe.

There are six principal recommendations of the SWAC workgroup that are addressed in the package of ordinances. These are presented in great detail in the staff report accompanying the ordinances and are summarized briefly below:

SWAC Workgroup Recommendations:

- 1) For the purpose of receiving the system fee or excise tax credit, Metro will count only the materials that are counted by the DEQ toward meeting the state recovery goal of 62%. To implement this recommendation, language is included in Ordinance 02-951 and Ordinance 02-952 that outlines the specific materials that the DEQ has

excluded from counting toward the recovery goal. The principal effect of this change would be to no longer count "rubble" in the credit programs.

- 2) The current program permits facility operators to count 5% of the source-separated material that they receive toward the recovery rate needed to qualify for the credit program. This provision was based on that some source-separated loads could be contaminated by up to 5%. In practice, contamination of such loads is minimal. Therefore, it is recommended that this allowance be repealed. In order to insure that this change would not negatively facility recovery efforts, Ordinance 02-952 includes a code amendment that would reduce the minimum qualifying percentage for the system fee credit by 5%. An identical change is proposed for the excise tax program in Ordinance 02-950.
- 3) The combined fiscal impact of recommendations 1 and 2 would be to reduce credit payments by \$400-450,000. Because such a reduction would likely reduce facility-based recovery efforts, the workgroup also recommended that the dollar amount paid for the various levels of recovery rates should be increased to make total future annual payments about equal to the current level. Ordinance 02-952 would modify the current system fee credit payment schedule from the current range of \$8 to \$12 to a new higher range of \$9.92 to \$14.
- 4) The workgroup requested that Metro explore options for increasing recovery from loads that are delivered directly to dry waste landfills. Staff is currently exploring such options, but these are not addressed in the proposed package of ordinances.
- 5) Several landfills and disposal facilities located outside Metro's geographic boundaries have approached the REM staff concerning their ability to access the fee and tax credit programs. While these programs do not extend to programs outside of Metro's boundaries, the REM staff has been advised by the Office of General Counsel that such an extension could be made by amending a facilities Designated Facility Agreement. Staff is currently discussing this potential change with the affected facilities. Such a change would require Council approval, but is not addressed in this package of ordinance.
- 6) The workgroup recommended that the credit programs be sunsetted when the Metro tip fee reaches \$75/ton. Language to this effect was included in Ordinance 02-950 for the excise tax credit and in Ordinance 02-951 for the system fee credit program.

Monroe Amendments. Councilor Monroe had requested that several amendments to the proposed ordinances be drafted. These were presented to the committee by Councilor Monroe. The amendments address the following areas:

- 1) It was originally thought that Council action on the proposed package of ordinances would be completed by the end of June. Given that final action will now likely occur in early August, it is necessary to change the effective date of each of the ordinances from October 1 to December 1, 2002.
- 2) Based on the original wording of the ordinances, the REM department would be specifically prohibited from expending more funds on the credit programs than had been budgeted. Councilor Monroe contended that the semi-annual program review

process outlined in Code, and the normal budget amendment process would give the Council more than adequate opportunity to review the need for additional funding for these system without placing restrictive language directly into the Code. His amendment would remove the Code language restricting expenditures for the programs. Additional amendments will be prepared at Councilor McLain's direction. These will require that the REM staff advise the Metro Council in advance of circumstances that might result in the credit program exceeding the amount budgeted for it.

- 3) Councilor Monroe also proposed an amendment to delete the proposed language that would automatically sunset the programs if the Metro tip fee again reached \$75/ton. He noted that some recovery facilities were built during the early and mid 1990's when the Metro tip fee was \$75 in anticipation that the fee would only go higher. The credit program was developed, in part, to address the financial stability of these facilities when the tip fee actually dropped. However, in the current environment, a variety of factors could affect the need for a continuing credit system. Examples include inflation, the market for recyclable materials and facility operating costs.
- 4) Councilor Monroe also proposed an amendment to more directly tie the types of materials that would qualify for the credit program to what was perceived to be a "list" of materials that DEQ would allow to be counted toward the state recovery goal. Further research found that the DEQ "list" was not outlined in state law or by administrative rule, but rather as an attachment to a staff memo referred to as the "What Counts" document. Legal, REM and Council staff concluded that it would be questionable to link the Metro program to such a staff document.

Therefore, Councilor Monroe introduced a different amendment at the July 17 meeting that would retain the original language in the proposed ordinances relating To excluded materials which the exception that "brick" would be removed from the list. This was based on information provided by DEQ that indicated that "brick" from remodeling, construction and demolition projects would count toward the state goal.

One point of discussion related to item #2 above, was whether the Council was guaranteeing a 12-month program, or not. Councilor McLain said that the Council does not have an unlimited purse. While the intention is to support a 12-month program, if additional program revenues or expenditures are needed, she wants the Council to be in a position to make the decision.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 02-950, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 7.01 TO INCREASE THE CREDITS AVAILABLE AGAINST THE SOLID WASTE EXCISE TAX AND MAKING OTHER RELATED CHANGES

May 23, 2002

Prepared by: Tom Chaimov

BACKGROUND

Summary

This staff report summarizes recommendations on revising the Regional System Fee (RSF) credit program to improve recovery. The report discusses the changes to the Metro Code that would be required in order to implement those recommendations and to implement similar changes in the Excise Tax credit program. Also included are other recommendations beyond the confines of the RSF credit program that are critical to maximizing recovery in the region.

Implementing these recommendations and related changes would require amendments to three chapters of the Metro Code: 5.01, 5.02, and 7.01. This staff report accompanies three separate ordinances, to implement recommendations, one each for Metro Code Chapters 5.01, 5.02, and 7.01.

Recommendations

A 12-member work group, representing all the sectors of the Solid Waste Advisory Committee (SWAC), met almost weekly from December 2001 through February 2002 to debate the merits of a variety of options for improving post-collection recovery in the region. On February 25, 2002, the SWAC unanimously endorsed the work group's recommended changes to the Regional System Fee Credit program, as follows:

Recommendation 1. Count only materials that Oregon Department of Environmental Quality (DEQ) counts

The Metro region is required by State law to achieve a recovery rate of 62% by 2005. In the State's calculation of the regional recovery rate, certain materials are excluded, such as dirt, rock, and industrial waste; however, Metro has traditionally counted some of these materials for the purposes of calculating the individual facility recovery rates used in the RSF credit program. Counting only those materials that the State counts will now focus the program on recovery activity that boosts the region's recovery rate.

In the Metro region, rubble (concrete, asphalt, etc.) is the material most affected; however, high levels of rubble recovery currently occur at facilities that are not regulated by Metro and are not eligible for recovery incentives. SWAC believes that these high recovery levels will continue even if rubble does not count for the purposes of the recovery incentives.

Recommendation 2. Count only recovery from mixed loads

Material Recovery Facilities receive loads of both mixed waste (recoverable and non-recoverable wastes, e.g., from construction sites) and source-separated materials (such as recyclables from curbside collection programs). Recognizing that even source-separated loads could contain some contamination, in 1998 Metro designed the RSF credit program to allow 5% of all source-separated materials accepted at mixed waste processing facilities to count toward the Facility Recovery Rate. Actual contamination in these

loads has typically been much less, about 0.5%. Therefore, the recommended action is to discontinue an allowance for source-separated residual. Discontinuing the allowance will help to maintain the integrity of the source-separated system and will help focus facility recovery on the mixed waste stream.

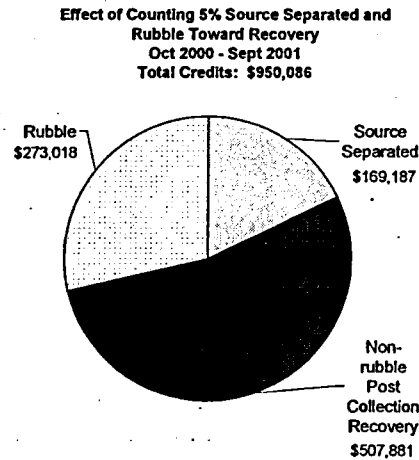


Figure 1. During the twelve months through September 2001, Metro granted approximately \$950,000 in Regional System Fee Credits; about \$440,000 of which rewarded facilities for recovering rubble (\$273,018), which does not count toward the regional recovery rate, and for accepting large amounts of source-separated recyclables (\$169,187).

Recommendation 3. Boost recovery with higher incentives

Implementing recommendations #1 and #2 above would free up about \$400,000 that could be redirected to improve post-collection recovery. Capitalizing on these savings by offering a higher incentive for materials that do count could help to increase the regional recovery rate. Maintaining the current program policy of reducing the RSF on disposal, based on each facility's recovery rate, would reward each facility according to its individual recovery effort: the higher the facility recovery rate, the larger the facility benefit. By redeploying the above savings as higher credits such that facilities as a whole continue to pay about the same effective RSF, the following credit curve results:

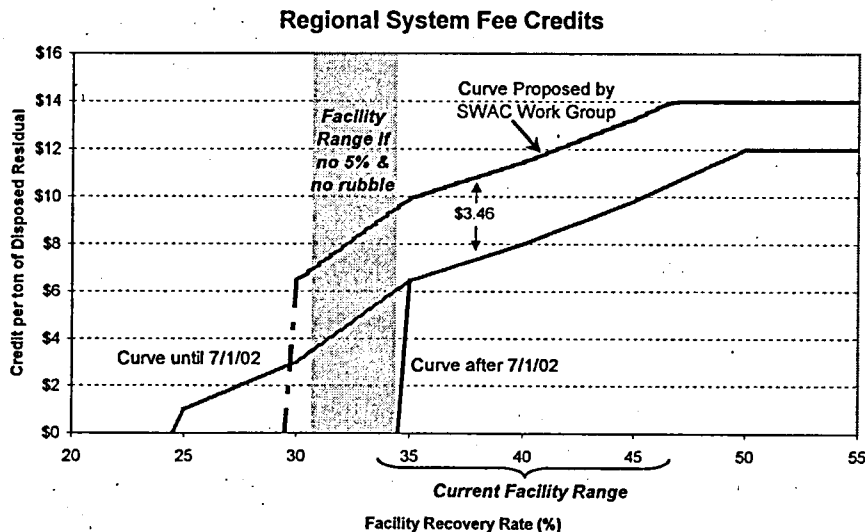


Figure 2. Regional System Fee credits available currently, until July 1, 2002; after July 1, 2002, pursuant to Ordinance 01-919B; and proposed. The higher proposed curve, recommended by SWAC because Facility Recovery Rates would be calculated differently, would ensure that facilities continue to pay about the same effective RSF as they are now.

Excise Tax Credits

Because a change in the way Metro calculates the Facility Recovery Rates would also affect Excise Tax credits, an analogous increase in the Excise Tax credit schedule is proposed as follows:

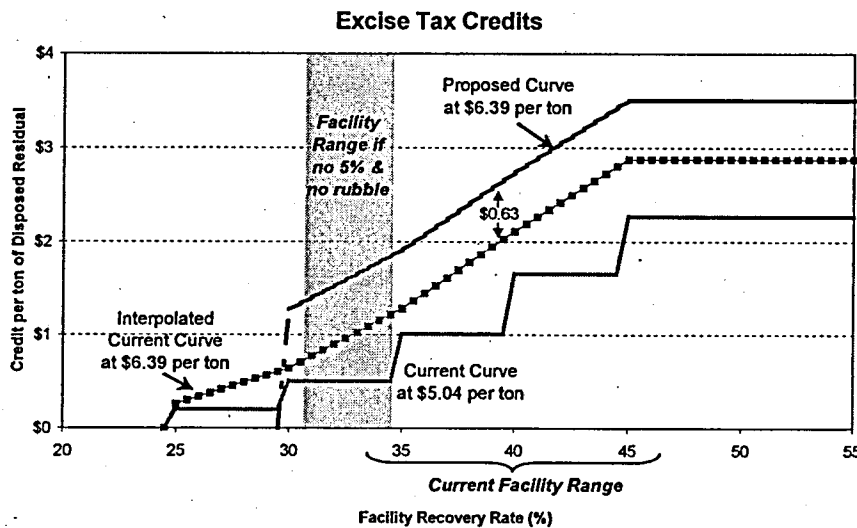


Figure 3. Excise Tax credits available currently and as proposed. The higher proposed curve, recommended by SWAC because Facility Recovery Rates would be calculated differently, would ensure that facilities continue to pay about the same effective Excise Tax as they are now. An oversight in the drafting of Ordinance 00-857, which established Excise Tax credits, prevented the agency from implementing a "smoothed" curve as shown. Ordinance 02-950 proposes to remedy that oversight.

Minimum Facility Recovery Rate

Currently, Metro-regulated facilities are required to maintain a minimum recovery rate of 25%, increasing to 30% July 1, 2002. The 5% increase was adopted by the Metro Council under the current formula for computing facility recovery rates. Counting neither rubble nor residual from source-separated recyclables for the purposes of calculating recovery rates would mean changing the formula that Metro uses to calculate Facility Recovery Rates.

The current formula, counting rubble and 5% of source-separated loads, results in a median Facility Recovery Rate of about 40% (see "Current Facility Range" in Figures 2 and 3). Changing the calculation as proposed (no rubble, no 5%) would result in a median Facility Recovery Rate of about 30%, with no change in recovered tonnage or in the regional recovery rate. For this reason, SWAC recommends that the minimum Facility Recovery Rate requirement remain at the current 25%, with eligibility for RSF and Excise Tax credits beginning at 30%. While this adjustment may give the impression that Metro is relaxing its recovery requirement, the opposite is true: a 25% minimum recovery rate under the proposed formula is actually more difficult to achieve than a 30% minimum under the current formula.

Additional Recommendations

In addition to specific changes to the RSF credit program, SWAC made the following recommendations to maximize recovery in the Metro region:

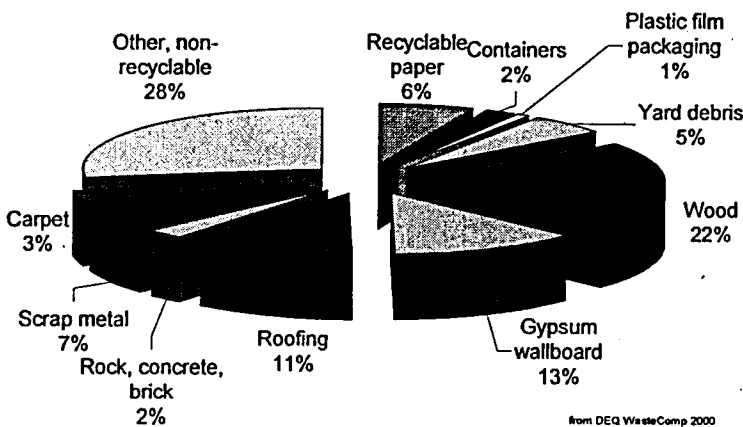
Recommendation 4. Increase recovery from currently landfilled loads

While some increase in the regional recovery rate may be achieved through the above adjustments to the RSF and Excise Tax credit programs, the greatest potential for boosting the regional recovery rate lies in waste that now is delivered directly to landfills.

Last year almost as many tons of mixed dry waste were delivered to the two out-of-district Washington County landfills as were delivered to in-Metro Material Recovery Facilities. Processing these landfilled loads at current recovery rates could almost double post-collection recovery and could add up to two full points to the regional recovery rate. Figures 4a and 4b compare the materials available for recovery in landfilled loads with materials in the dry residual typically disposed of by MRFs (data from Oregon Department of Environmental Quality.)

SWAC is asking Metro to investigate a range of potential means to process loads now delivered directly to landfills.

Waste Delivered to Washington Co. Landfills



MRF Residual

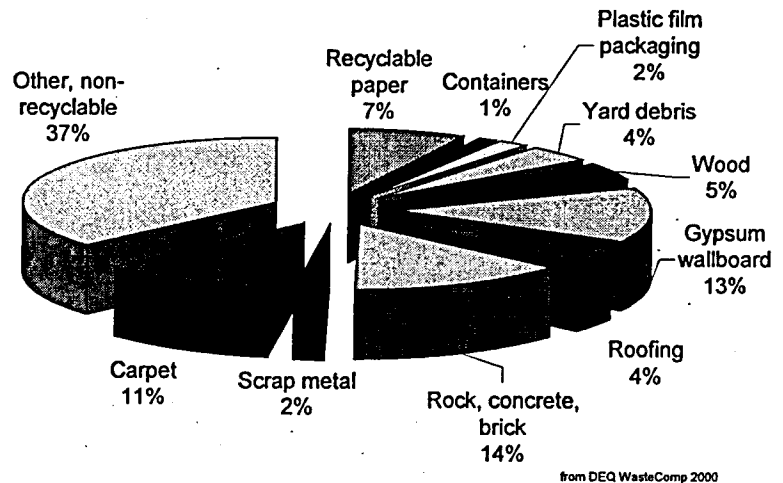


Figure 4. Dry waste loads delivered to Lakeside and Hillsboro landfills in Washington County are rich in recoverable materials. (a) 2000 DEQ waste characterization of loads delivered to Washington County landfills; (b) For comparison, the 2000 DEQ waste characterization of loads delivered to in-Metro Material Recovery Facilities. Note the apparent recovery potential, particularly of wood, at the landfills.

Recommendation 5. Provide credit access to out-of-district facilities

Currently, there are five Metro-regulated facilities that participate in the RSF credit program: East County Recycling, Pride Recycling, Recycle America, Wastech, and Willamette Resources, Inc. SWAC recommends that facilities outside Metro’s jurisdiction, but whose recovery helps the region meet its recovery goals, should have access to RSF credits, provided that they satisfy the same eligibility requirements as in-Metro facilities, and provided that they grant Metro auditing and inspection authority comparable to its authority at in-Metro facilities. Metro’s Office of the General Counsel has found that no change to Metro Code is required to enable Metro to grant credits to Designated Facilities. Regional

System Fee and Excise Tax credits may be granted via a Designated Facility Agreement. Accordingly, no change to the current Metro Code has been proposed in this regard.

Recommendation 6. Monitor program effectiveness

Semi-annual updates and a comprehensive program review in 2004 provide the Metro Council with periodic opportunities to evaluate the effectiveness of the RSF credit program and to make timely adjustments accordingly. Concurrent review requirements have been proposed for the Excise Tax credit program. In addition, a proposed program sunset for both RSF and Excise Tax credits if the Metro tip fee reaches historic pre-RSFC highs of \$75.00 per ton provides a signal to facilities that it is not Metro's intention to provide this economic incentive indefinitely.

ANALYSIS/INFORMATION

1. Known Opposition

None. The Solid Waste Advisory Committee voted unanimously to support the recommendations implemented by these ordinances.

2. Legal Antecedents

Ordinance 01-919B, "For the Purpose of Amending Metro Code Chapter 5.02 to Improve the Effectiveness of the Regional System Fee Credit Program and to Remove the Program Sunset Date", adopted by the Metro Council in October 2001, established a work group to make recommendations implementing the new focus of the Regional System Fee Credit program, namely to improve recovery and boost the region's recovery rate.

Regional System Fee Credits

Metro Code Chapter 5.02 provides Material Recovery Facilities with an opportunity to pay a reduced Regional System Fee for the disposal of dry waste processing residual (i.e., the waste left over after recyclables have been recovered from loads of mixed dry waste.) This program is referred to as the Regional System Fee (RSF) credit program.

Excise Tax Credits

Metro Code Chapter 7.01 provides Material Recovery Facilities with an opportunity to pay a reduced solid waste Excise Tax for the disposal of dry waste processing residual.

Minimum Recovery Rate

Metro Code Chapter 5.01 requires that Metro-regulated facilities recover a minimum of 25% of non-putrescible waste until July 1, 2002 and 30% thereafter.

3. Anticipated Effects

The anticipated effect is that recovery of targeted waste materials will increase.

4. Budget Impact

Solid Waste Fund

The Fiscal Year 2002-03 proposed budget appropriation for Regional System Fee credits is \$900,000, and pursuant to Ordinance 01-919B, effective July 1, 2002, the credit program will be capped at that amount.

With current recovery, about \$870,000 would be paid out in Regional System Fee Credits during FY 2002-03 if the proposed changes were in effect for the entire fiscal year.

General Fund

With a \$6.39 per-ton solid waste Excise Tax and assuming current waste generation and recovery, the total Excise Tax credits granted for Fiscal Year 2002-03 would be about \$210,000. The proposed changes to the Recovery Rate definition and to the Excise Tax credit schedule would lower that expectation to about \$170,000. Ordinance 02-950 proposes to limit the total Excise Tax credits granted in any fiscal year to the dollar amount budgeted for that year, currently \$170,000.

Other

Authorizing broader participation in the Regional System Fee and Excise Tax Credit programs itself causes no budget impact; however, there may be negative impacts to both the solid waste and general funds in the future, especially if the exemption from collecting Metro fees and excise tax currently granted to Material Recovery Facilities is extended to additional facilities.

RECOMMENDED ACTION

The Executive Officer recommends approval of Ordinance No. 02-950.

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Agenda Item Number 5.2

**Ordinance No. 02-951B, For the Purpose of Amending Metro Code Chapter 5.02 to Modify the Regional System
Credit Fee Program.**

Second Reading

**Metro Council Meeting
Thursday, August 8, 2002
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO) ORDINANCE NO. 02-951AB
CODE CHAPTER 5.02 TO MODIFY THE)
REGIONAL SYSTEM FEE CREDIT PROGRAM) Introduced by Mike Burton,
) Executive Officer

WHEREAS, in 2001, the Metro Council adopted Ordinance 01-919B to amend Chapter 5.02 of the Metro Code by providing that the primary goal of the Regional System Fee credit program shall be to improve material recovery in the Metro region and to boost the region's recovery rate; and,

WHEREAS, the Metro Council in adopting Ordinance 01-919B found that an operating subsidy could be a more effective recovery incentive if it were targeted at certain materials; and,

WHEREAS, pursuant to Ordinance 01-919B, the Metro Council established a work group of Metro staff and interested members of the Solid Waste Advisory Committee to make recommendations for implementing its findings; and,

WHEREAS, the Solid Waste Advisory Committee unanimously endorsed certain recommendations of the stakeholder work group; and,

WHEREAS, the Director of the Regional Environmental Management Department conveyed those recommendations to the Solid Waste and Recycling Committee of the Metro Council, together with certain refinements to such recommendations; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Subsection (w) of Metro Code Section 5.02.015 is amended to read:

(w) "Facility Recovery Rate" means the percentage expressed by dividing the ~~sum-amount of~~ tonnage recovered at a solid waste facility, ~~excluding Source Separate Recyclable Materials,~~ by the sum of the tonnage recovered at such facility, ~~excluding Source Separate Recyclable Materials,~~ plus the Processing Residual ~~at-from~~ such facility. As used in this subsection "tonnage recovered at solid waste facilities" excludes Source Separate Recyclable Materials; Waste from industrial processes; and ash, inert rock, concrete, brick, concrete block, foundry brick, asphalt, dirt, and sand, and any similar inert materials.

SECTION 2. Metro Code Chapter 5.02.047, as amended by Section 4 of Metro Ordinance 01-919B, is further amended to read:

5.02.047 Regional System Fee Credits

(a) A solid waste facility which is certified, licensed or franchised by Metro pursuant to Metro Code Chapter 5.01 or a Designated Facility regulated by Metro under the terms of an intergovernmental agreement shall be allowed a credit against the Regional System Fee otherwise due each month under Section 5.02.045 for disposal of Processing Residuals from the facility. The Facility Recovery Rate shall be calculated for each six-month period before the month in which the credit is claimed. The amount of such credit shall be in accordance with and no greater than as provided on the following table:

System Fee Credit Schedule

<u>Facility Recovery Rate</u>		<u>System Fee Credit of no more than</u>
<u>From Above</u>	<u>Up To & Including</u>	
0%	35% 30%	0.00
<u>30%</u>	<u>35%</u>	<u>9.92</u>
35%	40%	8.00 11.46
40%	45%	9.82 13.28
45%	100%	12.00 14.00

(b) The Executive Officer

- (1) shall establish by ~~July 1, 2002~~ administrative procedures to implement ~~Section 2(b) and Section 2(e) of this Ordinance~~ subsections (b) and (c) of Metro Code Section 5.02.046; and
- (2) may establish additional administrative procedures regarding the Regional System Fee Credits, including, but not limited to establishing eligibility requirements for such credits and establishing incremental System Fee Credits associated with Recovery Rates which fall between the ranges set forth in paragraph (a) of this section.

(c) The following users of Metro solid waste system facilities shall be allowed a credit in the amount of \$9 per ton against the Regional System Fee otherwise due under Section 5.02.045(a):

- (1) Users of Metro Central and Metro South Transfer Stations;
- (2) Any Person delivering authorized waste:
 - (A) to any landfill or other solid waste facility that is authorized to receive such waste through a Metro license, certificate, franchise or Designated Facility Agreement; or
 - (B) under the authority of a Metro Non-System License.

(d) Any person delivering Cleanup Material Contaminated By Hazardous Substances that is derived from an environmental cleanup of a nonrecurring event, and delivered to any Solid Waste System Facility authorized to accept such substances shall be allowed a credit in the amount of \$12.50 against the Regional System Fee otherwise due under Section 5.02.045(a) of this Chapter

~~(e) During any Fiscal Year, the total aggregate amount of credits granted under the Regional System Fee credit program shall not exceed the dollar amount appropriated budgeted for such purpose.~~ (e) During any Fiscal Year, the total aggregate amount of credits granted under the Regional System Fee credit program shall not exceed the dollar amount budget without the prior review and authorization of the Metro Council

~~(f)~~ (e)(f) The Director of the Regional Environmental Management Department shall make a semi-annual report to the Council on the status of the credit program. The report shall include that aggregate amount of all credits paid during the preceding six months and the amount paid to each facility eligible

for the credit program. The report shall also project whether the appropriation for the credit program will be sufficient to meet anticipated credit payment requests and train maintain existing contingency funding.

~~(g) The provisions of this Metro Code Section 5.02.047 are repealed on the effective date of any Ordinance increasing the fee for disposal of solid waste set forth in Metro Code Section 5.02.025(a) to an amount equal to or greater than \$75 per ton. For the purpose of determining whether the fee for disposal of solid waste set forth in Metro Code Section 5.02.025(a) is greater than \$75 per ton, the Transaction Charge provided in Metro Code Section 5.02.025(a)(3) shall be expressed on a per-ton basis by dividing such Transaction Charge by the average number of tons per transaction delivered to Metro South and Metro Central transfer stations during the previous calendar year."~~

SECTION 3. Effective Date

The provisions of this Ordinance shall become effective on ~~October~~ November ~~December~~ 1, 2002.

ADOPTED by the Metro Council this _____ day of _____, 2002.

Carl Hosticka, Presiding Officer

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, General Counsel

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SOLID WASTE AND RECYCLING COMMITTEE REPORT

CONSIDERATION OF ORDINANCE NO. 02-950A, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 7.01 TO INCREASE THE CREDITS AVAILABLE AGAINST THE SOLID WASTE EXCISE TAX AND MAKING OTHER RELATED CHANGES

CONSIDERATION OF ORDINANCE NO. 02-951A, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.02 TO MODIFY THE REGIONAL SYSTEM FEE CREDIT PROGRAM

CONSIDERATION OF ORDINANCE NO. 02-952A, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.01 TO DECREASE THE MINIMUM FACILITY RECOVERY RATE REQUIREMENT

Date: July 18, 2002

Presented by: Solid Waste and Recycling Committee

Committee Recommendation: At its July 17 meeting, the committee considered Ordinances No. 02-950, 02-951, and 02-952 and voted 3-0 to send the ordinances, as amended, to the Council for adoption. Voting in favor: Councilors McLain, Monroe, and Chair Atherton.

Background: Three ordinances (02-950, 02-951, and 02-952) recommend a package of code changes related to the solid waste system fee and excise tax credit programs. Ordinance No. 01-919B, adopted by the Council in October 2001, required the REM Department to establish a workgroup to review Metro Code provisions related to the regional system fee credit program and recommend changes designed to improve recovery and increase the region's recovery rate. A 12-member workgroup made up of SWAC representatives of the various sectors of the solid waste and recycling community represented on the committee examined all facets of the credit program and produced a series of recommended changes in late February 2002.

Changes related to the system fee credit program are addressed in Ordinances 02-951 and 02-952. Changes related to the excise tax credit program are addressed in Ordinance 02-950. The Council has not specifically requested an examination of the excise tax credit program. However, the REM staff believes that the proposed changes will result in greater conformity between the two credit programs.

Committee Discussion: At its June 19 meeting, the committee received a staff presentation on the package of ordinances, heard public testimony, and reviewed a series of amendments to the ordinances that had been prepared on behalf of Councilor Monroe.

There are six principal recommendations of the SWAC workgroup that are addressed in the package of ordinances. These are presented in great detail in the staff report accompanying the ordinances and are summarized briefly below:

SWAC Workgroup Recommendations:

- 1) For the purpose of receiving the system fee or excise tax credit, Metro will count only the materials that are counted by the DEQ toward meeting the state recovery goal of 62%. To implement this recommendation, language is included in Ordinance 02-951 and Ordinance 02-952 that outlines the specific materials that the DEQ has

excluded from counting toward the recovery goal. The principal effect of this change would be to no longer count "rubble" in the credit programs.

- 2) The current program permits facility operators to count 5% of the source-separated material that they receive toward the recovery rate needed to qualify for the credit program. This provision was based on that some source-separated loads could be contaminated by up to 5%. In practice, contamination of such loads is minimal. Therefore, it is recommended that this allowance be repealed. In order to insure that this change would not negatively facility recovery efforts, Ordinance 02-952 includes a code amendment that would reduce the minimum qualifying percentage for the system fee credit by 5%. An identical change is proposed for the excise tax program in Ordinance 02-950.
- 3) The combined fiscal impact of recommendations 1 and 2 would be to reduce credit payments by \$400-450,000. Because such a reduction would likely reduce facility-based recovery efforts, the workgroup also recommended that the dollar amount paid for the various levels of recovery rates should be increased to make total future annual payments about equal to the current level. Ordinance 02-952 would modify the current system fee credit payment schedule from the current range of \$8 to \$12 to a new higher range of \$9.92 to \$14.
- 4) The workgroup requested that Metro explore options for increasing recovery from loads that are delivered directly to dry waste landfills. Staff is currently exploring such options, but these are not addressed in the proposed package of ordinances.
- 5) Several landfills and disposal facilities located outside Metro's geographic boundaries have approached the REM staff concerning their ability to access the fee and tax credit programs. While these programs do not extend to programs outside of Metro's boundaries, the REM staff has been advised by the Office of General Counsel that such an extension could be made by amending a facilities Designated Facility Agreement. Staff is currently discussing this potential change with the affected facilities. Such a change would require Council approval, but is not addressed in this package of ordinance.
- 6) The workgroup recommended that the credit programs be sunsetted when the Metro tip fee reaches \$75/ton. Language to this effect was included in Ordinance 02-950 for the excise tax credit and in Ordinance 02-951 for the system fee credit program.

Monroe Amendments. Councilor Monroe had requested that several amendments to the proposed ordinances be drafted. These were presented to the committee by Councilor Monroe. The amendments address the following areas:

- 1) It was originally thought that Council action on the proposed package of ordinances would be completed by the end of June. Given that final action will now likely occur in early August, it is necessary to change the effective date of each of the ordinances from October 1 to December 1, 2002.
- 2) Based on the original wording of the ordinances, the REM department would be specifically prohibited from expending more funds on the credit programs than had been budgeted. Councilor Monroe contended that the semi-annual program review

process outlined in Code, and the normal budget amendment process would give the Council more than adequate opportunity to review the need for additional funding for these system without placing restrictive language directly into the Code. His amendment would remove the Code language restricting expenditures for the programs. Additional amendments will be prepared at Councilor McLain's direction. These will require that the REM staff advise the Metro Council in advance of circumstances that might result in the credit program exceeding the amount budgeted for it.

- 3) Councilor Monroe also proposed an amendment to delete the proposed language that would automatically sunset the programs if the Metro tip fee again reached \$75/ton. He noted that some recovery facilities were built during the early and mid 1990's when the Metro tip fee was \$75 in anticipation that the fee would only go higher. The credit program was developed, in part, to address the financial stability of these facilities when the tip fee actually dropped. However, in the current environment, a variety of factors could affect the need for a continuing credit system. Examples include inflation, the market for recyclable materials and facility operating costs.
- 4) Councilor Monroe also proposed an amendment to more directly tie the types of materials that would qualify for the credit program to what was perceived to be a "list" of materials that DEQ would allow to be counted toward the state recovery goal. Further research found that the DEQ "list" was not outlined in state law or by administrative rule, but rather as an attachment to a staff memo referred to as the "What Counts" document. Legal, REM and Council staff concluded that it would be questionable to link the Metro program to such a staff document.

Therefore, Councilor Monroe introduced a different amendment at the July 17 meeting that would retain the original language in the proposed ordinances relating To excluded materials which the exception that "brick" would be removed from the list. This was based on information provided by DEQ that indicated that "brick" from remodeling, construction and demolition projects would count toward the state goal.

One point of discussion related to item #2 above, was whether the Council was guaranteeing a 12-month program, or not. Councilor McLain said that the Council does not have an unlimited purse. While the intention is to support a 12-month program, if additional program revenues or expenditures are needed, she wants the Council to be in a position to make the decision.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 02-951, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.02 TO MODIFY THE REGIONAL SYSTEM FEE CREDIT PROGRAM

May 23, 2002

Prepared by: Tom Chaimov

BACKGROUND

Summary

This staff report summarizes recommendations on revising the Regional System Fee (RSF) credit program to improve recovery. The report discusses the changes to the Metro Code that would be required in order to implement those recommendations and to implement similar changes in the Excise Tax credit program. Also included are other recommendations beyond the confines of the RSF credit program that are critical to maximizing recovery in the region.

Implementing these recommendations and related changes would require amendments to three chapters of the Metro Code: 5.01, 5.02, and 7.01. This staff report accompanies three separate ordinances, to implement recommendations, one each for Metro Code Chapters 5.01, 5.02, and 7.01.

Recommendations

A 12-member work group, representing all the sectors of the Solid Waste Advisory Committee (SWAC), met almost weekly from December 2001 through February 2002 to debate the merits of a variety of options for improving post-collection recovery in the region. On February 25, 2002, the SWAC unanimously endorsed the work group's recommended changes to the Regional System Fee Credit program, as follows:

Recommendation 1. Count only materials that Oregon Department of Environmental Quality (DEQ) counts

The Metro region is required by State law to achieve a recovery rate of 62% by 2005. In the State's calculation of the regional recovery rate, certain materials are excluded, such as dirt, rock, and industrial waste; however, Metro has traditionally counted some of these materials for the purposes of calculating the individual facility recovery rates used in the RSF credit program. Counting only those materials that the State counts will now focus the program on recovery activity that boosts the region's recovery rate.

In the Metro region, rubble (concrete, asphalt, etc.) is the material most affected; however, high levels of rubble recovery currently occur at facilities that are not regulated by Metro and are not eligible for recovery incentives. SWAC believes that these high recovery levels will continue even if rubble does not count for the purposes of the recovery incentives.

Recommendation 2. Count only recovery from mixed loads

Material Recovery Facilities receive loads of both mixed waste (recoverable and non-recoverable wastes, e.g., from construction sites) and source-separated materials (such as recyclables from curbside collection programs). Recognizing that even source-separated loads could contain some contamination, in 1998 Metro designed the RSF credit program to allow 5% of all source-separated materials accepted at mixed waste processing facilities to count toward the Facility Recovery Rate. Actual contamination in these loads has typically been much less, about 0.5%. Therefore, the recommended action is to discontinue an

allowance for source-separated residual. Discontinuing the allowance will help to maintain the integrity of the source-separated system and will help focus facility recovery on the mixed waste stream.

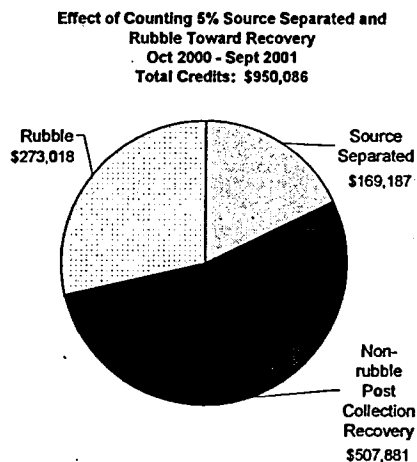


Figure 1. During the twelve months through September 2001, Metro granted approximately \$950,000 in Regional System Fee Credits; about \$440,000 of which rewarded facilities for recovering rubble (\$273,018), which does not count toward the regional recovery rate, and for accepting large amounts of source-separated recyclables (\$169,187).

Recommendation 3. Boost recovery with higher incentives

Implementing recommendations #1 and #2 above would free up about \$400,000 that could be redirected to improve post-collection recovery. Capitalizing on these savings by offering a higher incentive for materials that do count could help to increase the regional recovery rate. Maintaining the current program policy of reducing the RSF on disposal, based on each facility's recovery rate, would reward each facility according to its individual recovery effort: the higher the facility recovery rate, the larger the facility benefit. By redeploying the above savings as higher credits such that facilities as a whole continue to pay about the same effective RSF, the following credit curve results:

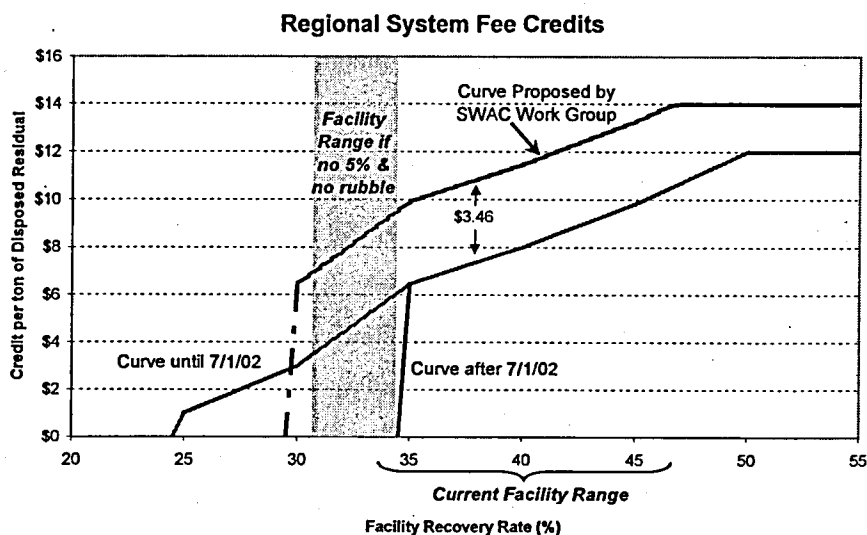


Figure 2. Regional System Fee credits available currently, until July 1, 2002; after July 1, 2002, pursuant to Ordinance 01-919B; and proposed. The higher proposed curve, recommended by SWAC because Facility Recovery Rates would be calculated differently, would ensure that facilities continue to pay about the same effective RSF as they are now.

Excise Tax Credits

Because a change in the way Metro calculates the Facility Recovery Rates would also affect Excise Tax credits, an analogous increase in the Excise Tax credit schedule is proposed as follows:

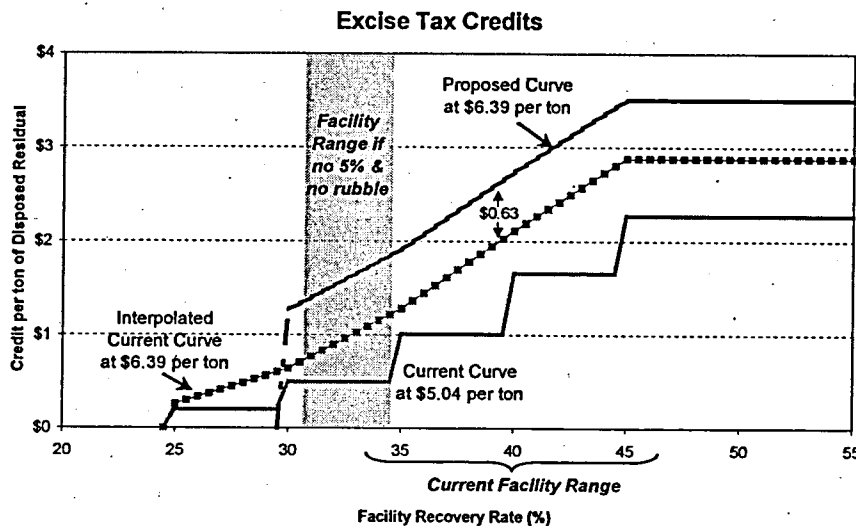


Figure 3. Excise Tax credits available currently and as proposed. The higher proposed curve, recommended by SWAC because Facility Recovery Rates would be calculated differently, would ensure that facilities continue to pay about the same effective Excise Tax as they are now. An oversight in the drafting of Ordinance 00-857, which established Excise Tax credits, prevented the agency from implementing a "smoothed" curve as shown. Ordinance 02-950 proposes to remedy that oversight.

Minimum Facility Recovery Rate

Currently, Metro-regulated facilities are required to maintain a minimum recovery rate of 25%, increasing to 30% July 1, 2002. The 5% increase was adopted by the Metro Council under the current formula for computing facility recovery rates. Counting neither rubble nor residual from source-separated recyclables for the purposes of calculating recovery rates would mean changing the formula that Metro uses to calculate Facility Recovery Rates.

The current formula, counting rubble and 5% of source-separated loads, results in a median Facility Recovery Rate of about 40% (see "Current Facility Range" in Figures 2 and 3). Changing the calculation as proposed (no rubble, no 5%) would result in a median Facility Recovery Rate of about 30%, with no change in recovered tonnage or in the regional recovery rate. For this reason, SWAC recommends that the minimum Facility Recovery Rate requirement remain at the current 25%, with eligibility for RSF and Excise Tax credits beginning at 30%. While this adjustment may give the impression that Metro is relaxing its recovery requirement, the opposite is true: a 25% minimum recovery rate under the proposed formula is actually more difficult to achieve than a 30% minimum under the current formula.

Additional Recommendations

In addition to specific changes to the RSF credit program, SWAC made the following recommendations to maximize recovery in the Metro region:

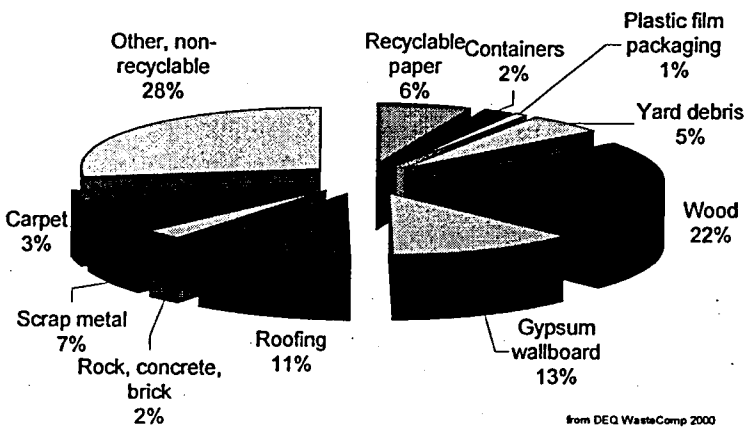
Recommendation 4. Increase recovery from currently landfilled loads

While some increase in the regional recovery rate may be achieved through the above adjustments to the RSF and Excise Tax credit programs, the greatest potential for boosting the regional recovery rate lies in waste that now is delivered directly to landfills.

Last year almost as many tons of mixed dry waste were delivered to the two out-of-district Washington County landfills as were delivered to in-Metro Material Recovery Facilities. Processing these landfilled loads at current recovery rates could almost double post-collection recovery and could add up to two full points to the regional recovery rate. Figures 4a and 4b compare the materials available for recovery in landfilled loads with materials in the dry residual typically disposed of by MRFs (data from Oregon Department of Environmental Quality.)

SWAC is asking Metro to investigate a range of potential means to process loads now delivered directly to landfills.

Waste Delivered to Washington Co. Landfills



MRF Residual

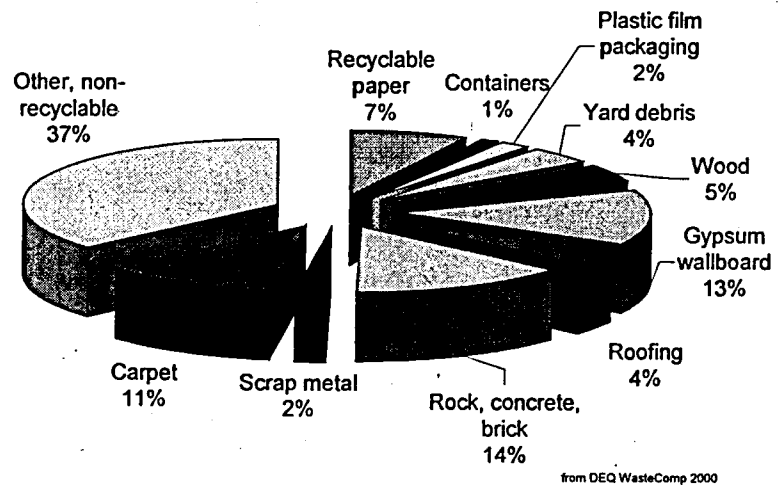


Figure 4. Dry waste loads delivered to Lakeside and Hillsboro landfills in Washington County are rich in recoverable materials. (a) 2000 DEQ waste characterization of loads delivered to Washington County landfills; (b) For comparison, the 2000 DEQ waste characterization of loads delivered to in-Metro Material Recovery Facilities. Note the apparent recovery potential, particularly of wood, at the landfills.

Recommendation 5. Provide credit access to out-of-district facilities

Currently, there are five Metro-regulated facilities that participate in the RSF credit program: East County Recycling, Pride Recycling, Recycle America, Wastech, and Willamette Resources, Inc. SWAC recommends that facilities outside Metro’s jurisdiction, but whose recovery helps the region meet its recovery goals, should have access to RSF credits, provided that they satisfy the same eligibility requirements as in-Metro facilities, and provided that they grant Metro auditing and inspection authority comparable to its authority at in-Metro facilities. Metro’s Office of the General Counsel has found that no change to Metro Code is required to enable Metro to grant credits to Designated Facilities. Regional

System Fee and Excise Tax credits may be granted via a Designated Facility Agreement. Accordingly, no change to the current Metro Code has been proposed in this regard.

Recommendation 6. Monitor program effectiveness

Semi-annual updates and a comprehensive program review in 2004 provide the Metro Council with periodic opportunities to evaluate the effectiveness of the RSF credit program and to make timely adjustments accordingly. Concurrent review requirements have been proposed for the Excise Tax credit program. In addition, a proposed program sunset for both RSF and Excise Tax credits if the Metro tip fee reaches historic pre-RSFC highs of \$75.00 per ton provides a signal to facilities that it is not Metro's intention to provide this economic incentive indefinitely.

ANALYSIS/INFORMATION

1. Known Opposition

None. The Solid Waste Advisory Committee voted unanimously to support the recommendations implemented by these ordinances.

2. Legal Antecedents

Ordinance 01-919B, "For the Purpose of Amending Metro Code Chapter 5.02 to Improve the Effectiveness of the Regional System Fee Credit Program and to Remove the Program Sunset Date", adopted by the Metro Council in October 2001, established a work group to make recommendations implementing the new focus of the Regional System Fee Credit program, namely to improve recovery and boost the region's recovery rate.

Regional System Fee Credits

Metro Code Chapter 5.02 provides Material Recovery Facilities with an opportunity to pay a reduced Regional System Fee for the disposal of dry waste processing residual (i.e., the waste left over after recyclables have been recovered from loads of mixed dry waste.) This program is referred to as the Regional System Fee (RSF) credit program.

Excise Tax Credits

Metro Code Chapter 7.01 provides Material Recovery Facilities with an opportunity to pay a reduced solid waste Excise Tax for the disposal of dry waste processing residual.

Minimum Recovery Rate

Metro Code Chapter 5.01 requires that Metro-regulated facilities recover a minimum of 25% of non-putrescible waste until July 1, 2002 and 30% thereafter.

3. Anticipated Effects

The anticipated effect is that recovery of targeted waste materials will increase.

4. Budget Impact

Solid Waste Fund

The Fiscal Year 2002-03 proposed budget appropriation for Regional System Fee credits is \$900,000, and pursuant to Ordinance 01-919B, effective July 1, 2002, the credit program will be capped at that amount.

With current recovery, about \$870,000 would be paid out in Regional System Fee Credits during FY 2002-03 if the proposed changes were in effect for the entire fiscal year.

General Fund

With a \$6.39 per-ton solid waste Excise Tax and assuming current waste generation and recovery, the total Excise Tax credits granted for Fiscal Year 2002-03 would be about \$210,000. The proposed changes to the Recovery Rate definition and to the Excise Tax credit schedule would lower that expectation to about \$170,000. Ordinance 02-950 proposes to limit the total Excise Tax credits granted in any fiscal year to the dollar amount budgeted for that year, currently \$170,000.

Other

Authorizing broader participation in the Regional System Fee and Excise Tax Credit programs itself causes no budget impact; however, there may be negative impacts to both the solid waste and general funds in the future, especially if the exemption from collecting Metro fees and excise tax currently granted to Material Recovery Facilities is extended to additional facilities.

RECOMMENDED ACTION

The Executive Officer recommends approval of Ordinance No. 02-950.

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Agenda Item Number 6.1

Resolution No. 02-3176, For the Purpose of Adopting a Draft Map of Regionally Significant Fish Habitat Pursuant to Resolution No. 01-3141C.

**Metro Council Meeting
Thursday, August 8, 2002
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING A DRAFT MAP OF REGIONALLY SIGNIFICANT FISH HABITAT PURSUANT TO RESOLUTION NO. 01-3141C) RESOLUTION NO. 02-3176) Introduced by Metro Council Natural Resources Committee

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

WHEREAS, on July 17, 2001, in Resolution No. 01-3087A, Metro Council approved a draft matrix of ecological functional criteria to be used to map potential riparian corridor resources in the Metro region; and

WHEREAS, on December 13, 2001, in Resolution No. 01-3141C, Metro Council identified criteria that define regionally significant riparian corridors and applied those criteria to adequate information Metro gathered on the location, quantity and quality of riparian corridors in the Metro region; and

WHEREAS, as part of that resolution, Metro Council amended the matrix of ecological functional mapping criteria as follows:

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

WHEREAS, in connection with Resolution No. 01-3141C Metro Council directed staff to provide data and analysis on:

- The location of developed floodplains.
- How the stream network mapping might be extended to capture all "waters of the state" as defined by ORS 196.800(14).
- Ecological functional criteria necessary to map wildlife habitat in the Metro region; and

WHEREAS, Metro Council directed staff to produce a map reflecting Metro Council's regionally significant riparian corridor decision for Metro Council review prior to identifying conflicting uses in the ESEE analysis; and

WHEREAS, Metro Council will consider the criteria and mapping of regionally significant wildlife habitat in a separate resolution; and

WHEREAS, at Metro Council Natural Resource Committee's February 27, 2002 meeting, staff presented a map of known streams entitled "Metro Stream Network Comparison" that might qualify as "waters of the state" and that are not currently part of the stream network to which Metro has applied the ecological functional mapping criteria for riparian corridors; and

WHEREAS, Metro Council Natural Resource Committee found that information on such streams is not consistent throughout the region, and that Metro Council had not considered riparian corridors along streams draining less than 50 acres to generally to be regionally significant. However, Metro Council Natural Resources Committee recommended that these streams be considered by local governments in their local Goal 5 processes; and

WHEREAS, at the March 6, 2002, Metro Council Natural Resources Committee meeting, staff presented data and analysis in a memo dated February 7, 2002, to identify the location of development within floodplains; and

WHEREAS, several options were identified for locating lands in developed floodplains and staff presented four options for locating these lands. Metro Council Natural Resources Committee recommended Option 3 which integrates existing Metro databases for floodplains, undeveloped lands, developed lands, forest canopy and grassland land cover types, open water, wetlands, and parks and open space to identify the locations of development within floodplains; and

WHEREAS, a draft inventory map of regionally significant riparian corridors that reflect Metro Council's decision in Resolution No. 01-3141C and the Metro Council Natural Resources Committee's direction on the mapping of development within floodplains is attached as Exhibit A; now, therefore

BE IT RESOLVED:

1. That the data contained within the Metro databases, and the integration of those databases as described in the February 7, 2002 memo from Justin Houk and Lynnea Sutton to Andy Cotugno provide adequate information to refine the location, quality and quantity of regionally significant riparian corridors as identified by the Metro Council in Resolution No. 01-3141C.
2. The Metro Council adopts the draft map in Exhibit A as the inventory of regionally significant riparian corridors. The draft map shall be the basis for conducting the economic, social, environmental and energy consequences analysis required by the Goal 5 administrative rule.
3. The Metro Council reserves the opportunity to minimally or substantially alter the draft map prior to adoption of a final map of regionally significant fish and wildlife habitat areas and Program to Achieve Goal 5, after public comment and review.

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

ADOPTED by the Metro Council this ___ day of _____ 2002.

Carl Hosticka, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

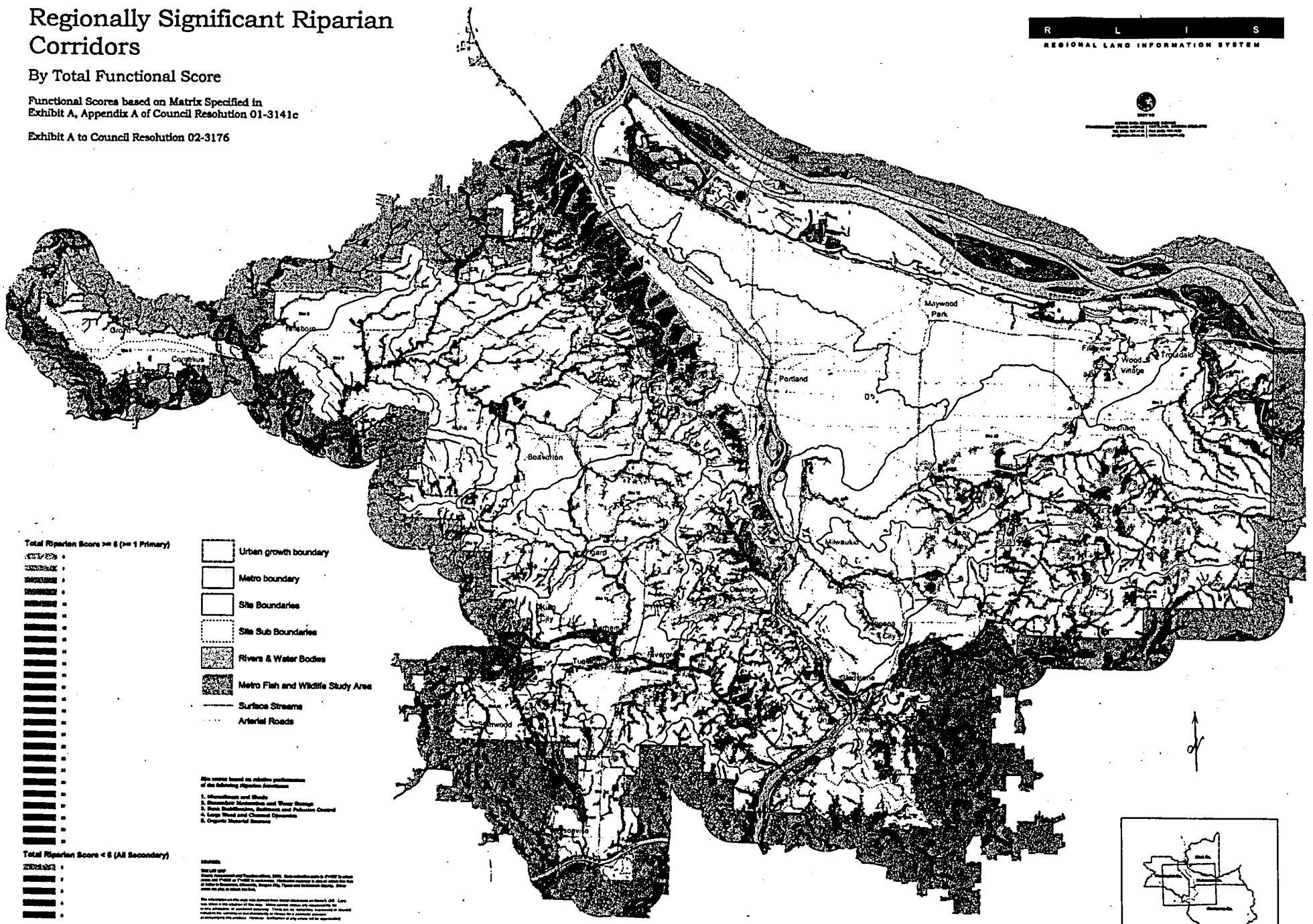
I:\gm\long_range_planning\share\R02-3176.001.doc

Regionally Significant Riparian Corridors

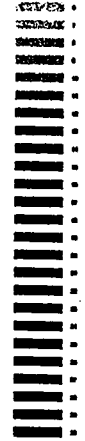
By Total Functional Score

Functional Scores based on Matrix Specified in Exhibit A, Appendix A of Council Resolution 01-3141c

Exhibit A to Council Resolution 02-3176



Total Riparian Score >= 6 (>= 1 Primary)



Total Riparian Score < 6 (All Secondary)

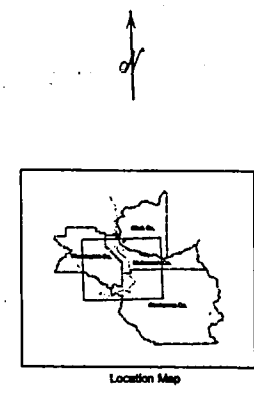
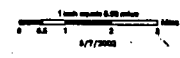


- Urban growth boundary
- Metro boundary
- Site Boundaries
- Site Sub Boundaries
- Rivers & Water Bodies
- Metro Fish and Wildlife Study Area
- Surface Streams
- Arterial Roads

Site scores based on relative performance of the following riparian attributes:

1. Streambank and Shrub
2. Streambank Mulchiness and Water Storage
3. Streambank Mulchiness and Pollution Control
4. Large Wood and Channel Obstructions
5. Organic Material Sources

Source:
Map of Oregon
Bureau of Land Management, 2000. Reprinted with permission of the U.S. Department of the Interior, Bureau of Land Management. The information on this map was derived from aerial photography and other data. The information is provided as a service to the public and is not intended to be used for any purpose other than that for which it was prepared. The information is provided as a service to the public and is not intended to be used for any purpose other than that for which it was prepared.



STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 02-3176, FOR THE PURPOSE OF ADOPTING A DRAFT MAP OF REGIONALLY SIGNIFICANT FISH HABITAT PURSUANT TO RESOLUTION NO. 01-3141C

Date: March 13, 2002

Prepared by: Andy Cotugno

BACKGROUND

In 1996, Metro Council adopted Ordinance 96-647C for the purpose of establishing the Urban Growth Management Functional Plan (UGMFP) and recommendations and requirements for implementing the 2040 Growth Concept. In 1996 completion of Title 3 of the UGMFP was postponed in order to gather more information. In June of 1998, sections of Title 3 were completed to address water quality and flood management and section 5 of Title 3 directed

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

- 1. Metro shall establish criteria to define and identify regionally significant fish and wildlife habitat areas.*
- 2. Metro shall adopt a map of regionally significant fish and wildlife areas after examining existing Goal 5 data, reports and regulations from cities, counties, and holding public hearings.”*

With the adoption of Resolution 01-3141C, For the Purpose of Establishing Criteria to Define and Identify Regionally Significant Fish Habitat and Approving Creation of a Draft Map of Regionally Significant Fish Habitat Areas, the Metro Council established criteria for defining and identifying riparian corridors, one section of applicable State regulations. The Council, through this resolution, directed staff to revise the maps to account for developed floodplains, how organic materials were mapped, and to address map corrections. Attachment A provides a detailed description of the method to address and revise the maps where developed floodplains exist.

With the adoption of this resolution, these policy changes and related map revisions would be addressed. In addition, the analysis of the inventoried regionally significant riparian corridors could be initiated to assess the economic, social, environmental, and energy consequences of allowing, limiting or prohibiting conflicting uses (the ESEE analysis). (A separate resolution, 02-3177, addresses wildlife habitat inventory and if both resolutions are adopted, the ESEE analysis could consider both resources - riparian corridors and wildlife habitat).

ANALYSIS/INFORMATION

1. Known Opposition

Opposition includes some landowners who may be concerned about the impact of this work on the value and use of their land. Until Metro completes the second step (which includes consideration of the economic, social, environmental, and energy consequences of allowing, limiting or prohibiting conflicting

uses) and creates the program step (which could include acquisition, education, incentives and regulations), it is not possible to determine what change, if any, the final Metro decision may have on an area or site. If regulations alone are the only approach, then it is likely that some property owners will oppose the final program decision. If acquisition, incentive, a or education approaches are used, it is likely that very little, if any, opposition will be heard from property owners, but those most concerned with protecting these resources may oppose a voluntary only approach. What combination of these approaches, regulatory and voluntary, would be optimal, would be best considered after the ESEE analysis and after program options are designed.

2. Legal Antecedents

There is a myriad of legislation that relates to this resolution. It includes Federal, State, regional and local laws. At the Federal level there is the Clean Water Act and the Endangered Species Act. At the State level there are State planning laws, goals and administrative rules (especially OAR chapter 660 and sections 660-023-090 and 660-023-110). At the regional level there is the Regional Framework Plan, the Urban Growth Management Functional Plan and Resolution 01-3141C. Local governments within the region have also enacted a range of local policies and regulations and these are documented in the draft Local Plan Analysis, Metro, 2002.

3. Anticipated Effects

The anticipated effect of the adoption of this ordinance is to begin the analysis of the economic, social, environmental and energy consequences of allowing, limiting or prohibiting uses that conflict with the protection of those areas determined to be regionally significant wildlife habitat.

4. Budget Impacts

As noted above, the approach that the Metro Council may direct, can be considered after the Council considers the economic, social, environmental and energy consequences and after program alternatives are created. The cost to implement this legislation is not be possible to estimate until these steps have been taken.

RECOMMENDED ACTION

The recommendation is to adopt resolution 02-3176.



METRO

Attachment A to staff
report for Resolution
02-3176

TO: Andy Cotugno
FROM: Justin Houk and Lynnae Sutton
DATE: 02/07/2002
SUBJECT: Modeling Developed Floodplain

MODELING DEVELOPED FLOODPLAIN

Council Resolution 3141C (Regionally Significant Fish Habitat) directs staff to produce a GIS dataset to identify developed areas within floodplains. To determine if Metro's existing data could be used to model this dataset, a "Developed Floodplains" coverage was created and evaluated using the following methodology and data.

DATA USED IN DEVELOPED FLOODPLAIN MODEL

Table 1 lists the data used in creating the "Developed Floodplains" layer. It is important to note the minimum mapping units, assumptions and rules by which each dataset was developed, since these items are incorporated into the "Developed Floodplains" layer. For instance, a taxlot is either developed, partially developed or undeveloped. Developed lots must have improvements and specific land uses. For example, a paved parking lot is developed but an unpaved lot where trucks are parked is vacant. If a developed tax lot has a 1/2 acre (20,000-sq. ft.) or greater portion that is vacant, the lot is considered to be partially vacant and partially developed. The vacant portion is added to the vacant or undeveloped land database. These are some of the rules used in the production of vacant lands each year. Developed lands then are the "reverse" of the undeveloped lands layer. In other words, any land (or water) which is not undeveloped is shown on the developed layer.

Table 1 – Data used in "Developed Floodplains Model"

DATASET	DESCRIPTION
Floodplains	Flood of 1996 and 100 Year Flood Plain as delineated by the Federal Emergency Management Association (FEMA). Digitized by the Portland Office of the Army Corps of Engineers. Updated with local input.
Undeveloped lands	<p>The undeveloped land layer represents lands appearing unimproved on aerial photography, without regard to developability and accessibility. <i>On partially developed parcels, only undeveloped areas 1/2 acre or larger are included.</i> The layer is digitized on an annual basis.</p> <p>Metro's vacant land definitions: Every tax lot is determined to be vacant, partially vacant, or developed.</p> <ul style="list-style-type: none"> • Vacant tax lots are those that have no building, improvements or identifiable land use. • Developed lots must have improvements and specific land uses. For example, a paved parking lot is developed but an

	<p>unpaved lot where trucks are parked is vacant.</p> <ul style="list-style-type: none"> • Lots under site development show building activity, but development is incomplete and they are considered vacant. • If a developed tax lot has 1/2 acre (20,000-sq. ft.) or greater portion that is vacant, the lot is considered to be partially vacant and partially developed. The vacant portion is added to the vacant land database. • Parks and open spaces are treated as developed. <p>During the assessment of each tax lot, no consideration is given to constrained land, suitability for building, or to redevelopment potential.</p>
Developed lands	This layer is the "reverse" of the undeveloped lands layer. In other words, any land (or water) which is not undeveloped is show on the developed layer.
Land cover including: Forest canopy throughout metropolitan region, grassland and shrub/scrub land within 300 feet of a stream.	Forest canopy was digitized from the 2000 aerial photographs. <i>The tree stands were only digitized if they were at least two acres in size. Gaps between forest stands were only digitized if they were at least 1 acre in size.</i> Grassland and shrub/scrub land were digitized within 300 feet of a stream.
Open water	River and other water body outlines.
Wetlands	<p>This layer is the National Wetland Inventory (NWI) with revisions made by local governments in the tri-county region. These revisions were coordinated by Metro's Growth Management department.</p> <p>NWI digital data files are records of wetlands location and classification as defined by the U.S. Fish & Wildlife Service. This dataset contains ground planimetric coordinates of wetlands, line, and area features and wetlands attributes.</p>
Parks and open space	Public and private parks and open space. (updated quarterly)

DEVELOPED FLOODPLAIN MODEL METHODOLOGY

The following steps were used in creating the "Developed Floodplains" coverage:

- Floodplains and developed lands were intersected, extracting developed land polygons which fell within the floodplains, creating a preliminary developed floodplains layer.
- Parks and openspaces were considered undeveloped for this model. Those within the floodplain were intersected with the developed floodplains layer. Then developed floodplains that were also designated as a park or openspace were removed from the layer.
- Forest canopy and shrub/scrub/grassland (within 300 feet of a stream) polygons within the floodplain were intersected with the developed floodplains layer. Then, developed floodplains that were also designated as these vegetation land cover types were removed from the layer.
- Wetland polygons within the floodplain were intersected with the developed floodplains layer. Then, developed floodplains that were also designated as a wetland were removed from the layer.
- Open water polygons within the floodplain were intersected with the developed floodplains layer. Then, developed floodplains that were also designated as open water were removed from the layer.

Hence, "Developed Floodplains" are developed lands polygons within the floodplain where no digitized forest canopy, wetlands, open water or parks and open spaces polygons occur.

METHODS OF EVALUATING MODEL

In order to evaluate the model, developed floodplain polygons¹ were chosen at random from throughout the metropolitan region. They were visually evaluated for quality by overlaying them onto the 2000 aerial photographs. Each polygon was qualitatively rated as Very Good (4), Good (3) – containing some minor problems, Fair (2) – containing more problems, and Poor (1) – not delineated correctly. There were a total of 51 sample polygons evaluated. In addition, comments on the problems within the dataset were recorded along with the qualitative rating. Appendix A – contains the results from this analysis.

DISCUSSION OF RESULTS

Of the 51 sampled polygons, 20 were rated as poor (1) or fair (2) (i.e., problems with correct delineation of developed floodplains). This represents about 39% of the sample. Hence, 61% of the sample are rated as very good (3) or good (4). All of the polygons that were rated as poor were along open water and actually contained open water, beach, vegetation or sand bars, areas that should not be considered developed. This poor rating is most likely due to the fact that taxlots are digitized to the "low water" mark. These represented about 16% of the sample. To potentially fix a large portion of this problem, major river bank map corrections could be completed so that the river banks did not coincide with the low water mark or taxlot boundary.

Polygons rated as very good were found in developed areas within the floodplain. These represented about 47% of the sample. Developed floodplain polygons rated as good constituted about 16% of the sample. Most of these polygons contained some undeveloped acreage, generally less than an acre in size, or were in close proximity to an undeveloped floodplain polygon containing some developed acreage.

The largest problems were in the polygons rated as fair. These constituted about 21% of the sample and contained similar problems as the "good" polygons. However, the area that was incorrectly identified as

¹ A polygon is a two-dimensional feature representing an area such as a state or county.

either developed or undeveloped was generally large compared to the areas within the "good" category. For instance, a large developed floodplain polygon contained a 2 acre grassland.

There were three polygons which represented some unique problems within the datasets. In one example, about 60% of a golf course lawn was categorized as developed due to improvements, while 40% of it was categorized as undeveloped. To alleviate this problem, delineated golf courses could be designated as undeveloped. In another example, when wetland polygons were removed from the developed floodplains, an incorrect wetland delineation caused a building and road patch to be identified as undeveloped. Map corrections, such as including local wetland inventories, may alleviate some of these problems. And finally, when the parks were removed from the developed floodplain, parking lots were then designated as part of the undeveloped floodplain because they were within a park boundary. Parks are hard to categorize because they may contain large undeveloped or developed areas, depending on the type of park. These three examples represent less than one percent of the total sample.

It is important to remember that these categories were subjective. Hence, someone else could have looked at the same sample polygons and placed some of those designated as poor in the fair category and visa versa.

Assuming that most of the polygons were designated correctly and finding a way to filter out those rated as poor, 79% of the sample could be considered acceptable, leaving 21% considered questionable. If one assumes at least a 5% error level in the categorization of the polygons, 74% to 84% of the polygons could be considered acceptable, leaving 16% to 26% considered questionable. If the polygons designated as poor were left in the sample, only 63% could be considered acceptable with 37% categorized as unacceptable.

CONCLUSIONS AND OPTIONS

There are several options available in the production of a GIS dataset identifying developed areas within floodplains. Table 2 lists several options and potential pros and cons associated with each of these decisions.

Table 2 – Developed Floodplain Options

DEVELOPED FLOODPLAIN OPTION	PROS	CONS
Option 1 - Digitize all impervious areas within the floodplain, based on specific rules.	<ul style="list-style-type: none"> • A rule-base could be developed to establish known reasons why specific polygons are designated as impervious (developed) within the floodplain and why others are not, resulting in less gray area within the polygon designations. • A more precise coverage of "Developed Floodplains" would be available with this option. 	<ul style="list-style-type: none"> • Impervious polygons within the floodplains would have to be digitized each year, as the undeveloped polygons are digitized each year. • A large portion of staff time and resources would have to be committed to this project... about 400-500 hours annually.
Option 2 – Use the modeled "Developed Floodplains" and evaluate each polygon for correctness, re-digitizing those with common problems (including all of a road instead of just a portion of it).	<ul style="list-style-type: none"> • A more precise coverage of "Developed Floodplains" would be available with this option. 	<ul style="list-style-type: none"> • A large portion of staff time and resources would have to be committed to this project... about 300-400 hours annually.

<p>Option 3 -- Use the modeled "Developed Floodplains".</p>	<ul style="list-style-type: none"> Developed floodplains are already identified with this option. No additional staff time required in the production of a "Developed Floodplain" GIS data coverage. 	<ul style="list-style-type: none"> There may be more map corrections with this option than with the first two options.
<p>Option 4 -- Create a more conservative version of modeled developed floodplains by overlaying the developed areas and floodplains.</p>	<ul style="list-style-type: none"> There would be less gray area in terms of the definition of modeled developed floodplains. 	<ul style="list-style-type: none"> A large portion of undeveloped areas would be considered developed.

Option 3 is considered the recommended option in the production of a "Developed Floodplains" GIS dataset. An additional model standard could be considered to mark golf courses as undeveloped. In addition, if the former mentioned river bank and local wetland inventory map corrections were completed, it may increase the "correctness" of the modeled developed floodplains to approximately 80%. Option 4 would create a more conservative version of modeled developed floodplains. However, large portions of undeveloped areas may be considered as developed.

APPENDIX A - "Developed Floodplain" Model Analysis Results

SECTION	FINAL-ID	ACRES	VALUE	MAP	ISSUE	NOTES
	3723	0.340	1		River bank correction	Polygon includes edge of river, sand bar, vegetation.
1n2w24	3907	0.460	1		River bank correction	DF polygon only includes part of golf course... the rest of it still is in floodplain.
2n1e30,2n1e19,2n1w24	146	0.473	1		River bank correction	DF polygon along river, includes beach, sand bar.
2n1w24	43	1.366	1		River bank correction	DF polygon along river, includes beach, sand bar.
2n1w24	43	1.367	1		River bank correction	Polygon is adjacent to open water and includes beach, open water, sand bar and forest edge.
	9523	2.182	1		River bank correction	Sand bar
	51	3.457	1		River bank correction	Sand bar
	12307	4.799	1		River bank correction	Sand bar
1n2w24	3979	0.710	2			DF polygon misses about 1/4 of road length
1s1w34	9419	1.140	2			Clips out about 85% of houses at edge of wetland as developed, leaves 15% as marked incorrectly as undeveloped.
2n1w24		2.171	2			Includes correctly parking lot and road, however it missed portion of road that goes out to large dock -- still maked as undeveloped.
1n1w02	979	2.578	2			Includes portion of river bank with dock, building and open water... hence portion with bank and open water should not be included as developed.
1s4w01	4972	3.277	2			DF polygon is a road, however it leaves about 1/4 of it still in floodplain as undeveloped.
1s3w08	5484	5.079	2			This polygon follows a road; it leaves the edges of the road and small portions of the ends as undeveloped

	6135	13.448	2		DF polygon includes large portion of undeveloped area; polygon is mostly undeveloped
1n3w36	4626	16.115	2	Golf course (model standard)	DF polygon consists of golf course lawn. However, some of golf course lawn is also designated as undeveloped (60% developed and 40% undeveloped)
	6253	17.157	2		The portion marked as developed is good. However, adjacent to it is a large storage area with a lot of containers? Should this be marked as developed?
2s2e29,2s2e30		152.181	2	Parks (model standard)	DF polygon includes 2 acre grass area near parking lot, undeveloped areas include a park that is developed with parking lot etc..., undeveloped area includes a large storage area? Or gravel area with containers and some cars.
1s2e14	943	423.067	2		The undeveloped area near polygon includes small houses and portions of roads....the undeveloped areas could be extended to include larger portions of area that is marked as developed.
3s1w23	13651	1.066	3		Clips out developed area (houses), leaves undeveloped area (backyard and trees) marked correctly, however leaves house as undeveloped downstream.
3S1W14	13443	2.307	3		West edge of DF polygon includes some low structure vegetation (0.115 acres)
1s1w23	8126	3.804	3		In undeveloped portion of the floodplain, there is a small parking lot (0.227 acres)
	11738	5.108	3		Small house left in undeveloped FP near DF polygon.
	71	5.212	3		DF polygon near river includes sand bar that has a boat landing.
2s2e31	12983	15.069	3		Includes 0.12 acres of undeveloped land along river

1n2e07, 1n2e18	2294	21.116	3		Undeveloped area includes 0.53959 acres of developed area
Lower Tualatin Subbasin	7929	47.905	3	Local Wetland Correction	DF polygon includes road, building and vegetation zones between highway. When the wetland was added as areas of undeveloped floodplain, the building and road patch was included in the undeveloped floodplain.
	12339	0.309	4		
2s2e06	9898	0.382	4		
1s1w33	9417	0.407	4		Includes road and houses as developed floodplain.
1n2w24	3918	0.457	4		
3s1w23	13661	0.500	4		
3s1w14	13465	0.532	4		
1s1w33	918	0.545	4		Completely marks road as developed floodplain.
1n2w24	3827	0.657	4		
3s1w23	13662	1.153	4		
2s2e06	9896	1.418	4		
2s2e06	10071	1.797	4		
2n1w24	53	2.171	4		
1n1e34	4893	2.317	4		
	9481	2.811	4		
2s2e06	10111	2.921	4		Developed area near river that it marked correctly
1s3w08	6089	3.149	4		
	4088	3.812	4		
3s1w14	13452	9.131	4		
1n3w36	4785	10.851	4		
2s2e06	9838	18.065	4		
1n1e34	4539	19.892	4		
	3729	26.109	4		
1n1e34	5024	29.738	4		
2n1e30,2n1e19,2n1w24	73	31.513	4		
(1) Poor, (2) Fair, (3) Good, (4) Very Good					

Agenda Item Number 6.2

Resolution No. 02-3177A, For the Purpose of Establishing Criteria to Define and Identify Regionally Significant Wildlife Habitat and Adopting a Draft Map of Regionally Significant Wildlife Habitat Areas.

**Metro Council Meeting
Thursday, August 8, 2002
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ESTABLISHING CRITERIA TO)
DEFINE AND IDENTIFY REGIONALLY SIGNIFICANT) RESOLUTION NO. 02-3177A
WILDLIFE HABITAT AND ADOPTING A DRAFT MAP)
OF REGIONALLY SIGNIFICANT WILDLIFE HABITAT) Introduced by Councilor Susan McLain,
AREAS) Chair, Natural Resources Committee
)

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

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

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

WHEREAS, Metro Council has determined that OAR 660-023-0090 (riparian corridors) and OAR 660-023-0110 (wildlife habitat) are the relevant State Goal 5 resources for Metro Council consideration of regional fish and wildlife habitat to be consistent with State Goal 5; and

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

WHEREAS, in public hearings before Metro Council Natural Resources Committee and in recommendations from the Metro Policy Advisory Committee (MPAC), Metro Technical Advisory Committee (MTAC), Metro Goal 5 Technical Advisory Committee (Goal 5 TAC) and the Water Resources Policy Advisory Committee (WRPAC) Metro Council was urged to complete the analysis of potential regionally significant wildlife habitat and combine that information with the mapping of regionally significant riparian corridors; and

WHEREAS, in Resolution No. 01-3141C, Metro Council directed staff to complete additional work necessary to inventory and map regional wildlife habitat and present that information to Metro Council in early 2002; and

WHEREAS, in response to Metro Council's direction, staff compiled a decision package similar to the package provided for Metro Council's consideration of regionally significant riparian corridors. That package included the following products:

- An analysis of existing Goal 5 data, reports and regulations from cities and counties. This information is contained in a November 20, 2001 memo from the Office of General Counsel on local Goal 5 data, reports and regulations and additional information concerning fish and wildlife habitat areas gathered and exchanged with local governments and agencies.
- A methodology and criteria for identifying wildlife habitat and maps applying those criteria to the region.
- A map(s), based on the regionwide wildlife habitat maps, identifying Goal 5 resource sites and Goal 5 "wildlife habitat" within those resource sites to serve as the basis for identifying regionally significant wildlife habitat.

- An inventory narrative including information on the location, quantity and quality of the potential resource sites identified on the map.
- A map(s) of potential significant resource sites containing wildlife habitat.
- A summary of recommended criteria for identifying and defining regionally significant wildlife habitat.
- A map(s) of potential resource sites containing wildlife habitat, which could be adopted as "regional resources" under the Goal 5 administrative rule. The map of resource sites is the map identified as Exhibit B of Resolution No. 01-3141C; and

WHEREAS, staff presented draft criteria to Metro Council Natural Resources Committee in February 2002 for identifying Goal 5 wildlife habitat based on information contained in "Metro's Scientific Literature Review for Goal 5;" and

WHEREAS, the Metro Council Natural Resources Committee held numerous public hearings and accepted public comment on the topic of regionally significant wildlife habitat including hearings on June 26, July 3, July 17, and July 31, 2002; and

~~WHEREAS, MPAC recommended on March 27, 2002~~

~~WHEREAS, MTAC recommended on March 20, 2002~~

~~WHEREAS, WRPAC recommended on March 25, 2002~~

~~WHEREAS, the Goal 5 TAC recommended on March 22, 2002; now therefore~~

WHEREAS, on June 7, 2002, the Goal 5 Technical Advisory Committee recommended that the June 4, 2002 draft of the Wildlife Habitat Criteria Matrix be adopted with the following modifications: 1) for each criterion, include references back to the Goal 5 Technical Report that directs the reader to the underlying science as documented in Metro's *Technical Report for Goal 5* dated January, 2002.; 2) for the "Connectivity and Proximity to Water Resources" criterion, the average distance of a patch from water sources such as streams, lakes and wetlands *within 320 feet of the patch* should be changed to *within 300 feet of the patch* (it is already mapped using the latter); and 3) for the "Habitats of Concern and Habitats for Unique and Sensitive Species" criterion, Metro should include information on the wetlands inventory layer addressing how it incorporated local wetlands inventory information. The Goal 5 TAC recommended that all inventoried wildlife habitat receiving a score of 2 through 9 including all Habitats of Concern should be identified as regionally significant wildlife habitat; and

WHEREAS, at their June 10 meeting, the Water Resources Policy Advisory Committee recommended that Metro accept the revised inventory of regionally significant riparian corridors and adopt Resolution No. 02-3176.; and that Metro accept the June 4, 2002 version of the Wildlife Habitat Criteria Matrix and the April 17, 2002 decision draft map as the inventory of significant wildlife habitat. At their July 15, 2002 meeting, the Water Resource Policy Advisory Committee recommended that Metro designate all wildlife habitat areas receiving a score of 1 through 9 including Habitat of Concern as regionally significant; and

WHEREAS, at their July 17, 2002 meeting, the Metro Technical Advisory Committee recommended adoption of the draft wildlife habitat criteria dated June 4, 2002; with the same modifications recommended by the Goal 5 TAC as listed above. In addition, they included the recommendation that in cases where Habitats of Concern have been designated solely on the basis

of documented species use of a given area, biological survey data should be required as a minimum, for documentation; and

WHEREAS, at the July 24, 2002 meeting, the Metro Policy Advisory Committee recommended that the Metro Council adopt the recommendations as indicated in the Metro Technical Advisory Committee recommendation, including adoption of the draft Wildlife Habitat inventory map for those areas receiving a score of 2 through 9 including Habitats of Concern; now, therefore,

BE IT RESOLVED:

1. That Metro Council finds that the information in Exhibit A, including *Metro's Riparian Corridor and Wildlife Habitat Inventories*, dated March-July 2002, and *Metro's Scientific Literature Review for Goal 5*, dated January 2002, contain adequate information to determine the location, quantity and quality of wildlife habitat resources in the Metro region.
2. That Metro Council finds that sufficient data has been gathered and examined concerning local Goal 5 data, reports and regulations to comply with Title 3, Section 5(C)(2) of the Functional Plan.
3. That the Metro Council is relying on the same Goal 5 resource sites identified in Resolution No. 01-3141C as resource sites that identifies the resource sites in Exhibit B as Goal 5 resource sites containing Goal 5 wildlife habitat resources.
4. Metro Council accepts the Metro Council Natural Resources Committee, WRPAC, Goal 5 TAC, MTAC and MPAC recommendations that the resources shown on Exhibit B are significant "~~riparian corridor~~wildlife habitat" resources.
5. That Metro Council interprets the term "regionally significant" wildlife habitat as that term is used in Title 3 of the Functional Plan to be those Goal 5 wildlife habitat resources that qualify as "regional resources" under the Goal 5 administrative rule.
6. That the ~~Metro Council list of~~ adopts the criteria in Exhibit C, revised as recommended by the Metro Policy Advisory Committee cited above ~~are~~ as criteria that define regionally significant wildlife habitat. A resource need not meet every criteria to be considered regionally significant.
7. That Metro Council has applied the criteria identified in Exhibit C to the information in Exhibits A and B to define regionally significant wildlife habitat as all areas ~~identified in Exhibit B scoring 2 through 9 including Habitats of Concern as identified in Exhibit D.~~ The Metro Council recommends that areas scoring 1 be considered by local governments in their local Goal 5 process.
8. That staff is directed to produce a combined map reflecting Metro Council's regionally significant riparian corridor decision in Resolution No. 01-3141C and its decision on regionally significant wildlife habitat.
9. That the map of regionally significant riparian corridors and wildlife habitat that staff has been directed to produce will be a draft map which will be the basis for conducting

subsequent steps in the Goal 5 process including the economic, social, environmental and energy consequences analysis and the Program to Achieve Goal 5.

10. Metro Council reserves the opportunity to minimally or substantially alter the draft map prior to adoption of a final map of regionally significant fish and wildlife habitat areas and Program to Achieve Goal 5, after public comment and review.
11. The draft map of regionally significant wildlife habitat will be subject to correction for accuracy until the Council reaches a final decision including the ESEE analysis and program choices which is anticipated in 2003. The Council directs the staff to review all new requests for map corrections during the ESEE and program steps of the regional fish and wildlife project, making changes where documentation of the presence or absence of a physical feature is demonstrated. In addition, staff is directed to develop a post adoption map correction process that may be adopted as an amendment to the Urban Growth Management Functional Plan.
12. The Metro Council's actions in this resolution are not final actions designating regionally significant fish and wildlife habitat areas or a final action to protect those areas through a Program to Achieve Goal 5.

ADOPTED by the Metro Council this ____ day of _____ 2002.

Carl Hosticka, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

I:7.4.3.2.2.R02-3177A.002

Exhibit A
Resolution 02-3177A

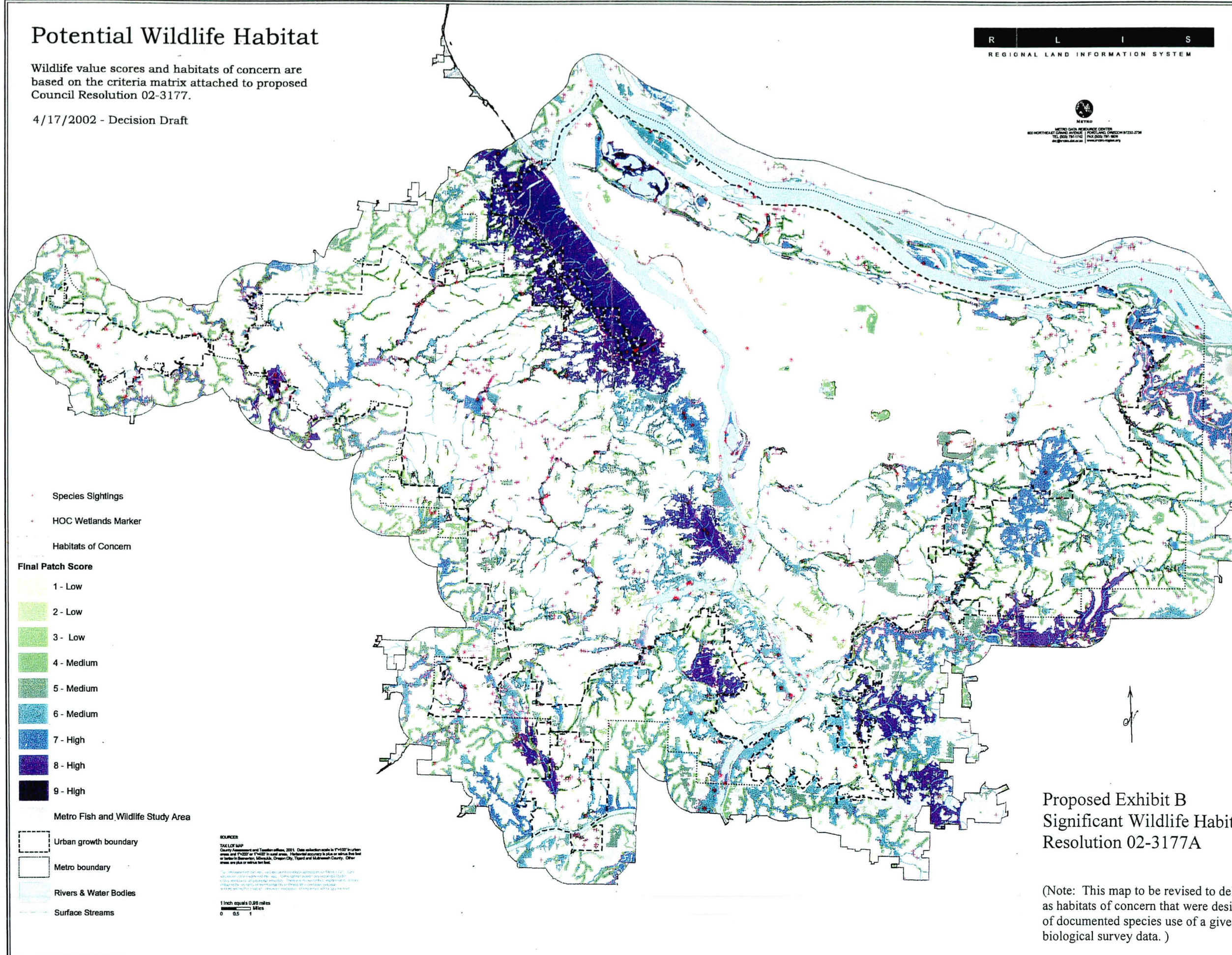
Contents:

- Metro's Riparian Corridor and Wildlife Habitat Inventories (Preliminary draft, July 2002)
- Memo dated July 29, 2002 entitled "Revisions to Metro's January 2002 Technical Report for Goal 5"
- Memo dated July 23, 2002 entitled "City of Hillsboro's Technical Review (Fishman report): Wildlife portion"
- Metro's Technical Report for Goal 5 (Revised draft, January 2002 version)

Potential Wildlife Habitat

Wildlife value scores and habitats of concern are based on the criteria matrix attached to proposed Council Resolution 02-3177.

4/17/2002 - Decision Draft



- Species Sightings
- HOC Wetlands Marker
- Habitats of Concern

- Final Patch Score**
- 1 - Low
 - 2 - Low
 - 3 - Low
 - 4 - Medium
 - 5 - Medium
 - 6 - Medium
 - 7 - High
 - 8 - High
 - 9 - High

- Metro Fish and Wildlife Study Area
- Urban growth boundary
- Metro boundary
- Rivers & Water Bodies
- Surface Streams

SOURCES
 TAX LOT MAP
 County Assessment and Taxation office, 2001. Data resolution scale is 1"=100' in urban areas and 1"=200' or 1"=400' in rural areas. Horizontal accuracy is plus or minus five feet or better in Beaverton, Hillsdale, Clatsop City, Tualatin and Multnomah County. Other areas are plus or minus ten feet.

1 inch equals 0.98 miles
 0 0.5 1 Miles

Proposed Exhibit B
 Significant Wildlife Habitat
 Resolution 02-3177A

(Note: This map to be revised to delete two areas designated as habitats of concern that were designated solely on the basis of documented species use of a given area, but which lack biological survey data.)

Resolution No. 02-3177A
Exhibit C
Criteria for Identifying Regionally Significant Wildlife Habitat

1. **Meets Goal 5 requirements:** Alternatives likely to be in compliance with the rules outlined in the Goal 5 rule.
2. **Meets the goals in the Vision Statement:** Alternatives that support the goals outlined in Metro's Vision Statement.
3. **Supports the goals in ODFW's Wildlife Diversity Plan:** Options meeting this criterion should directly support a goal, priority, or strategy stated in ODFW's Wildlife Diversity Plan (ODFW 1993). The Goal 5 rule states that when gathering information regarding wildlife habitat under the standard inventory process in OAR 660-23-030(2), local governments shall obtain current habitat inventory from ODFW and other state and federal agencies. Because such habitat information is limited, Metro has also incorporated ODFW's wildlife diversity goals for the state into the Goal 5 inventory process. The stated goal of ODFW's Wildlife Diversity Plan is: "To maintain Oregon's wildlife diversity by protecting and enhancing populations and habitats of native wildlife at self-sustaining levels throughout natural geographic ranges." The Plan also recognizes that habitat is most often the key to maintaining wildlife populations, and that a multi-species, ecosystem-based approach to research and management should be used whenever possible. Metro's vertebrate species list (Appendix 9) identifies wildlife species that are native to this region (e.g., species whose natural geographic ranges fall within the metro area). Options with a high level of agreement with this criterion should: (1) be science-based, (2) consider at least a watershed approach, and (3) pay particular attention to the protection of at-risk habitats and species (including groups of at-risk species such as Neotropical migratory birds), as manifested in the Habitats of Concern and through patch size and connectivity issues.
4. **Consistent with Metro's Technical Report for Goal 5** means that the option is compatible with the information presented in Metro's Goal 5 Technical Review (scientific literature review), and that it is likely to qualitatively differentiate habitat patches based on each of the four identified habitat characteristics addressed in Metro's GIS model (patch size, shape, connectivity to other patches, and water resources).
5. **Ecosystem approach:** ODFW's Wildlife Diversity Plan recognizes that a multi-species, ecosystem-based approach to research and management should be used whenever possible, stating that:

...Maintaining wildlife diversity means maintaining the full array of native species and populations of those species. To this end, the Plan calls for a multi-species, ecosystem-based approach whenever possible...An ecosystem approach to wildlife management represents (in its broadest sense) a philosophy of natural resource management that emphasizes sustaining ecological values and functions while deriving socially-defined benefits. Ecosystem management considers all natural components, both biological and physical, rather than focusing on single species or groups of species. (ODFW 1993)

ODFW does not provide a spatially explicit definition of ecosystem, but states that ecosystem management assumes that by preserving adequate amounts, quality and connectivity of habitat, all wildlife species will be maintained. The metro region is largely contained within ODFW's recognized Western Interior Valleys physiographic province, and forms a cohesive ecosystem unit via the influences of the greater Portland region's urbanization patterns, which exert varying (but predictable) degrees of human influence along the urban-rural gradient. Alternatives supporting this criterion should consider the region's wildlife habitats as a cohesive, interrelated system.

Resolution No. 02-3177A
Exhibit C
Criteria for Identifying Regionally Significant Wildlife Habitat

6. **Promotes sensitive species/habitat conservation:** The Goal 5 rule states that when gathering information regarding wildlife habitat under the standard inventory process in OAR 660-23-030(2), local governments shall obtain current habitat inventory from ODFW and other state and federal agencies, including at least the following:
- Threatened, endangered, and sensitive wildlife species habitat information;
 - Sensitive bird site inventories; and
 - Wildlife species of concern and/or habitats of concern identified and mapped by ODFW.

Sensitive, or at-risk, species and habitats are also identified as priorities by ODFW. Note that neither ODFW nor any other agency has systematically mapped species or habitats of concern specifically for the metro region. Partial information is available from a variety of sources, and Metro used such data to incorporate site-specific sensitive species information into the Habitats of Concern layer (for example, know native turtle nesting and crossing areas). Although site-specific species information is limited, many sensitive species are habitat specialists relying on sensitive habitats, such as riparian or grasslands; regional loss of these habitats contributes to these sensitive species' decline. The Habitats of Concern layer includes all of the sensitive habitat information that Metro has received (verified using aerial photos and GIS data) and that meet our definition of Habitats of Concern (based on ODFW, USFWS, Partners in Flight, and the Oregon Biodiversity Project), including: priority conservation habitats (based on ODFW, USFWS, the Oregon Biodiversity Project, and the Oregon/Washington chapter of Partners in Flight); riverine islands and deltas; and patches providing unique or critical wildlife functions, such as migration corridors and stopover habitat, inter-patch connectors, and biologically or geologically unique areas habitat vital for a sensitive species. Alternatives supporting this criterion should include the full known extent of the Habitats of Concern layer.

7. **Maintains existing connectivity:** Metro's RUGGOs state 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." Connectivity in the wildlife habitat context refers to how well fish and wildlife can move among watershed components (aquatic and terrestrial). The ecological health of a watershed and its wildlife depends in part on the connectivity between and among streams and other water resources, as well as the riparian area and upland habitats, over space and time. Well-connected streams, riparian buffers, and upland patches serve as movement corridors for wildlife and plants, allowing re-population of extirpated species, gene flow over space, and migration and dispersal corridors. Within Metro's wildlife habitat inventory, many patches providing important connectivity corridors are not forested, but consist of low-structure vegetation, including agricultural lands; in addition to connectivity, these habitats are very important to wildlife species dependent on non-forested habitats, such as grassland bird and mammal species. Alternatives resulting in significant reduction of existing connectivity, such as substantial omission of low-structure connector patches or options failing to consider connectivity, would not meet this criterion (and would also reduce the amount of available grassland and shrub habitat in the inventory).
8. **Maximizes restoration potential:** Alternatives addressing this criterion will address certain areas that may be currently degraded, but are important to wildlife and could be restored to increase wildlife habitat functions and value. The more lower-scoring areas included as regionally significant, the more restoration potential exists in a regional wildlife habitat plan, in terms of improving both habitat quality and connectivity. For example, low-structure vegetation within 300' of streams, or

Resolution No. 02-3177A

Exhibit C

Criteria for Identifying Regionally Significant Wildlife Habitat

small “stepping-stone” upland habitats providing important inter-patch connectivity for birds, could be enhanced with native plants or improved with connectivity in mind. While not required by Goal 5, restoration of such areas is consistent with Metro’s RUGGOs and Vision Statement as well as ODFW’s Wildlife Diversity Plan, and would likely result in higher levels of ecological function, increase the potential for retaining sensitive species, and decrease the potential for future ESA listings. Alternatives supporting this criterion would be more inclusive of smaller connector patches, regardless of their current condition.

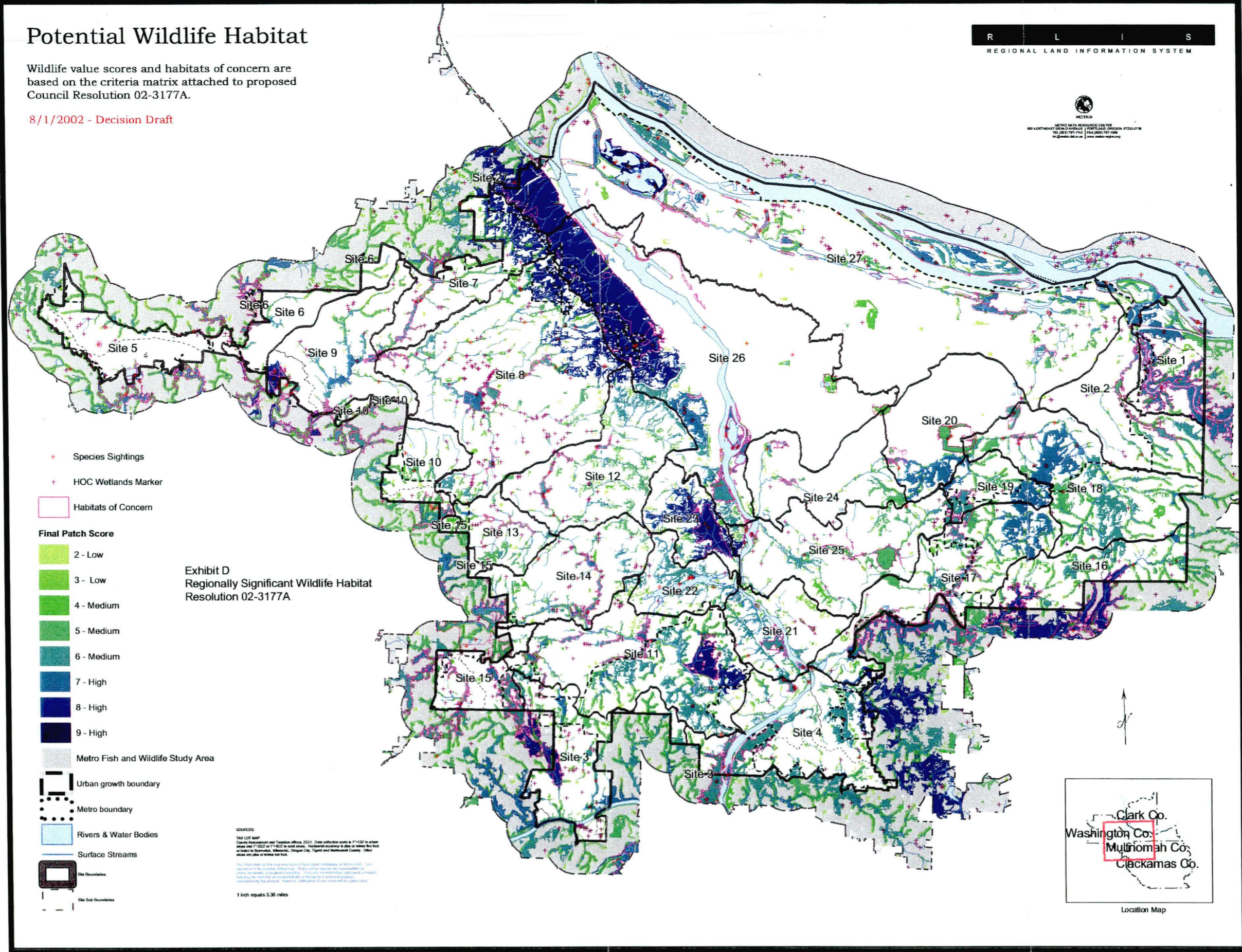
Potential Wildlife Habitat

Wildlife value scores and habitats of concern are based on the criteria matrix attached to proposed Council Resolution 02-3177A.

8/1/2002 - Decision Draft

R L I S
REGIONAL LAND INFORMATION SYSTEM

MCTCO
METRO DATA RESOURCE CENTER
800 NORTH EAST GRAND AVENUE PORTLAND, OREGON 97224-2778
TEL (503) 791-1111 FAX (503) 791-1999
www.metro.or.gov



- Species Sightings
- HOC Wetlands Marker
- Habitats of Concern

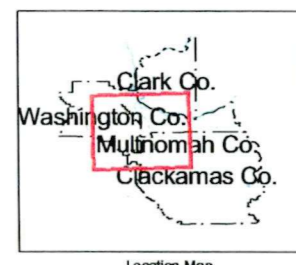
- Final Patch Score**
- 2 - Low
 - 3 - Low
 - 4 - Medium
 - 5 - Medium
 - 6 - Medium
 - 7 - High
 - 8 - High
 - 9 - High

- Metro Fish and Wildlife Study Area
- Urban growth boundary
- Metro boundary
- Rivers & Water Bodies
- Surface Streams
- Site Boundary
- Site Sub-Boundary

Exhibit D
Regionally Significant Wildlife Habitat
Resolution 02-3177A

SOURCES
TAX LOT MAP
County Assessor and Taxation Office, 2001. Data resolution varies by T1432 in urban areas and T1432 or T1437 in rural areas. Horizontal accuracy is plus or minus two feet or more for boundaries, elevations, Oregon City, Tigard and Multnomah County. Other areas are plus or minus ten feet.
The information on this map was derived from digital databases of Metro's GIS. This data does not constitute a warranty of accuracy or responsibility for any use of the information. It is provided as a reference only. It is not intended to be used for any purpose other than that for which it was collected. Metro is not responsible for any errors or omissions in this information. Metro is not responsible for any use of the information for purposes other than those for which it was collected.

1 inch equals 3.36 miles



STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 02-3177, FOR THE PURPOSE OF ESTABLISHING CRITERIA TO DEFINE AND IDENTIFY REGIONALLY SIGNIFICANT WILDLIFE HABITAT AND ADOPTING A DRAFT MAP OF REGIONALLY SIGNIFICANT WILDLIFE HABITAT AREAS

Date: March 12, 2002

Presented by: Andy Cotugno

BACKGROUND

In June 1998, Metro Council adopted Title 3 of the Urban Growth Management Functional Plan. Section 5 of this Title called for identifying, considering and protecting regionally significant fish and wildlife habitat conservation areas. Since that time, work has been initiated to carry out this Metro Council policy direction, consistent with State law, especially State land use Goal 5. With the adoption of Resolution 01-3141C, the Metro Council established criteria for defining and identifying riparian corridors, one section of State regulations.

Resolution 02-3177 concerns defining, identifying and mapping regionally significant wildlife habitat, the other section of State law relevant to fish and wildlife habitat. The adoption of this resolution will complete a first step, creating an inventory, and will establish which wildlife habitat areas are regionally significant and therefore, suitable for analysis in the second of three steps. The second step, if this resolution is adopted, will analyze the regionally significant wildlife habitat areas for the economic, social, environmental and energy consequences of allowing, limiting or prohibiting conflicting uses (known as the ESEE analysis). After the second step, a third step, a draft protection program, can begin. The program stage will likely include an array of possible program options for Metro Council consideration including incentives, education, acquisition and regulation or some combinations of these options.

The documents attached to this resolution include:

- 1) a technical review of the scientific literature; (Exhibit A)
- 2) a summary of how the scientific literature was converted to operational criteria for identification and mapping purposes; (Exhibit A)
- 3) an inventory of all areas within the region providing one or more wildlife habitat functions, including maps of the region for four wildlife habitat functions, (Exhibit A)
- 4) a composite map that takes each wildlife function and ranks areas by their relative wildlife habitat function and (Exhibit A)
- 5) alternatives for determining which of the areas identified as having wildlife habitat functions could be considered regionally significant and for ESEE analysis. (Exhibit C)
- 6) a map of regionally significant wildlife habitat (Exhibit B)

(a separate resolution, 02-3176 addresses riparian corridor inventory. If both resolutions are adopted an ESEE analysis of both could commence.)

ANALYSIS/INFORMATION

1. Known Opposition

Concerns about wildlife habitat inventory have been raised by the Home Builders Association of Metropolitan Portland. Their letter and a Metro response are being made part of the public record of this resolution. In summary, the Home Builders have voiced a concern that State Goal 5 is not being followed because they assert that "...presence of wildlife species is the primary factor in developing an inventory and determining significance." Home Builders also state that State resource agencies should be consulted and they further recommend that Metro should use the State resource agency mapping inventory as the universe from which to select regionally significant wildlife habitat.

The standard process under Goal 5 is based on habitat information, not exclusively on the presence of wildlife species. The inventory must include habitat information on sensitive and threatened and endangered species, but may include habitat information on other wildlife species as well. In addition, State and Federal agencies have been consulted by Metro staff. Either State and Federal agency information has been incorporated into Metro's data and inventory or, State agencies do not have this information for the metropolitan area and Metro staff assert that they have used a sound scientific approach and applicable data in a manner consistent with State Goal 5 to identify wildlife habitat. Finally, the Home Builder comment pertains to a State safe harbor approach and Metro has pursued the other State approved option which is the standard inventory approach.

Other opposition includes some landowners who may be concerned about the impact of this work on the value and use of their land. Until Metro completes the second step (which includes consideration of the economic, social, environmental and energy consequences of allowing, limiting or prohibiting conflicting uses) and creates the program step (which could include acquisition, education, incentives and regulations), it is not possible to determine what change, if any, the final Metro decision may have on an area or site. If regulations alone are the only approach, then it is likely that some property owners will oppose the final program decision. If acquisition, incentive or education approaches are used, it is likely that very little, if any opposition will be heard from property owners, but those most concerned with protecting these resources may oppose a voluntary only approach. What combination of these approaches, regulatory and voluntary would be optimal, would be best considered after the ESEE analysis and after program options are designed.

During earlier discussions, a wide range of interests and perspectives, from the development community to local governments to the environmental community have urged that wildlife habitat be made a part of Metro's fish and wildlife habitat protection plan. The reasons for this range from an interest in an integrated approach to the legal, administrative, and outreach costs of doing wildlife habitat separate from riparian corridors.

2. Legal Antecedents

There is a myriad of legislation that relates to this resolution. It includes Federal, State, regional and local laws. At the Federal level there is the Clean Water Act and the Endangered Species Act. At the State level there are State planning laws, goals and administrative rules (especially OAR chapter 660 and sections 660-023-090 and 660-023-110). At the regional level there is the Regional Framework Plan, the Urban Growth Management Functional Plan and resolution 01-3141C. Local governments within the region have also enacted a range of local policies and regulations and these are documented in the draft Local Plan Analysis, Metro, 2002.

3. Anticipated Effects

The anticipated effect of the adoption of this ordinance is to begin the analysis of the economic, social, environmental, and energy consequences of allowing, limiting or prohibiting uses that conflict with the protection of those areas determined to be regionally significant wildlife habitat.

4. Budget Impacts

As noted above, the approach that the Metro Council may direct can be considered after the Council considers the economic, social, environmental and energy consequences and after program alternatives are created. The cost to implement this legislation is not possible to estimate until these steps have been taken.

RECOMMENDED ACTION

Adopt Resolution 02-3177 and direct staff which option to follow for determining regionally significant wildlife habitat for a forthcoming analysis of the economic, social, environmental and energy consequences of allowing, limiting or prohibiting conflicting uses.

Agenda Item Number 6.3

Resolution No. 02-3218, For the Purpose of Combining Metro's Draft Inventory Maps of Regionally Significant Riparian Corridors and Wildlife Habitat for the Goal 5 ESEE Analysis and Approving Metro's Local Plan Analysis.

**Metro Council Meeting
Thursday, August 8, 2002
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF COMBINING METRO'S)
DRAFT INVENTORY MAPS OF REGIONALLY) RESOLUTION NO 02-3218
SIGNIFICANT RIPARIAN CORRIDORS AND)
WILDLIFE HABITAT FOR THE GOAL 5 ESEE) Introduced by Councilor McLain
ANALYSIS, AND APPROVING METRO'S LOCAL)
PLAN ANALYSIS)

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

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

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

WHEREAS, the Metro Council adopted a draft inventory and map of regionally significant riparian corridors in Resolution No. 02-3176 on August 8, 2002; and

WHEREAS, the Metro Council adopted a draft inventory and map of regionally significant wildlife habitat in Resolution No. 02-3177A on August 8, 2002; and

WHEREAS, the Goal 5 administrative rule allows local governments to conduct a single economic, social, environment and energy ("ESEE") analysis for more than one significant Goal 5 resource; and

WHEREAS, the Metro Council desires to combine the two draft inventory maps for the purpose of conducting one ESEE analysis for both riparian corridors and wildlife habitat resources within the regionally significant resource sites identified by the Metro Council in Resolution No. 01-3141; and

WHEREAS, Title 3, Section 5 of the Urban Growth Management Functional Plan states that Metro must undertake an analysis to "identify inadequate or inconsistent data and protection in existing Goal 5 data, reports and regulations on fish and wildlife habitat" and "shall complete Goal 5 ESEE analyses ... only for those areas where inadequate or inconsistent data or protection have been identified."; and

WHEREAS, a draft analysis of "inadequate or inconsistent data and protection" ("Local Plan Analysis") among local governments within Metro's jurisdiction is attached as Exhibit B; and

BE IT RESOLVED:

1. The Metro Council adopts the draft map in Exhibit A, as the map of combined riparian corridor and wildlife habitat Goal 5 resources that shall be used for the purpose of identifying conflicting uses and impact areas in the ESEE analysis.

2. The Metro Council reserves the opportunity to minimally or substantially alter the draft map prior to adoption of a final map of regionally significant fish and wildlife habitat areas and Program to Achieve Goal 5, after public comment and review.
3. The Metro Council adopts the Local Plan Analysis in Exhibit B, as required by Title 3, Section 5 of the Urban Growth Management Functional Plan. The Metro Council concludes, based on the evidence in Exhibit B, that Goal 5 data and protection among local governments within Metro's jurisdiction is inconsistent, and that Metro conduct a regional ESEE analysis for all Goal 5 resource sites containing regionally significant riparian corridors and wildlife habitat as identified by the Metro Council in Resolution Nos. 02-3176 and 02-3177A.
4. The Metro Council's action in this resolution is not a final action designating regionally significant fish and wildlife habitat areas, final action on an ESEE analysis, or a final action to protect those areas through a Program to Achieve Goal 5.

ADOPTED by the Metro Council this ____ day of _____ 2002.

Carl Hosticka, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

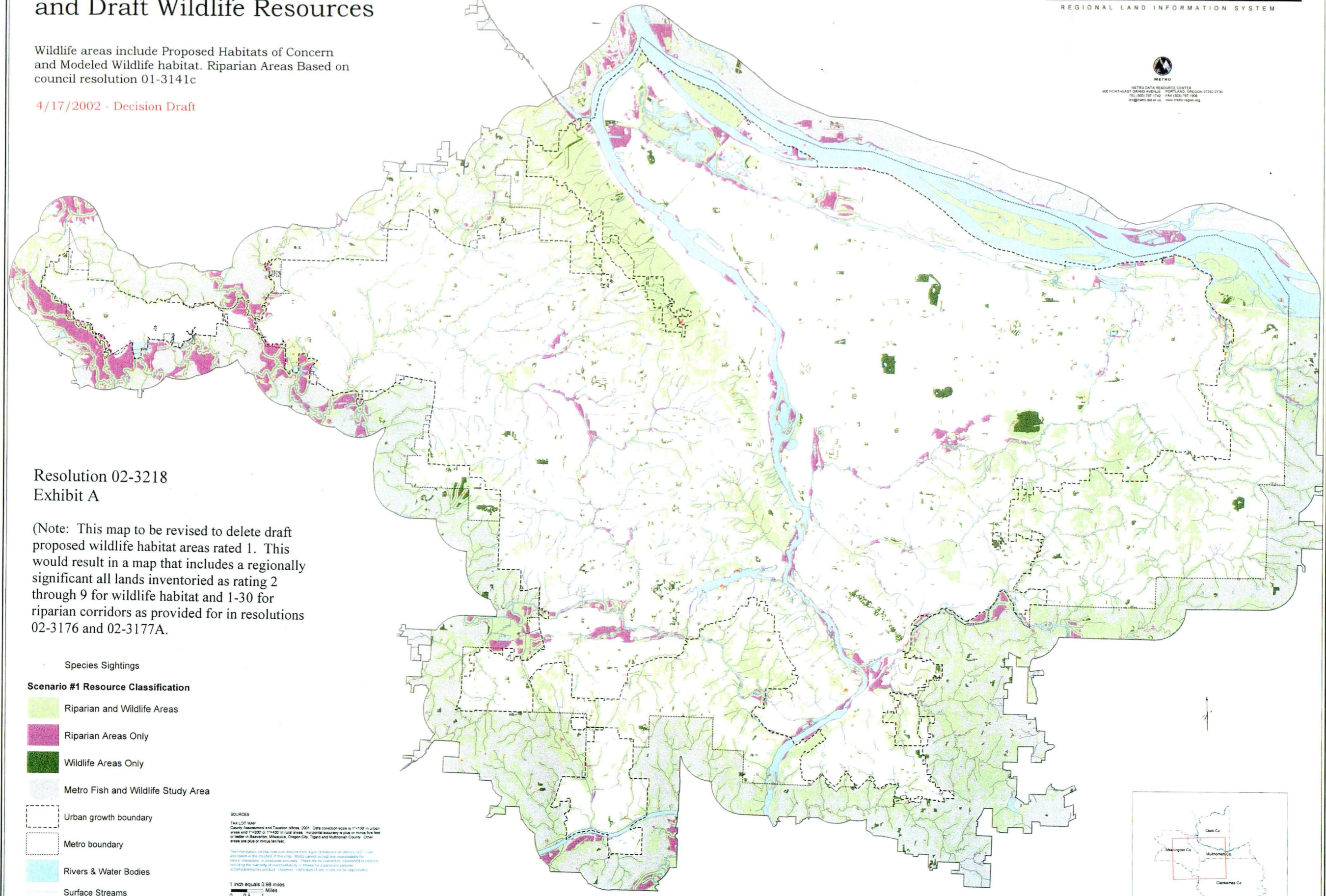
Regional Distribution of Riparian and Draft Wildlife Resources

Wildlife areas include Proposed Habitats of Concern and Modeled Wildlife habitat. Riparian Areas Based on council resolution 01-3141c

4/17/2002 - Decision Draft



METRO DATA RESOURCE CENTER
800 NORTHEAST GRAND AVENUE PORTLAND, OREGON 97232-2736
TEL: (503) 787-1742 FAX: (503) 797-1008
E-MAIL: metro@metro.or.gov WWW: www.metro-oregon.org



Resolution 02-3218 Exhibit A

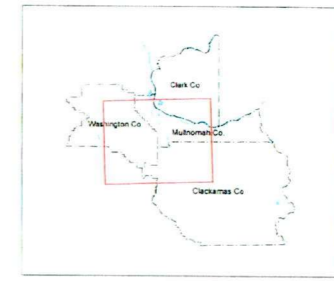
(Note: This map to be revised to delete draft proposed wildlife habitat areas rated 1. This would result in a map that includes a regionally significant all lands inventoried as rating 2 through 9 for wildlife habitat and 1-30 for riparian corridors as provided for in resolutions 02-3176 and 02-3177A.

- Species Sightings
- Scenario #1 Resource Classification**
 - Riparian and Wildlife Areas
 - Riparian Areas Only
 - Wildlife Areas Only
 - Metro Fish and Wildlife Study Area
 - Urban growth boundary
 - Metro boundary
 - Rivers & Water Bodies
 - Surface Streams

SOURCES
TAX LOT MAP
County Assessment and Taxation offices 2001. Data collection scale is 1"=100' in urban areas and 1"=200' or 1"=400' in rural areas. Horizontal accuracy is plus or minus five feet or better in Beaverton, Milwaukie, Oregon City, Tigard and Multnomah County. Other areas are plus or minus ten feet.

The information on this map was derived from digital databases on Metro's GIS. Metro is not responsible for the accuracy of the information. Metro cannot accept any responsibility for the use of this information. There are no warranties, expressed or implied, including the necessity of, or fitness for a particular purpose, accompanying this product. However, modification of any maps will be appreciated.

1 inch equals 0.98 miles
0 0.5 1 Miles



Location Map

RESOLUTION NO. 02-3218 EXHIBIT B

DRAFT FOR COMMITTEE REVIEW

LOCAL PLAN ANALYSIS

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APPENDICES

Appendix A.	Local Jurisdictions' Goal 5 Programs.
Appendix B.	Local Jurisdictions' ESEE Analyses.

Introduction

Fish and wildlife habitat is protected in the Metro region primarily through the application and implementation of State Land Use Planning Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces. Metro's Urban Growth Management Functional Plan contains the regional regulations relating to the future growth of the Metro region. The plan's requirements are divided into eleven titles based on various areas of growth management. Title 3 of the Functional Plan describes specific requirements for local governments to implement growth management policies addressing water quality, flood management, and fish and wildlife habitat conservation. In June of 1998, the Metro Council adopted revisions to Title 3, including a model ordinance and water quality and floodplain map identifying where Title 3 applies. Section 5 of Title 3 seeks to "conserve, protect, and enhance fish and wildlife habitat within the fish and wildlife habitat conservation areas to be identified on the water quality and flood management map by establishing standards and promoting coordination by Metro of regional urban watersheds."

Title 3, Section 5 relates to Statewide Planning Goal 5. Section 5(C) requires that Metro shall:

- 1) Establish criteria to define and identify regionally significant fish and wildlife habitat areas.
- 2) Adopt a map of regionally significant fish and wildlife areas after (a) examining existing Goal 5 data, reports and regulations from cities and counties, and (b) holding public hearings.
- 3) Identify inadequate or inconsistent data and protection in existing Goal 5 data, reports, and regulations on fish and wildlife habitat.
- 4) Complete Goal 5 economic, social, environmental, and energy (ESEE) analyses for mapped regionally significant fish and wildlife habitat areas only for those areas where inadequate or inconsistent data or protection has been identified.
- 5) Establish performance standards for protection of regionally significant fish and wildlife habitat that must be met by the plans implementing ordinances of cities and counties.

For this local plan analysis, we are focusing on steps 2(a) and 3: examining existing Goal 5 data, reports and regulations from cities and counties and identifying inconsistencies and inadequacies in data and protection of fish and wildlife habitat in the Metro region.

The purpose of this document is to provide the Metro Council the information necessary to make a decision to move on to step 4, completing an ESEE analysis for regionally significant fish and wildlife habitat.

Most of the local jurisdictions in the Metro region have adopted Goal 5 programs that have been acknowledged by the Department of Land Conservation and Development as being in compliance with the state rule. Some of these programs were developed prior to the Goal 5 rule revisions in 1996, while a few have been done more recently. Goal 5 is a process goal – the state does not prescribe a specific outcome as it does in other land use planning goals. The rule requires local jurisdictions to balance the need to protect natural resources against other state goals such as housing (Goal 10) and transportation (Goal 12) while providing ample opportunity for citizen involvement (Goal 1). Thus, the state rule allows local jurisdictions' Goal 5 programs to be in compliance with state law while being inconsistent with each other. However, as described above, Metro's code requires an analysis of the consistency of local natural resource protection prior to conducting a regional ESEE analysis and a regional protection program.

This report includes the following sections:

- 1) A description of the methodology used to gather data and evaluate local Goal 5 programs;
- 2) A summary of the regulatory context for this analysis;
- 3) A brief discussion of other related studies from the Metro region;
- 4) An analysis of the *inconsistencies in resource protection* in local Goal 5 programs;
- 5) An evaluation of the *inadequacy of resource protection* compared to what the science indicates as necessary to retain functional habitat; and
- 6) A *conclusion* in which inconsistencies and inadequacies in data and protection are summarized.

Methodology

The task of reviewing existing Goal 5 data, reports, and regulations for the purpose of identifying inconsistencies and inadequacies in data and protection is daunting in light of the fact that there are 27 jurisdictions in the Metro region. Metro began collecting data and information for this project early in 1999, when Metro staff interviewed local planners on-site in each jurisdiction. The result of this data gathering exercise was a Local Goal 5 Analysis Matrix that summarized local inventories, ESEE analyses, and programs, completed in March 1999. This matrix was then updated in August 2000 for those jurisdictions identified with work in progress for various elements. Both versions of the matrix were faxed to local planners for an accuracy check and review. In November 2000, Metro hired a planning intern to focus specifically on gathering the most updated material on local Goal 5 planning work. Additional information was gathered through a questionnaire sent to all local governments in early 2001.

Development of this local plan analysis included:

- On-site visits to interview local planners;
- An email questionnaire sent to all local governments;
- Follow up phone calls for additional information;
- Review of local comprehensive plans, development and zoning code, inventories, and ESEE analyses;
- Review of maps, overlay zones, and other GIS data layers relating to fish and wildlife habitat protection;
- Examination of the best available science on the protection of fish and wildlife habitat;
- Consideration of the recent listing of salmonids, and review of the Final Rule for Threatened Salmon and Steelhead;
- Review of other studies related to assessing local protection of fish and wildlife habitat in the region; and
- Local government opportunity to review a preliminary version of this document.

Regulatory context

In this section we include a short description of Metro's role as a regional government and State Planning Goal 5.

Metro's role as a regional government

Metro's primary planning and land use authority originates in Oregon Revised Statutes chapter 268. First, the rule requires Metro to define a planning procedure that identifies and designates areas and activities having significant impact upon the development of the metropolitan area, including, but not limited to, impacts on air quality, water quality, and transportation. Then, Metro has the responsibility of preparing and adopting functional plans for those areas and activities identified as having a significant impact on the development of the metropolitan area. Functional plans are limited purpose plans, intended to be narrower in focus than city or county comprehensive plans. Finally, Metro has the authority to recommend or require cities and counties to make changes in any comprehensive plan to assure that the plan and any actions taken pursuant to it conform to the district's adopted functional plans (ORS 268.390).

Statewide Planning Goal 5

Goal 5 requires local jurisdictions to adopt plans to protect natural resources and conserve scenic and historic areas and open spaces by "inventorying Goal 5 resources and developing land use programs to conserve and protect Goal 5 resources" (OAR 660-023-0000). Pursuant to Goal 5 and Oregon Administrative Rule chapter 660, division 23, local governments must (1) inventory the location, quality, and quantity of Goal 5 resources, (2) determine the significance of resource sites, (3) analyze the economic, social, environmental, and energy consequences of the conflicting uses with the Goal 5 resource sites, and (4) develop a program to achieve Goal 5 objectives (OAR 660-023-0030; OAR 660-023-0040). Oregon Administrative Rule chapter 660, division 23 replaces Oregon Administrative Rule chapter 660, division 16. The revised rule is similar to the former version; however, a "safe harbor" option has been added. The safe harbor option provides flexibility in the Goal 5 process for jurisdictions to decide between completing a traditional ESEE analysis or streamlining their Goal 5 program by applying protective measures set forth in the Goal 5 rule.

Metro has the authority pursuant to Oregon Administrative Rule chapter 660, division 23, to identify "regional resources." Regional resource is defined as "a site containing a significant Goal 5 resource, including but not limited to a riparian corridor, wetland, or open space, which is identified as a regional resource on a map adopted by Metro ordinance." Metro's Goal 5 work addresses the following Goal 5 resources: riparian corridors, associated wetlands, and wildlife habitat.

Studies relating to assessment of fish and wildlife protection

While Goal 5 is the rule under which to address fish and wildlife habitat protection within the framework of Oregon's land use planning laws, several studies have indicated that protection of natural resources through the Goal 5 process is not always predictable nor adequate. On the other hand, some groups, such as the National Association of Homebuilders, assert that current regulations are sufficient to protect endangered species. The results of this local plan analysis are intended to provide the Metro Council with sufficient information to identify inconsistencies and inadequacies of local Goal 5 programs in the protection provided for fish and wildlife

habitat. Here we discuss other studies that are related to the assessment of fish and wildlife protection in the Metro region.

The National Association of Homebuilders in their *Saving Salmon and Growth* (2000) report discuss many of the local, state and federal regulations currently in place that protect the environment. The report states that: "From a land development perspective, a credible argument can be made that one of the major goals of NMFS' 4(d) Final Rule – environmental protection for salmon habitat – is being met thanks to a plethora of local, state and federal regulations that were already in place prior to implementation of the 4(d) Final Rule." This statement appears to be based on the number of existing regulations, rather than a comprehensive analysis of how the rules are implemented. As stated above, the purpose of this local plan analysis is to assess the consistency and adequacy of local plans in the protection of fish and wildlife habitat, not the existence of a protection program.

In 1994, Metro co-sponsored a study, *To Save or To Pave*, with the Portland Audubon Society and 1000 Friends of Oregon to analyze and evaluate the effectiveness of five Goal 5 programs in the Metro region (Ketcham et al. 1994): Beaverton, Gladstone, Gresham, Milwaukie, Portland, and Washington County. In the study the authors conducted an evaluation of the jurisdictions' Goal 5 programs. Included is consideration of the data and inventories, the ESEE analyses, the programs used to protect natural resources, and the monitoring and enforcement of the regulations.

Some of the major findings of *To Save or To Pave* were included in Metro's Regional Framework Plan (Metro 1998):

- Over three-fourths of local decisions examined allowed degradation of natural and scenic resources.
- Goal 5's rules were site specific and did not protect resources on an ecosystem or landscape level.
- Local governments employed a variety of regulatory and non-regulatory techniques with no overall consistency in an area.
- Goal 5 does not require standardized inventories or methods of data collection. As a result, important areas were omitted from consideration for protection, and inventories did not contain enough information to guide local planning decisions.
- Enforcement of local Goal 5 programs is difficult, inadequate and too reliant on citizen efforts.
- Upland forests are the least protected resource and are vulnerable to destruction.

Implementation of a strategy to address the above findings is called for in Title 3 of Metro's Urban Growth Management Functional Plan (adopted 1998).

Ozawa et al. (2000) analyzed the connection between protective regulations for natural resources and the amount of vegetation in the stream corridors of two cities in the Metro region, Hillsboro and Oregon City in a recent study: *An exploratory investigation of regulatory strategies to protect stream buffers in Oregon*. The authors used aerial photographs and GIS to assess the percentage of vegetative cover within a range of buffer widths in both cities. The study found

that near stream tree cover was higher in Hillsboro but that the percentage of cover dropped as buffer width increased. Oregon City, on the other hand, had a higher level of vegetative cover farther from the stream, likely due to the topography of the area. The study emphasized the importance of monitoring the implementation of protective regulations in order to assess the effectiveness of specific land use tools. In addition the authors concluded that: "Data collection regarding regulatory strategies at the municipal level over even only a 20-year period was severely impeded by a lack of access to documents." The lack of transparent decision factors and availability of data and other documents is a common problem in evaluating the consistency and adequacy of local Goal 5 programs.

Finally, the Defenders of Wildlife recently commissioned a study to evaluate the effectiveness of Oregon's Land Use program in protecting fish and wildlife habitat (Wiley 2001). The study concluded in part that even when local comprehensive plans comply with the state planning goals, "...planners express doubt about the effectiveness of those efforts." A main reason for the inconsistent protection of natural resources through Goal 5 can be attributed to the fact that the rule dictates a process, rather than a specific outcome. Local jurisdictions have flexibility in determining which resources to protect (if any) and how to protect them. The rule provides jurisdictions with an opportunity to allow the development of natural resources based on the economic, social, environmental or energy consequences of protecting the resource. Thus, the very nature of Goal 5 allows for inconsistent protection programs to be developed that still comply with state law. One of the main conclusions of the study is that in order for Goal 5 to be effective in protecting natural resources, the state must assert "...the importance of habitat protection and restoration...and make an explicit connection to the land use program through legislative or administrative action."

Thus, while there are many regulations in place that are intended to protect fish and wildlife habitat, several studies of local programs demonstrate inconsistent and insufficient protection of fish and wildlife habitat. This is in large part due to the flexibility inherent in the Goal 5 rule.

Inconsistencies in resource protection

Introduction

The Metro region lies within the Willamette Valley ecoregion, as defined by the U.S. Environmental Protection Agency. The EPA defined ecoregions, which are used in the Oregon State of the Environment Report (2000), are based on similarity of several environmental variables like geology, vegetation, and average precipitation. While there are several different watersheds within the Metro region with different geological characteristics, all of the ecosystems within the region are more similar than different, especially in comparison with other ecoregions such as the Columbia Plateau. Thus, it becomes important to consider data collection and resource protection within a similar context.

In this section we analyze local Goal 5 programs to evaluate the level of consistency (or inconsistency) in data and protection. For this task we examined local jurisdictions' Goal 5 inventories and the economic, social, environmental, and energy (ESEE) analysis for

inconsistencies in data, and local programs for inconsistencies in resource protection. Consistency in data collection and protection among local jurisdictions in the Metro region is important in order to achieve the vision described in the Regional Urban Growth Goals and Objectives (RUGGOs). Objective 15: *Natural Areas, Parks, Fish and Wildlife Habitat* calls for an open space system capable of sustaining or enhancing native wildlife and plant populations, and recognizes the need for a regionwide system of linked significant wildlife habitats.

Many Goal 5 resources cross jurisdictional boundaries, such as a stream or river. A stream may be deemed significant in one jurisdiction, but insignificant in the other. Insignificant resources are not protected under Goal 5. This could result in inconsistent protection of the resource. Resource protection programs also may vary based on the level of encroachment allowed, buffer widths, and mitigation requirements, for example. While inconsistent protection may be problematic from an ecological perspective, it often results from the tradeoffs inherent in the Goal 5 process.

The Goal 5 rule allows local programs, acknowledged as being in compliance with State rules, to be inconsistent with each other, resulting in varying levels of resource protection across jurisdictional boundaries. The flexibility allowed local jurisdictions in maneuvering through the Goal 5 process provides several opportunities to make different choices that result in varying resource protection decisions.

Baseline protection

As stated by the National Association of Homebuilders, there are many existing local, state, and federal regulations that currently protect natural resources at some level. Here we provide a brief description of current regulations that provide fish and wildlife habitat with some protection. Most local jurisdictions have an acknowledged Goal 5 program that provides some fish and wildlife habitat protection. Metro's Title 3 provides a baseline of protection for water quality and flood management purposes, while other state and federal laws also provide some protection for streams and wetlands. However, wildlife habitat that is not associated with riparian corridors or wetlands (upland habitat) is the least protected resource.

Riparian corridors

Prior to 1998, Metro did not place any requirements on local jurisdictions related to natural resource protection. In 1998, Metro amended Title 3 of the Functional Plan to protect water quality, manage floodplains, and prevent erosion. Title 3 provides specific regional standards, rather than dictating a process like the Goal 5 Rule. All local jurisdictions are required to be in compliance with the requirements of Title 3¹, which provides a baseline of protection for streams, wetlands, and floodplains. While the Title 3 regulations provide a consistent level of protection for water quality, they were not developed with the goal of providing habitat protection. Title 3 requires a 50-foot vegetated corridor (on each side of a stream) on primary streams (streams draining 100+ acres) and wetlands, and a 15-foot vegetated corridor on

¹ As of 8/29/2001 the following jurisdictions were not yet in compliance with the following sections of Title 3. *Flood management*: Durham, Fairview, Gladstone, Lake Oswego, Milwaukie, Tigard, Clackamas County, and Multnomah County. *Water quality*: Durham, Fairview, Gladstone, Gresham, Lake Oswego, Milwaukie, Portland, Rivergrove, Tigard, West Linn, Clackamas County, Multnomah County. *Erosion and sediment control*: Durham, Fairview, Sherwood, Tigard, Clackamas County, Multnomah County.

secondary streams (streams draining 50-100 acres). The width of the vegetated area extends up to 200 feet for primary streams in steeply sloped areas and 50 feet for secondary streams. This does provide some benefit to fish and wildlife, but does not meet the recommendations found in scientific studies of riparian and upland habitat (further discussed below under *Inadequacies in resource protection*). Floodplain development must be mitigated through balance cut-and-fill requirements.

In Washington County, streams receive additional protection through the Clean Water Services (CWS) (formerly United Sewerage Agency) Design and Construction Standards. CWS serves as the regional water quality authority in Washington County and oversees storm and surface water management and sanitary sewer systems. CWS's water management responsibilities arise from State Department of Environmental Quality (DEQ) rules and federal Clean Water Act orders. CWS standards cover 10 jurisdictions: Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, Sherwood, Tigard, Tualatin, and Washington County. The Design and Construction Standards meet, and in some cases exceed, Metro's Title 3 requirements for floodplain and water quality protection.

Wetlands

Wetlands are provided with protection from a number of agencies. Metro's Title 3 requires a 50-foot buffer surrounding wetlands. However, a wetland can be filled if a permit is obtained from the Oregon Division of State Lands (DSL), which administers Oregon's removal/fill law, and mitigation occurs. DSL also determines wetland boundaries. Any delineated wetland meeting the definition of "waters of the state" requires a permit for removal of more than 50 cubic yards of material. DSL also enforces mitigation requirements. DSL, however, must determine land use compatibility, which means that a DSL permit does not trump Title 3 regulations. Federal requirements, identified in the Clean Water Act of 1977, also provide for the protection of wetlands. Despite these regulations, wetlands are still being lost to development and agriculture. An internal study conducted for DSL found that 70 percent of wetland losses involved the unauthorized use of wetlands.² All regional, state, and federal regulations allow for the fill of wetlands as long as mitigation occurs; however, fish and wildlife are not always able to inhabit the new wetlands. A recent study by the National Academy of Sciences found that the goal of no net loss of wetlands is not being met by wetland mitigation programs, and furthermore "[e]ven when artificial wetlands are well-built, they rarely come close to replacing natural ones..."³

Floodplains

Intended to reduce flood damage and loss to human life and property, Metro's Title 3 requires that any development within the 100-year floodplain identified by the Federal Emergency Management Agency (FEMA) remove an equal amount of soil to that of the fill needed for development. A floodplain management plan is also required in order for communities to participate in low-cost flood insurance provided by the federal government. Title 3 does not include any provisions for retaining floodplain that may provide important fish and wildlife habitat.

² Cited in *The Oregonian*, "Efforts to save NW wetlands mired in failure," August 25, 2001, p. A1.

³ National Academy of Sciences, *Compensating for Wetland Losses Under the Clean Water Act*, National Academy Press, 2001.

Upland wildlife habitat

Upland areas are most likely to receive protection through acquisition for parks or open spaces by either governments or private groups. An example of a regional effort to protect open spaces is the 1995 bond measure approved by the voters to allow Metro to purchase over 7,000 acres in the region.

Inventory

In this section, we discuss the Goal 5 inventory requirements and describe the inventories of several jurisdictions. Table 1 provides an outline of the current status of all jurisdictions' Goal 5 inventories.

Goal 5 Requirements

The Goal 5 process begins with the inventory of Goal 5 resource sites, providing information to locate and evaluate resources and to develop programs to protect such resources (OAR 660-023-0030(1)). The standard inventory process involves four steps. However, depending on the type of Goal 5 resource, not every step must be applied in the inventory stage.

The inventory stage begins with the collection of all "existing and available" information about potential Goal 5 resource sites (OAR 660-023-0030(2)). After a local government gathers all of the existing information concerning potential resource sites, the local government then must determine the adequacy of the information (OAR 660-023-0030(3)). Information about a resource site is deemed adequate when it includes a determination of location, quality, and quantity of the resource (*Id*). Location information shall include a description or map of the resource area for each site (OAR 660-023-0030(3)(a)). Although this information must be sufficient to determine whether a resource exists on a particular site, the precise location of the resource need not be determined at this stage in the inventory process.⁴ Quality information shall indicate a resource site's value relative to other known examples of the same resource (OAR 660-023-0030(3)(b)). Although regional comparison of resources is preferred, quality comparisons may be made for resource sites within the jurisdiction, if no other local examples exist (*Id*). Concerning quantity, Goal 5 requires local governments to estimate the relative abundance or scarcity of the resource (OAR 660-023-0030(c)).

Once the adequacy of the information is determined, the local government must then determine whether the site is significant (OAR 660-023-0030(4)). The significance determination is based on the following: (1) the location, quality, and quantity of the resource; (2) special significance criteria; and (3) additional criteria adopted by the local government (OAR 660-023-0030(4)(a), (b), & (c)). After the significance determination, a local government must list the significant sites on its inventory and identify them as such on a map adopted by ordinance (OAR 660-023-0080(1)(b)). Once included in the inventory, the sites must proceed through the remaining Goal 5 process (*Id*).

⁴ Prior to amendment, OAR 660-016-0000(2) required a determination of site specific resource location, which included a description or map of the resource site's boundaries and the impact area, if different. For non-site specific resources, determination was to be as specific as possible. *Id*. However, OAR 660-023-0030(3)(a) does not distinguish between site specific and non-site specific resources. Rather, the new rule requires information about location to include a description or map of the resource and to be sufficient enough to conclude whether a resource exists on a particular site. *Id*.

Local governments may also choose to utilize the State “safe harbor” approach rather than conducting an inventory using the standard methodology described above (OAR 660-23-020). A safe harbor approach may be used for riparian corridors and wildlife habitat. Using the safe harbor approach, a local government may determine the boundaries of significant riparian corridors within its jurisdiction using a standard setback distance from all fish-bearing lakes and streams (OAR 660-23-090(5)). This setback distance is determined as follows:

- (a) for streams with average annual stream flow greater than 1,000 cubic feet per second (cfs), the riparian corridor boundary is 75 feet upland from the top of each bank
- (b) for lakes and fish-bearing streams with average annual stream flow less than 1,000 cfs, the riparian corridor boundary is 50 feet upland from the top of each bank

For wetlands, local jurisdictions are required to follow state determined standards to inventory and determine significant wetlands (OAR 660-23-100(2)). Jurisdictions must conduct a local wetland inventory (LWI) for areas inside urban growth boundaries using specific standards and procedures and are required to adopt the LWI as part of the comprehensive plan. Criteria for determining significance must be followed, which are adopted by the Division of State Lands (DSL). After this set inventory and significance determination process is completed, local governments may either follow the standard Goal 5 process to adopt a program for protection or adopt the state’s safe harbor for wetland protection.

Local governments may use the safe harbor approach for some resources and the standard inventory approach for other resources. For example, Wilsonville used the safe harbor to determine protection along the Willamette River and the standard ESEE approach for other riparian resources.

Comparison of local jurisdictions’ inventories

Following is a brief analysis of local jurisdictions’ inventories. Included is a summary of the status of all the inventories conducted for Goal 5 by local jurisdictions in the region and an analysis of the criteria for determining inconsistencies in the inventories. To determine the level of consistency, we consider:

- the date inventories were conducted,
- the definition of a resource,
- the methodology used for data collection,
- the format of data,
- the variability in the inventory approaches,
- the methods of significance determination, and
- the comparability of data from one jurisdiction to another.

Date of local inventories

The dates of local inventory efforts and the resources inventoried differ widely across jurisdictions. Table 1, below, provides information about the status of all jurisdictions’ inventory efforts in the Metro region.

Table 1. Goal 5 inventories by resource and jurisdiction.

Jurisdiction	Resource/Date			
	River/Stream/ Riparian Area	Wetlands		Upland/Open Space/Trees ¹
		Goal 5	Local Wetlands Inventory	
Beaverton	1985 2000 (safe harbor)	1985 2000 (safe harbor)	yes	1985 2000 (safe harbor)
Cornelius	*	*		*
Durham	1994 (in Comp. Plan)	1994		*
Fairview	1994	1994		1994
Forest Grove	1997	1983	yes	1977
Gladstone	1979 1983	1979 1983		1979 1983 1991 (Open Space Inv.)
Gresham	1988	1988	In progress	1988
Happy Valley	1991 (reconnaissance level survey) 1996	1991 (reconnaissance level survey) 1996	yes	1996 1998 (Urban Forest Plan)
Hillsboro	1991 2001	2001	yes - 2001	1991 2001
Johnson City	*	1980 (Comp Plan)		*
King City	*	1990		*
Lake Oswego	1975 1991 1995 1996	1975 1991 1995 1996	yes	1975 1991 1995 1996
Maywood Park	No Goal 5 resources	No Goal 5 resources		No Goal 5 resources
Milwaukie	1987 (adopted in 1989)	1987(adopted in 1989)		1987(adopted in 1989)
Oregon City	1993 1999	1993 1999	yes	*
Portland	1987-1997 In progress	1987-1997 In progress		1987-1997 In progress
Rivergrove	1989	1989		*
Sherwood	1979 1990	1979 1990 1992	yes	1979 1990
Tigard	1983 1994	1983 1994	yes	1983
Troutdale	1994 (Beaver Creek) (not adopted)	1989 (not adopted)		*
Tualatin	1995/1997	1995/1997	yes	1995/1997
West Linn	In progress	1988 In progress	In progress	In progress
Wilsonville	1992-94 1997-98 2000	1992-94 1997-98 2000	yes	1992-94 2000
Wood Village	*	* (no floodplains)		*
Clackamas County	1992 1996	1996		1996 (sensitive bird sites)
Multnomah County	1977 1994 (Streams in rural West Hills); 1995 (Streams east of the Sandy River); 2001 (Streams in rural area west of Sandy River)	1977 1989 (Sauvie Island and Multnomah Channel area)		1977 1994 (Wildlife habitat in rural West Hills)
Washington County	1983	1983		1983

Source: Metro 2001.

¹While the Goal 5 rule does not refer to upland or trees as a resource category, Metro is using the heading Upland/Open space/Trees as a catch-all term that encompasses protection for areas not associated with streams or wetlands.

*No inventory conducted.

For many jurisdictions, the inventory process is ongoing. Lake Oswego and Wilsonville, for example, have completed several inventories for wetland, riparian, and open space areas over the past twenty years. However, other jurisdictions have not updated inventories completed ten and twenty years ago. For example, Johnson City has not updated their inventory since 1980; Gresham has not updated their inventory since 1988. Some jurisdictions have updated an inventory for a single resource. For example, Gladstone updated its Open Space inventory in 1991, yet its other Goal 5 resources have not been reviewed for 18 years (Riparian Areas and Wetlands, 1983). A few of the smaller jurisdictions within the Metro region, such as Cornelius and Wood Village, have never completed an inventory. Financial resources typically dictate the number of resources inventoried and the thoroughness of the data collected.

Resource definition

The old Goal 5 rule (prior to 1996), under which most jurisdictions developed their Goal 5 programs (only eight jurisdictions have completed a Goal 5 program under the new rule), provides no specific guidance on how Goal 5 resources should be defined. Each jurisdiction has a slightly, if not completely, different way of defining resource categories, such as “open space” and “fish and wildlife areas and habitats.” Table 2, below, includes definitions from three jurisdictions that refer to forested areas as a resource, yet are very different in how inclusive the definition is. Oregon City includes forested land in its definition of “wildlife habitat,” while Lake Oswego specifically identifies tree groves as a resource type.

Table 2. Comparison of resource definitions that include trees.

Jurisdiction	Resource definition
Lake Oswego	<i>Tree groves:</i> the boundary of a tree grove shall be measured at the outer edge of a contiguous tree canopy based on aerial photos and/or visual field observations.
Milwaukie	<i>Habitat areas:</i> The NR Overlay Zone will be assigned to nonriparian and nonwetland natural resource sites containing habitat values such as wooded areas, naturally vegetated areas, areas with rare or endangered flora and fauna, or similar areas...
Oregon City	<i>“Wildlife habitat”</i> means (1) forested land; (2) riparian area; or (3) any other areas designated as wildlife habitat in the city’s comprehensive plan.

Source: Metro 2001.

The revised Goal 5 Rule includes specific definitions for some resources. However, there is still a great amount of flexibility allowed jurisdictions in the specific application of the definitions. For example, in OAR 660-23-090(1) a riparian corridor is defined as “a Goal 5 resource that includes the water areas, fish habitat, adjacent riparian areas, and wetlands within the riparian corridor boundary.” While this appears to be specific, the riparian corridor boundary is defined as “an imaginary line that is a *certain distance* upland from the top bank...” (emphasis added). The “certain distance” language allows for local jurisdictions to determine any distance for which there is adequate justification.

Data collection methodologies

The Goal 5 Rule allows jurisdictions to inventory a single resource category in an inventory, or to inventory several Goal 5 resources. All but five jurisdictions have inventoried streams and riparian corridors, while 10 jurisdictions have not yet inventoried upland wildlife habitat. Table 3 below provides a description of the data collection process for four jurisdictions.

Table 3. Description of four jurisdictions' data collection process.

Inventory step	Gresham	Milwaukie	Happy Valley	Lake Oswego
Site selection	Completed an inventory for fish and wildlife areas and habitats, wetlands, and ecologically and scientifically significant areas in 1988. The inventory was in two parts: (1) Natural Resources Inventory and (2) Open Spaces Inventory. A total of 89 sites were selected using USFWS National Wetland Inventory maps, aerial photographs, and site visits.	Completed an inventory for wetland, riparian, and upland areas in 1987. A total of 26 sites were selected based on USFWS National Wetland Inventory, aerial photographs, and field visits. The inventory included areas with unique and diverse natural and vegetative features, areas important for wildlife habitat, and areas with soil and/or wetness constraints, which may contribute to erosion control, aquifer recharge, or other natural values.	Completed a Local Wetland Inventory in 1996 using Oregon Freshwater Assessment Methodology (OFWAM) for 26 wetland and waterway sites within the jurisdiction. The majority of wetland sites were determined using the routine on-site method described in the manual. However, where access was denied, the jurisdiction relied on aerial photographs, topographic maps, and other information.	Completed an inventory for wetland, riparian, and natural areas in 1991. A total of 226 natural resource sites were selected, including 93 wetland and water areas, 34 upland tree groves, and 98 individual tree sites. Wetland and water resources were categorized into four categories: emergent wetlands, forested wetlands, ponds, and stream corridors. Tree groves were categorized as follows: coniferous sites, deciduous sites, and mixed coniferous/deciduous sites. In 1996, the inventory was expanded to include 36 additional stream reaches and upland forests.
Data collection	After one site visit, a standard inventory form, narrative, and Wildlife Habitat Assessment rating form were completed. Field notes included descriptions of location of the site, weather, physical parameters, vegetation, wildlife species (observed and known to be present), human uses, and potential for management.	A narrative description of topography, vegetation, wildlife, habitat function, human use, and management potential as well as a standard inventory form were completed for each site. The Wildlife Habitat Assessment rating form was used to determine the wildlife habitat value of the natural resource sites.	OFWAM describes wetland functions to include: wildlife habitat, fish habitat, water quality, hydrologic control, education, and recreation. Furthermore, wetland conditions include: enhancement potential, aesthetic quality, and sensitivity to impact. These functions and conditions formed the basis for the quality assessment.	Biologists surveyed each site and completed a site summary, which included a general description of the site, the associated natural resource values, impacts of disturbance, and a Habitat Assessment Score. The Habitat Assessment Score evaluated the food, water, cover, disturbance, linkage, and unique features of the site.

Source: Metro 2001.

Site selection methods were similar for all four jurisdictions, likely due to the specific references in the Goal 5 Rule to data sources appropriate for inventories. However, Happy Valley only inventoried wetlands, while the other three jurisdictions inventoried all types of fish and wildlife habitat. Three of the four jurisdictions used some form of the Wildlife Habitat Assessment (WHA) rating form to assess the wildlife value of specific sites. However, the WHA rating form has been altered by most of the jurisdictions that have put it to use, thus rendering the scores incomparable with each other. The person conducting the assessments also affects the comparability of the WHA scores; planners assessing wildlife habitat value in one site visit may not arrive at the same score as trained biologists conducting fieldwork. Happy Valley used the Oregon Freshwater Assessment Methodology to evaluate wetlands, rather than the WHA.

Lack of data and comparability of data impairs the monitoring and assessment of the progress of natural resource plans. As the table above demonstrates, data is collected using different procedures and at different times throughout the region.

Data format

The format of the inventory data layers varies by jurisdiction. Some jurisdictions have their inventories described in paper documents that have never been transferred to maps. Other jurisdictions have natural resource sites identified by hand on paper maps, while a few jurisdictions with inventories that have been completed recently have inventory data on a geographic information system (GIS). Most current state of the art planning efforts use GIS technology to map and plan for natural resource protection. However, not all jurisdictions in the Metro region have access to GIS technology or the planning resources to develop GIS data layers. This makes it difficult to compare inventories and data. (See further discussion of the inconsistencies in mapping in the *Program* section below.)

Significance determination

The Goal 5 rule provides for flexibility in the significance determination process. The rule only requires the consideration of information on location, quality, and quantity of the resources. Jurisdictions are free to adopt any number of additional significance criteria to be used in the significance determination process. This flexibility in the application of the rule allows for differences in the significance determinations of local jurisdictions. Some jurisdictions use a different set of criteria for determining significance for each resource category. For example, Tualatin considered the following criteria in determining wetland significance: fish and wildlife habitat value; hydrologic control; location in close proximity to a water listed by DEQ as water quality limited; and the presence of a rare, locally unique, or state or federally listed species. For riparian areas, Tualatin considered additional factors, including educational, scientific, and recreational factors, to name just a few. Happy Valley found a wetland significant if it was: (1) a wetland associated with a perennial water course; (2) a wetland providing three or more functions and conditions assessed by OFWAM; (3) a wetland contiguous with wetlands determined to be significant by Clackamas County; or (4) a wetland providing diverse wildlife habitat, as determined by OFWAM.

Jurisdictions may develop unique criteria to determine the significance of the same resource. For example, both Forest Grove and Lake Oswego identified tree groves as significant natural resources, yet they used very different criteria to do so (see Table 4 below). Forest Grove outlines specific criteria in the zoning ordinance for determining significant trees and tree groves, while Lake Oswego uses one set of criteria for all natural resources.

Table 4. Comparison of significance factors for tree groves in Forest Grove and Lake Oswego.

Forest Grove		Lake Oswego
Trees	Tree Groves	Criteria for all natural resources
a. distinctive size, shape or location b. special botanical significance c. exceptional beauty d. significant due to a functional or aesthetic relationship to a natural resource e. significant based on association with historic figures, properties or general growth and development of the city	a. relatively mature and evenly aged b. purity of species composition, or a rare or unusual nature, or an exceptional example of a type of forest such as riparian or woodland c. in healthy growing condition d. crucial functional and/or aesthetic relationship to a natural resource e. historic significance	<i>Natural Resource Values:</i> 1. unusual or threatened species 2. native plant communities 3. wildlife Habitat Rating (must receive a score of 35+) 4. water quality function <i>Social Values:</i> 5. educational potential (educational value, feasibility of access, proximity to schools) 6. scenic (attractive vegetation, high visibility, screening value) 7. recreational (passive recreational opportunities, public accessibility, environmental sensitivity)
Resource is significant if it meets one or more of the above criteria	Resource is significant if it meets criteria a-c and either d or e above	Resource is significant if it meets one or more of the above criteria

Source: Metro 2001.

Other jurisdictions have adopted few, if any, additional criteria to aid in the significance determination process. Fairview simply states in its comprehensive plan that “seventy-one natural resource sites were inventoried, evaluated, and determined to be of significance.” Finally, for some jurisdictions, such as Milwaukie and Gresham, it is unclear how the significance determinations were made due to a lack in documentation or clear descriptions.

Key observations

Below are several major items that illustrate the inconsistencies in Goal 5 inventories in the Metro region:

Date of inventory

- Several jurisdictions have never completed an inventory for one or more resources: riparian area (*Cornelius, Johnson City, King City, Wood Village*); wetlands (*Cornelius, Wood Village*); wildlife habitat (*Cornelius, Durham, Johnson City, King City, Oregon City, Rivergrove, Troutdale, Wood Village*).
- Two jurisdictions have never completed a Goal 5 inventory for any resource (*Cornelius, Wood Village*), and Troutdale has completed but never has adopted inventories for riparian areas and wetlands.
- Only nine jurisdictions have completely updated their inventories since they were first acknowledged. (*Gladstone, Happy Valley, Lake Oswego, Portland, Sherwood, Tualatin, Wilsonville, Multnomah County, Washington County [not adopted]*)
- Eight jurisdictions have completed inventories for some resources under the new Goal 5 rule (revised in 1996). (*Beaverton, Happy Valley, Oregon City, Portland, Tigard, Tualatin, Wilsonville, Multnomah County*)

Resource definition

- The old Goal 5 rule, under which most jurisdictions developed their Goal 5 programs (only eight jurisdictions have completed a Goal 5 program under the new rule), provides no specific guidance on how Goal 5 resources should be defined. Thus, jurisdictions have inconsistent definitions of resources. For instance, “wildlife habitat” as defined by one jurisdiction may include forested and riparian areas, while another jurisdiction provides a separate definition for tree groves. This leads to inconsistent data collection and may also lead to inconsistent protection.

Data collection methodology

- Jurisdictions may inventory a single resource category in an inventory, or may choose to inventory several Goal 5 resources. All but five jurisdictions have inventoried streams/riparian corridors in the region, while 10 jurisdictions have not yet inventoried upland wildlife habitat.
- Lack of data and comparability of data severely impairs the ability of public agencies to monitor and assess the progress of natural resource plans. When data is collected using different definitions, procedures, and at different times, as is the case with local Goal 5 planning programs, it frustrates efforts to study the efficacy of local plans in protecting fish and wildlife habitat.

Data format

- Data on natural resource inventories is found in notebooks, hand-drawn on paper maps, and on electronic GIS systems. This lack of consistency in data format adds to the difficulty in comparing data across the region.

Comparability of data from one jurisdiction to another.

- No evidence of data sharing or coordination with adjacent cities and counties – with the possible exception of current work in Washington County by Clean Water Services for the Watersheds 2000 project, in which jurisdictions may use data collected using a consistent methodology and at the same time.
- Inventories are not comparable based on the time data was collected and the varying methodologies employed.

Methods of significance determination

- Jurisdictions may develop unique criteria to determine the significance of the same resource. The approaches may or may not result in similar outcomes, but exemplify the inconsistent treatment of natural resources between jurisdictions in the region.
- For some jurisdictions, the criteria for determining significance are stated explicitly in planning documents. Other jurisdictions, especially those that completed Goal 5 several years ago, may simply state that they determined certain sites to be significant. This makes it difficult to compare the factors used by various jurisdictions in determining which resources are significant.
- The flexibility in the application of the Goal 5 Rule creates inconsistencies among the significance determinations of local jurisdictions.

Variability in inventory approaches

- Six jurisdictions have utilized the State safe harbor option for inventorying and significance determination for one or more riparian resources. (*Beaverton, Happy Valley, Tigard, Tualatin, Wilsonville, Clackamas County*) Beaverton is the only jurisdiction in the Metro region to have implemented the State safe harbor for wildlife habitat; however DLCD has not yet acknowledged the city's Goal 5 program.
- The safe harbor for riparian corridors applies to only a portion of the stream network (fish-bearing streams and those over a certain size), thereby excluding many of the smaller non-fish bearing tributary streams important for maintaining water quality, fish habitat, and watershed health.

Local Goal 5 inventories in the Metro region have been conducted at varying times, with different definitions of a resource, disparate methodologies, and a variety of approaches to the significance determination. However, most of the jurisdictions have Goal 5 programs that the State has acknowledged as being in compliance with Goal 5. This exemplifies the results of the flexibility inherent in the Goal 5 rule and the lack of a specific objective described by the State.

Many of the inconsistencies among local Goal 5 inventories can be attributed to the fact that some jurisdictions have recently updated their inventories while others are over a decade old. The older the inventory, the more likely the work has become outdated, original documents difficult to find, and data in a format incompatible with the latest planning efforts and technologies. The best available scientific information has advanced dramatically since the time the first Goal 5 inventories were conducted. Data collected at varying times is also not comparable for monitoring and assessment purposes. Consistent data helps in a number of ways. Consistent data is the building block for monitoring programs. The benefits of monitoring include measuring the degree to which development actions comply with local code provisions, measuring the degree to which plans are effective in meeting their stated purposes, and providing the basis for necessary plan revisions. In an era of salmon listings under the ESA, water quality impaired streams, and loss of biodiversity, it is important that local Goal 5 planning efforts move toward consistent data collection, assessment, and management decisions.

ESEE Analysis

In this section, we discuss the Goal 5 requirements for the economic, social, environmental, and energy (ESEE) analysis, the safe harbor option being implemented by a few jurisdictions, and compare several jurisdictions' approaches to the ESEE analysis.

Goal 5 Requirements

Following the inventory and determination of significant resources, local governments must develop programs to achieve compliance with Goal 5, based on an analysis of the ESEE consequences that could result from a decision to allow, limit, or prohibit a conflicting use (OAR 660-023-0040(1)). The ESEE analysis involves four steps: (1) identification of conflicting uses, (2) determination of impact area, (3) analysis of ESEE consequences, and (4) development of a program to achieve Goal 5 (*Id.*).

First, local governments must identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. A conflicting use is an adjacent land use that may negatively impact the resource site, determined by considering land uses allowed outright and conditionally within the zones applied to the resource site and impact area (OAR 600-023-040(2)). If no conflict will occur with the resource site, then the acknowledged policies and land use regulations are deemed sufficient to protect the resource site (OAR 660-023-040(2)(a)). A determination of no conflicting uses may be based upon applicable zoning and not ownership of the site (*Id.*).

Second, unlike the previous version of the rule, Oregon Administrative Rule chapter 660, division 16, the new rule requires a determination of the impact area, representing the extent to which land use activities could negatively impact the resource (OAR 660-023-0040(3))⁵. The impact area identifies the geographic limits within which to conduct the ESEE analysis for significant resource sites.

Third, the ESEE analysis describes the interaction between the resource and the conflicting use(s) based upon a decision to either fully protect the resource, fully allow conflicting uses, or limit the conflicting uses. Jurisdictions that choose to limit conflicting uses are to do that in such a way that “protects the resource to the desired extent” (OAR 660-23-040(5)). This discretionary language leads to widely disparate treatments of Goal 5 resources.

The old rule provided that both the impacts of the conflicting use on the resource site and the protection of the resource site on the conflicting use must be considered. The new rule adds that the local government may address each of the conflicting uses, or it may address a group of similar conflicting uses (OAR 660-023-0040(4)). Furthermore, the local government may use a “matrix of commonly occurring conflicting uses,” or it may conduct a single analysis for two or more resource sites that are within the same area or subject to similar zoning requirements. Both rules require local jurisdictions to consider any applicable statewide planning goals.

The standards identified by the state for completing the ESEE analysis are procedural rather than substantive. Findings must show that the steps of the ESEE analysis are met, but OAR 660-23-040 states that: “[t]he ESEE analysis need not be lengthy or complex, but should enable reviewers to gain a clear understanding of the conflicts and consequences to be expected.”

Safe Harbor Option

Less than half of the jurisdictions in the Metro region have completed an ESEE analysis. The new rule (Goal 5 was revised in 1996) created a “safe harbor” option, providing greater flexibility in the Goal 5 process for jurisdictions to choose between completing an ESEE analysis or applying safe harbor standards (OAR 660-23-020(2)). The safe harbor standards for significant riparian corridors are described previously in the inventory discussion. Jurisdictions choosing to implement such standards do, however, limit their ability to set standards to protect resources more broadly than the safe harbor provisions require.

⁵ The identification of the impact area occurred in the Inventory stage in the earlier version of the Goal 5 rule. This change results in a major difference between Goal 5 programs developed prior to 1996.

Six of the twenty-seven jurisdictions within the Metro region have applied some form of the safe harbor methodology.⁶ The cities of Happy Valley and Tigard only used the safe harbor methodology for the protection of significant resources. Happy Valley completed an ESEE analysis in 1995; however, the city did not submit the analysis for DLCD acknowledgement. Rather, it opted the safe harbor standards for wetlands and riparian corridors within its jurisdiction. Tigard did not complete an ESEE analysis; rather it implemented the safe harbor methodology for the Tualatin River, major streams, and associated wetlands.

Other jurisdictions chose to implement a combination of both safe harbor and ESEE methodologies. For example, Tualatin protected resources (two riparian areas and several wetlands) that met a certain level of significance with safe harbor standards. However, they completed an ESEE analysis for the remaining resource sites where: (1) development issues were significant and unresolved; (2) full protection of the resource would not be justified; and (3) limiting or fully allowing the conflicting uses would be a likely decision.

Comparison of local jurisdictions' ESEE analyses

Following is an examination of local jurisdictions' ESEE analyses. Included is a summary of the status of all the ESEE analyses conducted by local jurisdictions in the region, followed by analyses of each criteria for assessing inconsistencies. We used the following criteria to analyze local jurisdictions' ESEE analyses:

- status of the ESEE analysis,
- method of conducting the ESEE analysis,
- conflicting use determination,
- impact area determination,
- factors used for analyzing ESEE impacts, and
- decision to allow, limit, or prohibit conflicting uses.

Status of analysis

Whether or not a jurisdiction has completed an ESEE analysis tends to vary widely across jurisdictions within the Metro region, due to differences in jurisdictional size, dispersion of natural resources, and availability of financial resources. For example, Maywood Park has no Goal 5 resources; therefore, the jurisdiction has not completed an ESEE analysis. Smaller jurisdictions, such as Forest Grove, King City, and Troutdale, which may not have as many planning and financial resources as the larger jurisdictions, have not completed ESEE analyses. Table 5, below, provides a summary of the status of local jurisdictions' ESEE analyses.

⁶ Jurisdictions that have incorporated the safe harbor methodology into their Goal 5 programs are Beaverton, Happy Valley, Tigard, Tualatin, Wilsonville, and Clackamas County.

Table 5. Summary of the status of local jurisdictions' ESEE analyses.

Status of analysis	Number of jurisdictions*
Adopted ESEE analysis that is acknowledged by DLCD	13 (<i>Beaverton**</i> , <i>Fairview</i> , <i>Gresham</i> , <i>Johnson City</i> , <i>Lake Oswego</i> , <i>Milwaukie</i> , <i>Portland</i> , <i>Rivergrove</i> , <i>Tualatin</i> , <i>West Linn</i> , <i>Wilsonville</i> , <i>Multnomah County</i> , <i>Washington County</i>)
Adopted ESEE analysis not yet acknowledged by DLCD	2 (<i>Oregon City</i> , <i>Clackamas County</i>)
Adopted safe harbor (for one or more resources)	6 (<i>Beaverton**</i> , <i>Happy Valley</i> , <i>Tigard</i> , <i>Tualatin</i> , <i>Wilsonville</i> , <i>Clackamas County</i>)
No adopted ESEE analysis	9 (<i>Cornelius</i> , <i>Durham</i> , <i>Forest Grove</i> , <i>Gladstone</i> , <i>Happy Valley</i> , <i>Hillsboro</i> , <i>King City</i> , <i>Sherwood</i> , <i>Tigard</i> , <i>Wood Village</i>)

*Does not include Maywood Park as they have no Goal 5 resources.

**Beaverton has recently updated their Goal 5 work under the new OAR and is using the safe harbor where possible. However, the city's new program has not yet been acknowledged by DLCD.

Source: Metro 2001.

Of the twenty-seven jurisdictions within the Metro region, nineteen jurisdictions have initiated ESEE analyses. Only thirteen cities have adopted and acknowledged ESEE analyses. The cities of Troutdale and Wood Village never completed their work. Troutdale could not complete their ESEE analysis because the inventories were not detailed enough in their determinations of quality and quantity of the resources for the jurisdiction to proceed. Furthermore, the city ran out of funding and has been unable to complete the analysis. Hillsboro and Happy Valley, on the other hand, have completed their ESEE analyses but have not adopted them. Happy Valley adopted the safe harbor methodology instead of their completed ESEE analysis.

Oregon City and Clackamas County have completed and adopted ESEE analyses, but have not received acknowledgement from DLCD for compliance with Goal 5. Oregon City submitted their ESEE analysis for acknowledgement in 1993; however, DLCD remanded the work task, finding their inventories inadequate. Therefore, the jurisdiction is currently revising their inventories before revising the ESEE analysis. Clackamas County, however, adopted their ESEE analysis in 1996 and is still waiting for DLCD acknowledgement.

Method of analysis

The methods for completing the ESEE analysis vary greatly among jurisdictions, as shown in Table 6. Beaverton's basic and brief ESEE worksheets, comprised of a single-page of ESEE consequences rated high, medium, or low for each site, provides an example of a less detailed approach. In addition, Beaverton included a narrative ESEE for certain resource categories. Other jurisdictions have used similar worksheets, including Fairview, Johnson City, Milwaukie, and Rivergrove.

Table 6. Summary of ESEE methodologies.

Methodology	Number of jurisdictions
Standard DLCD worksheet methodology	5 (Beaverton, Fairview, Gresham, Happy Valley*, Johnson City, Rivergrove)
Site-by-site or resource-by-resource approach	5 (Tualatin, West Linn, Wilsonville**, Multnomah County, Washington County)
Two-tiered approach to analysis: generic and site-specific	5 (Lake Oswego, Milwaukie, Portland, Troutdale*, Wilsonville**)
Watershed by watershed approach	1 (Clackamas County**)

Source: Metro 2001.

*Indicates jurisdictions where the ESEE analysis was not adopted.

**Indicates jurisdictions where the ESEE analysis has not yet been acknowledged by DLCD.

Tualatin’s method provides for a more detailed comparison of ESEE consequences. They conducted ten basic ESEE consequences analyses for numerous sites within the jurisdiction. Each ESEE identified the basic characteristics of the parcels affected, and then summarized the significant functions and values associated with each parcel. The ESEE consequences were completed in a narrative fashion, as opposed to the checklist method employed by Beaverton, providing more opportunities for the jurisdiction to explain decision making.

The most detailed approaches used a two-tiered analysis method, comparing first the generic ESEE consequences for resource protection and development and then comparing the more site-specific consequences. For example, after making general assumptions about ESEE consequences, Lake Oswego identified the generic analyses that applied to each site. They then identified “priority properties” within each sub-site, where either serious adverse economic consequences would occur with full resource protection or where the full development of the property would have serious environmental consequences, and analyzed specific ESEE consequences for these properties. In the Columbia South Shore Plan, Portland performed a site-specific analysis by developing a matrix to compare each site’s conflicting use, the ESEE consequences unique to the site, and the conclusion and conflict resolution. The multi-layered approach is an effective method of analysis because it enables a jurisdiction to be detailed and extensive in their analysis without being repetitive.

Without specific requirements for analysis methodologies, ESEE analyses are determined to be sufficient when they contain the jurisdictions’ reasons for making certain land-use decisions.⁷ The brevity of the checklist method of analysis provides only a limited opportunity for jurisdictions to provide explanations of their reasoning and programmatic decisions based on the analysis, thereby impairing the transparency and accountability in the natural resource protection and planning process. On the other hand, the more detailed, two-tiered analysis method provides ample opportunity for jurisdictions to rely on the analysis to explain their decisions.

Conflicting use determination

Jurisdictions took a variety of approaches to analyzing the uses that conflict with protecting natural resources. Table 7 provides a sampling of the methods used by local jurisdictions to determine uses that conflict with the protection of identified significant resources. Approaches ranged from very general to site specific identification of conflicting uses.

⁷ *Columbia Steel Castings Co. v. City of Portland*, 314 Or 424, 432.

Table 7. Sample of methods used by local jurisdictions to determine conflicting uses.

Jurisdiction	Method of determining conflicting uses
Gresham	Used the DLCDD worksheets under the old Goal 5 Rule, identified conflicting uses specific to each site.
Lake Oswego	<p>Followed a two-tiered approach for determining conflicting uses.</p> <ol style="list-style-type: none"> 1. General conflicting uses were identified in six broad categories, based on the use allowed by underlying zoning districts, existing environmental regulations, and ownership patterns: fully protected; developed properties; vacant residential; vacant commercial/industrial; public and semi-public; and excavation and vegetation removal. 2. For site-specific ESEE analyses, additional criteria such as approved plans, low density housing, public facilities and active parks were used to identify other conflicting uses. <p>A conflicting use matrix, consisting of the six generic categories, was developed to identify the applicable conflicting uses.</p>
Portland	Identified conflicting uses based on broad zoning categories, including residential, commercial, industrial, recreational or agricultural uses. Discussion is general and qualitative rather than quantitative.
Tigard	The city identified two areas of conflict: 1) loss of the resource through conversion of the area to a developed residential, commercial or industrial use; and 2) creation of adjacent activities that would degrade resource areas.
Tualatin	Identified conflicting uses by examining underlying zoning districts, existing environmental regulations, and ownership patterns. Zoning districts included residential, commercial, industrial, and public/semi-public. Included summaries of conflicts for each stream reach. Did not use a conflicting use matrix.
Wilsonville	The city used the underlying code to identify conflicting uses. A general analysis of the impacts development has on natural resource areas is provided, as well as specific impacts of the following uses: residential, commercial, industrial and institutional/public facility. Additionally, specific conflicting uses are identified in each site-specific ESEE analysis.

Source: Metro 2001.

Impact area

The old Goal 5 rule allowed local governments to define an impact area in the inventory stage, while the new Goal 5 rule defines “impact area” as the area in which allowed uses could adversely affect the identified significant resources (OAR 660-23-040(3)). Since most jurisdictions have completed Goal 5 prior to the 1996 amendments, few have identified an impact area under the new provisions.

Fairview, under the old Goal 5 rule, stated that “the Fairview impact area could reasonably be the entire City.” Thus, Fairview did not identify a specific impact area outside of the resource area as it would serve “no useful purpose.” Lake Oswego, also under the old Goal 5 rule, uses the impact area to refer to “the area where development siting standards are recommended to mitigate adverse impacts.” The city’s definition of the impact area varies based on the resource, but basically refers to the buffer around the resource (e.g., 30-foot impact area on each side of a Class 1 stream).

Tualatin and Wilsonville have completed an ESEE analysis under the new Goal 5 rule. In Tualatin, the impact area varies based on the resource. The impact area for wetlands includes the wetland plus a 25-foot buffer surrounding the wetland. Some upland resource lands within 50 feet of certain wetlands plus any adjacent steeply sloped areas are also included in the impact

area. Open space areas do not include any additional land as an impact area, and for forested resource sites the impact area extends to the edge of the canopy. In Wilsonville, the city chose to implement a 25-foot impact area “because it was protective of the resource, provided a reasonable review of development, and allowed a buffer area for the storm sewer system.” The impact area is in addition to the resource area.

Thus, impact areas vary throughout the region due to the flexibility allowed local jurisdictions in the new rule provisions and the number of jurisdictions following the old rule, which provided a choice in the identification of an impact area.

Factors used for analyzing ESEE impacts

The flexibility of the Goal 5 rule allows local jurisdictions to analyze the ESEE impacts based on any factors deemed appropriate at the local level. Table 8 provides examples of the factors chosen by several jurisdictions in the region. Economic and environmental consequences tend to receive the most attention during the ESEE analysis phase of Goal 5. Some of the same factors were identified in different categories, for example Portland included recreation as an economic and social factor, while the other jurisdictions include recreation only in the social category. The table and further discussion below illustrate the varying factors used for analyzing ESEE impacts.

Table 8. Comparison of factors used in local jurisdictions’ ESEE analyses.

Jurisdiction	Economic	Social	Environmental	Energy
Gresham	<ul style="list-style-type: none"> • development potential • current economic uses 	<ul style="list-style-type: none"> • accessibility • education • recreation 	<ul style="list-style-type: none"> • wildlife habitat • unique environmental characteristics • size and diversity of habitat 	<ul style="list-style-type: none"> • transportation
Lake Oswego	<ul style="list-style-type: none"> • impacts on adjacent farmers • development potential • property values • public services • mitigation • transportation • utilities • public cost 	<ul style="list-style-type: none"> • recreation • scenic • education • traffic • urban design • amenity values • utilities • noise and light pollution 	<ul style="list-style-type: none"> • fish and wildlife habitat • impervious surfaces • vegetation • food and water resources • connectivity • level of physical and biological disturbance • water quality (erosion, sedimentation, pollution) • flood minimization 	<ul style="list-style-type: none"> • solar access • wind and shade • transportation (efficiency)
Portland	<ul style="list-style-type: none"> • property values and development potential • <i>employment</i> • tax base • tourism and convention related impacts • infrastructure and flood control • water quality • recreation 	<ul style="list-style-type: none"> • recreation/educational opportunities • historical, heritage, and cultural values • visual variety/impact • urban design and image of the city • screening and buffering of incompatible uses • health, safety and welfare 	<ul style="list-style-type: none"> • water quality and quantity • fish and wildlife habitat • air quality • <i>protected resources</i> 	<ul style="list-style-type: none"> • heating and cooling of structures • transportation • infrastructure
Tigard	<ul style="list-style-type: none"> • development potential 	<ul style="list-style-type: none"> • historic or cultural nature of a site • educational significance • proximity to schools • buffer between development • community beauty 	<ul style="list-style-type: none"> • visual buffer • wildlife habitat • ecological value 	<ul style="list-style-type: none"> • destruction of resources may require residents to drive elsewhere to enjoy such amenities

Tualatin	<ul style="list-style-type: none"> • property values • development potential • parks and maintenance 	<ul style="list-style-type: none"> • aesthetic/scenic • recreation • shade/shelter/ habitat • community development • hazards 	<ul style="list-style-type: none"> • fish habitat • wildlife habitat • vegetation • erosion • water quality • flood control 	<ul style="list-style-type: none"> • heating and cooling costs • transportation (efficiency)
Wilsonville	<ul style="list-style-type: none"> • potential future jobs • economic use of property • property values (maintained by protecting the resource) • development potential • impact on stormwater drainage system and flood control • tax base • impact on transportation of allowing dense development 	<ul style="list-style-type: none"> • future employment opportunities • recreational and educational values • visual relief • flood control • water quality • future housing options 	<ul style="list-style-type: none"> • high quality resources • water quality and bank stabilization • flood control • integrity of wildlife habitat • habitat fragmentation • vegetation 	<ul style="list-style-type: none"> • heating and cooling energy consumption • infrastructure development • transportation

Source: Metro 2001.

Economic

All of the jurisdictions included in the table above considered development potential as a factor in the ESEE analysis. Most jurisdictions focused extensively on the relationship between property value and distance to the natural resource as well as property owner rights and development potential. Lake Oswego (mitigation, property values, public cost, public services), Portland (tourism and convention related impacts, infrastructure and flood control, recreation), and Wilsonville (property values, impact on stormwater and flood control) factored in the positive economic impacts of protecting resources. Wilsonville included a section on “The Economic Values of Riparian Buffers and Open Space” that describes some of the positive economic benefits provided by protecting significant natural resources. Tualatin included a literature review and discussion of the economic relationship between property value and open space as an appendix to its Goal 5 document. Lake Oswego is the only jurisdiction that considered the cost of mitigation as an economic factor in its analysis.

Social

Jurisdictions chose a variety of social impacts as factors in their analyses. Aesthetic, recreational, and educational concerns were common social factors for most jurisdictions. Wilsonville discussed the impact on future employment and housing opportunities. Lake Oswego and Portland included a discussion of urban design factors, such as transportation planning. The impacts of hazards such as flooding were included in the social category by several jurisdictions, including Portland, Tualatin, and Wilsonville. Lake Oswego, Portland, Tigard, and Wilsonville considered the role natural resources play in buffering land uses as a social impact.

Environmental

All jurisdictions considered wildlife habitat as a factor in their environmental impact analysis. Several jurisdictions considered the integrity and connectivity of wildlife habitat as a factor. Water quality and flood control were identified as environmental factors by Lake Oswego, Portland, Tualatin, and Wilsonville. Jurisdictions’ approaches to the environmental analysis

varied from an in-depth consideration of ecological systems to a strict assessment of the inventory and significance determination.

Portland detailed the inter-relatedness of ecological systems and listed characteristics of good overall fish and wildlife habitat, in addition to listing the general land use activities that degrade natural resources. Lake Oswego and Wilsonville also documented the importance of the inter-relatedness of streams, wetlands, and upland forests. Tualatin and Gresham were less detailed in describing specific connections between the conflicting uses and natural resources. For example, Gresham states that “residential development . . . could result in [the wetland’s] destruction and negative consequences for wildlife and vegetation which it supports,” but does not specifically describe the functions and values that will be lost and how that impacts wildlife.

Energy

Energy consequences received the least attention in the ESEE process across all jurisdictions. Solar and wind impacts and maintaining efficiency in travel patterns were common considerations in the energy consequences analysis. Portland includes a relatively detailed consideration of energy alternatives. Tualatin included a general discussion of energy alternatives as an appendix. Gresham’s analysis of energy consequences stated that there were no significant energy consequences across all sites.

Decision to allow, limit, or prohibit conflicting uses

After considering the ESEE consequences of resource protection versus development, local jurisdictions must decide the appropriate level of protection to give each significant resource site. This decision is to fully allow, completely prohibit, or limit conflicting uses in such a way that the resource is protected to the “desired extent.” Most jurisdictions choose to limit conflicting uses to some extent, rather than allow complete destruction of resources or completely prohibiting all development opportunities. The “limit” decision appears to result in an approach that most successfully “balances” the four ESEE factors in accordance with the Goal 5 rule. However, this does not necessarily lead to consistent protection of important fish and wildlife habitat from jurisdiction to jurisdiction.

Jurisdictions may choose to prohibit development on part of a site and limit development on the remainder. Portland implements such an approach by prohibiting conflicting uses in areas with high resource significance and limiting conflicting uses in other places. However, even decisions to prohibit conflicting uses may result in some level of development, especially if the geography or ownership of a property leaves no practicable alternatives. Wilsonville chose to prohibit conflicting uses on certain sites such as wetlands, but chose to limit conflicting uses in wildlife habitat areas not associated with riparian habitat. Few jurisdictions chose to allow conflicting uses fully on resource sites that have been designated as significant. However, in some cases the economic consequences are so great that the jurisdiction allows development.

The method by which a jurisdiction chooses to implement a “limit” decision is as important as the decision to allow, limit or prohibit conflicting uses. This is discussed further in the *Program decisions* section below.

Key observations

Below are several items that illustrate inconsistencies among local jurisdictions' ESEE analyses:

Status of the ESEE analysis

- Only 13 jurisdictions have an adopted ESEE analysis that has been acknowledged by DLCD (*Beaverton, Fairview, Gresham, Johnson City, Lake Oswego, Milwaukie, Portland, Rivergrove, Tualatin, West Linn, Wilsonville, Multnomah County, Washington County*), while two jurisdictions have completed ESEE analyses and await acknowledgement (*Oregon City, Clackamas County*).
- Six jurisdictions have adopted the State safe harbor for one or more resources (*Beaverton, Happy Valley, Tigard, Tualatin, Wilsonville, Clackamas County*).
- Nine jurisdictions do not have an adopted ESEE analysis (*Cornelius, Durham, Forest Grove, Gladstone, Happy Valley, Hillsboro, King City, Sherwood, Tigard, Wood Village*).

Method of conducting the ESEE analysis

- Five jurisdictions utilized the standard DLCD worksheet methodology under the old Goal 5 rule (*Beaverton, Fairview, Gresham, Happy Valley [not adopted], Johnson City, Rivergrove*).
- Five jurisdictions took a site-by-site or resource-by-resource approach (*Tualatin, West Linn, Wilsonville, Multnomah County, Washington County*).
- Five jurisdictions used a two-tiered approach to the ESEE analysis: generic and site-specific (*Lake Oswego, Milwaukie, Portland, Troutdale, Wilsonville*).
- One jurisdiction took a watershed approach to analyze the impacts in the ESEE analysis (*Clackamas County*).

Conflicting use determination

- Most jurisdictions identify conflicting uses by examining the underlying zoning districts, such as residential, commercial and industrial uses. Some have developed a matrix of conflicting uses, while others simply consider conflicting uses at the site level. A few jurisdictions identified general development as a conflicting use, and described the impacts of development on natural resources.

Impact area determination

- The old Goal 5 rule allowed local governments to define an impact area in the inventory stage, while the new Goal 5 rule defines "impact area" as the area in which allowed uses could adversely affect the identified significant resources. Since most jurisdictions have completed Goal 5 prior to the 1996 amendments, few have identified an impact area under the new provisions.

Factors used for analyzing ESEE impacts

- The flexibility of the Goal 5 rule allows local jurisdictions to analyze the ESEE impacts based on any factors deemed appropriate at the local level. Economic and environmental impacts tend to receive the most attention during the ESEE analysis phase of Goal 5.
- A few jurisdictions have included an analysis of the economic benefits of protecting natural resources to ensure a complete consideration of all positive and negative

effects when determining the economic impacts. However, such analysis is not consistent throughout the region.

Decisions to allow, limit, or prohibit conflicting uses

- Most jurisdictions choose to limit conflicting uses on a majority of sites. However, the inconsistencies are found in the extent and method with which conflicting uses are limited, which is discussed in the following section.

Many jurisdictions have not completed an ESEE analysis, and others still await DLCD acknowledgement. Only half of the jurisdictions in the Metro region have adopted and acknowledged ESEE analyses. The Goal 5 Rule does not provide much guidance to local governments on an ESEE methodology, thus it is not surprising that approaches vary substantially. Recently conducted ESEE analyses are much more complex than earlier ones that used the DLCD worksheet approach. The state's standard of review has evolved over the years. While the substance of the analyses may vary, the new rule, while more specific than the old rule, only requires local governments to provide a clear analysis of the conflicts and consequences to be expected, rather than describing a set methodology. This allows for variation among acknowledged ESEE analyses. With such inconsistent methods of evaluating ESEE consequences there is little way to ensure that significant natural resources and conflicting uses receive consistent treatment throughout the region.

Program decisions

In this section, we outline the Goal 5 requirements for the program decision and then compare local jurisdictions' Goal 5 programs. The purpose of comparing local protection programs is to assess the inconsistencies in data and protection as described in Title 3, Section 5(C). Local jurisdictions have chosen whether to allow, limit, or prohibit conflicting uses as described in the Goal 5 rule. Here we also assess how well resources that received a "limit" or "prohibit" decision are actually protected. This allows a determination to be made of the consistency of natural resource protection across jurisdictional boundaries. For example, two jurisdictions may both make a "limit" conflicting uses decision, but the level at which a use is limited may vary between jurisdictions.

Goal 5 Requirements

After identifying conflicting uses and considering the ESEE consequences on the resource and conflicting uses, local jurisdictions must decide whether to prohibit, limit, or allow conflicting uses for significant resource sites (OAR 660-023-0040(5)). If the local government finds a significant resource site of more importance, as compared to the importance of the conflicting use, local governments may choose to prohibit the conflicting use (OAR 660-023-0040(5)(a)). If the local government finds both the resource site and conflicting use important, the conflicting use may be allowed in a limited way so as to provide limited protection to the resource site (OAR 660-023-0040(b)). Finally, if the local government finds the conflicting use of more importance relative to the resource site, then the conflicting use may be allowed fully without regard to the possible impacts on the resource site (OAR 660-023-0040(c)).

The final step in the Goal 5 process requires local governments to develop a program to achieve the desired level of resource protection, based on the decision of whether to prohibit, limit, or allow conflicting uses. Pursuant to OAR 660-016-0010 (amended by 660-023-0040(5)), if limiting conflicting uses, the local governments must be specific with what uses are allowed, prohibited, and conditioned upon other factors. The governments must be specific enough that the affected property owner can determine what can and cannot be done on his/her property.

Comparison of local jurisdictions' Goal 5 programs

Following is an examination of local jurisdictions' Goal 5 programs. Included is a summary of the data available on protection programs, followed by analyses of each criterion for assessment. Factors used to assess the consistency or inconsistency of local programs include:

- the data available on protection programs,
- the program decision to allow, limit, or prohibit conflicting uses,
- the variation in the application of the "limit" and "prohibit" decision,
- the review process,
- the mitigation and restoration requirements, and
- the monitoring and enforcement process.

Data available on protection programs

The availability of data is an important factor in assessing the consistency of resource protection throughout the Metro region. Local jurisdictions have varying capabilities in terms of mapping natural resources as well as the areas identified for protection. Depending on available resources, some jurisdictions have their Goal 5 inventories and/or protection overlay zones

mapped on a geographic information system (GIS). Several of the smaller jurisdictions do not have GIS capability, while other jurisdictions have only recently begun transferring data that once resided on paper maps into an electronic format. Overlay zones for natural resource protection programs that were developed years ago are often not converted to GIS until the program itself is updated.

In 1994, Metro hired a consultant, Pacific Meridian Resources, to digitize the natural resource protection areas for all of the jurisdictions within the Metro planning area. However, the zoning maps used to develop this electronic information are several years out of date, thus the information is not current. Table 9, below, shows the current availability of local Goal 5 protected areas in an electronic format at Metro.

Table 9. Availability of local Goal 5 protected areas on GIS.

Jurisdiction	Pacific Meridian Data (1996)	New data provided since 1996
Beaverton	X	X (LWI)
Cornelius	X	
Durham	X	X
Fairview	X	
Forest Grove	X	X
Gladstone*	X	
Gresham	X	
Happy Valley	X	
Hillsboro	X	X
Johnson City	X	
King City	X	
Lake Oswego	X	
Maywood Park	X	
Milwaukie	X	X
Oregon City	X	
Portland	X	X
Rivergrove	X	
Sherwood	X	
Tigard	X	
Troutdale	X	
Tualatin	X	
West Linn	X	
Wilsonville	X	X
Wood Village	X	
Clackamas Co	X	X
Multnomah Co	X	
Washington Co	X	X

Source: Metro 2001.

*Uses Clackamas Co.

Note: This represents the best available information at Metro.

The variation in local jurisdictions' approaches to mapping protected areas makes it difficult to analyze levels of protection from one jurisdiction to the next. The overlay zones, however, do not necessarily indicate the level of protection, rather they depict a general area within which development will be held to some standard described in the local code.

Program decisions (allow, limit, prohibit conflicting uses)

Program decisions differ across jurisdictions. Table 10 provides an example of the variation that can be found in local jurisdictions' program decision.

Table 10. Examples of local jurisdictions' Goal 5 program decisions.

Jurisdiction	Program Decision		
	Allow	Limit	Prohibit
Fairview		X	
Gresham	X	X	
Lake Oswego		X	X
Milwaukie		X	
Portland		X	X
Tualatin	X	X	X
Wilsonville		X	X
Clackamas County		X	X
Washington County	X	X	X

Source: Metro 2001.

A study conducted by the Audubon Society and 1000 Friends of Oregon, *To Save or To Pave*, contained detailed information on program decisions for each jurisdiction studied. Information included the decision for each inventoried significant resource site. For example, in Washington County 529 sites were inventoried. One hundred and one (19 percent) of the sites (all open space) had no conflicts and were considered protected from future development. Decisions to prohibit conflicting uses were made for 192 (36 percent) of the sites, and the remaining 235 (45 percent) of the sites received limited protection. No decisions were made to completely allow conflicting uses on resource sites.⁸ This example is typical of program decisions made by local jurisdictions in the region – most decisions are to limit conflicting uses.

Allow conflicting uses decision

The Goal 5 Rule states that:

A local government may decide that the conflicting use be allowed fully, notwithstanding the possible impacts on the resource site. The ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource site, and must indicate why measures to protect the resource to some extent should not be provided... (OAR 660-23-040 (5)(c))

Few jurisdictions choose to allow conflicting uses fully on identified significant resources. Gresham chose to allow complete development of some sites when the economic consequences outweighed the other impacts. Tualatin allows development fully on several resource sites, based on the results of the ESEE analysis considering the tradeoffs of protecting the resources. The "Other Natural Areas" designation refers to those areas that were either not significant or significant but not protected.⁹ These areas "may be eligible for development incentives for voluntary dedication such as landscape credits, density shift/lot size reductions and Parks SDC credits and may be considered for local acquisition programs."

⁸ However, in 1997 Washington County did choose, based on their ESEE analysis, to allow transit-oriented development in significant upland habitat areas in the vicinity of the Sunset Transit Center.

⁹ These sites are identified in the Parks and Recreation Master Plan Recreation Resources Map and are not subject to NRPO or Goal 5 regulations.

Limit conflicting uses decision

The Goal 5 rules states that:

A local government may decide that both the resource site and the conflicting uses area important compared to each other, and, based on the ESEE analysis, the conflicting uses should be allowed in a limited way that protects the resource to the desired extent. (OAR 660-23-040 (5)(b))

Local jurisdictions tend to favor the option to limit development on resource lands, typically on those lands that received a less significant environmental value than the fully protected resources. Jurisdictions typically choose to limit development near streams by providing buffers of variable widths. In some cases development within the buffer is allowed with compensatory mitigation for the intrusion. Within upland wildlife habitat sites development is typically limited by describing a percentage of the area that must be protected.

Fairview stated that “it is the City’s intent to allow development to occur and protect its resources.” In Fairview’s case, significant resource areas receive limited protection from development.¹⁰ Wilsonville, on the other hand, limits development within wildlife habitat areas to only five percent. This represents a conservative limit. Tualatin permits up to thirty-percent modification of wetlands within the Wetland Conservation NRPO. Clackamas County limits lot coverage to no more than thirty percent on slopes greater than twenty percent. Lake Oswego permits development of up to fifty-percent of the resource area in all lands designated Resource Conservation (RC) Zone, but only permits development if impacts are (1) avoided, (2) minimized, and (3) a mitigation plan developed.

While choosing to limit conflicting uses allows local governments the flexibility to provide for economic growth and development while protecting natural resources, it results in an array of protection levels, as described above. As a result, resources receive varying protection based on the jurisdiction in which they are located.

Prohibit conflicting uses decision

The Goal 5 rules states that:

A local government may decide that a significant resource site is of such importance compared to the conflicting uses, and the ESEE consequences of allowing the conflicting uses are so detrimental to the resource, that the conflicting uses should be prohibited. (OAR 660-23-040 (5)(a))

Although many jurisdictions have designated full resource protection for some sites, this does not mean that every resource site receiving full resource protection is granted the same level of protection across jurisdictions. For example, Tualatin prohibits development within Greenway, Wetland Preservation, and Open Space Preservation Natural Resource Protection Overlay (NRPO); however, these areas are not entirely “no touch” zones. Rather, Tualatin’s Zoning Code permits public streets and facilities to be built within the most significant resource areas, as long as city projects are designed to minimize intrusion into riparian areas. Lake Oswego and Portland, on the other hand, apply a more stringent standard for development within the most

¹⁰ Proposed alterations, not listed as allowed in the zoning code, may be permitted as long as they meet the following criteria: development must (1) not be able to be located in somewhere other than the riparian buffer zone; (2) have more than 25 percent of the property within the overlay zone; (3) cause the minimum amount of degradation or loss of natural features; (4) be allowed by the underlying zoning districts; and (5) be consistent with regional land use and development standards.

significant resource areas, prohibiting road and utility building on such sites unless “no other practicable alternative” or “rare and unusual circumstances” exist. If no practicable alternative exists, then the jurisdictions require minimization and mitigation of project impacts. Wilsonville prohibits all development within riparian corridors and wetlands.

Variation in the application of “prohibit” and “limit” decisions

As described above, a prohibit or limit decision can mean different levels of protection in different jurisdictions, as allowed by the Goal 5 Rule. Table 11, on the following pages, shows the range of riparian protection implemented by jurisdictions in the region. *(Please also refer to the appendix, which includes information on all Goal 5 programs in the Metro region.)* Some of the riparian buffers indicate a prohibition on development, with few exceptions, while others indicate an area within which certain development or performance standards apply.

For example, Lake Oswego’s most significant riparian and wetland resources (“Class 1”) receive a 30-foot buffer. The less significant resources (“Class 2”) receive a 25-foot buffer. Within Tualatin, buffer widths for the Tualatin River extend 40 feet inland from the top of the riverbank. Some creek greenways receive a 50-foot wide buffer; however, the buffer does not have to be centered on the creek. Further, Tualatin also has greenways with state safe harbor corridors (i.e., Saum Creek) where the protected area includes the creek bottom and a 50-foot buffer on each side. Tualatin permits the 50 feet of buffer to be off center as long as there is a minimum of 15 feet of buffer on either side of the creek. Offering greater protection for riparian areas, Clackamas County has designated 100 to 150 feet of buffer for river conservation areas. Streams in Clackamas County receive buffers ranging from 100 feet for large streams to 50 feet for small streams.

While most jurisdictions provide protection to streams and wetlands, fewer have considered wildlife habitat. Eighteen jurisdictions in the region include some sort of tree protection in their code (Beaverton, Forest Grove, Gladstone, Gresham, Happy Valley, King City, Lake Oswego, Maywood Park, Milwaukie, Portland, Rivergrove, Sherwood, Tigard, West Linn, Wilsonville, Clackamas County, Multnomah County, and Washington County). However, few jurisdictions refer specifically to wildlife habitat not associated with stream corridors. Lake Oswego, Milwaukie, Portland, Wilsonville, Clackamas County, Multnomah County, and Washington County have specifically mentioned wildlife habitat not associated with riparian corridors in local code. Lake Oswego requires protection of significant tree groves, but allows for up to 50 percent of the trees on a site to be removed for development purposes.

Table 11. Comparison of riparian and wetland buffer widths for selected jurisdictions.

Jurisdiction	Riparian buffer width	Wetland buffer width
Beaverton*	50 ft (on fish bearing streams)	
Cornelius*		
Durham*		
Fairview	Fairview Creek, No Name Creek, Columbia Slough: 35 ft Fairview Lake: 35 ft Osburn Creek: 26 ft	Undeveloped buffer width to be determined in consultation with DSL and ODFW at time of development
Forest Grove*		
Gladstone	Greenway District does not include a setback distance	
Gresham	Includes a 25 ft transition area from the edge of the natural resource	
Happy Valley	Main-stem of Mount Scott Creek: 50 ft	Includes a 25 ft transition area from the edge of the natural resource 30 ft from outer boundary of significant wetland
Hillsboro*	<i>Slope <25%:</i> Intermittent flow draining 10-50 acres: 15 ft Intermittent flow draining 50-100 acres: 25 ft Rivers, streams and springs with year round flow: 50 ft Streams with intermittent flow draining >100 acres: 50 ft <i>Slopes ≥25%:</i> Streams with intermittent flow draining 10-50 acres:30 ft Streams with intermittent flow draining 50-100 acres:50 ft Rivers, streams, and springs with year round flow, variable flow; streams with intermittent flow draining more than 100 acres, variable width: the vegetated corridor varies from 15-200 ft.	<i>Slope <25%:</i> Existing or created wetlands less than 0.5 acre: 25 ft Existing or created wetlands greater than 0.5 acre; natural lakes and ponds: 50 ft <i>Slope ≥25%:</i> Existing or created wetlands, natural lakes and ponds: the vegetated corridor varies from 15-200 ft.
Johnson City	ONE GOAL 5 RESOURCE, CITY BUILT-OUT	
King City*		
Lake Oswego	Class 1 streams: 30 ft Class 2 streams: 25 ft	Class 1 wetlands: 30 ft Class 2 wetlands: 25 ft
Maywood Park	NO GOAL 5 RESOURCES	
Milwaukie	Willamette River, Johnson Creek: 25 ft from high water line Other water bodies: 100-yr floodplain	Delineated at time of development application
Oregon City	50 ft from boundary of streams except: slope <10%: 25 ft slope 10-15%: 35 ft slope >25%: 75 ft slope >35%: 100 ft	50 ft from boundary of wetland
Portland	<i>These are development standards, not specific buffer widths:</i> 50 ft from top of bank in Columbia Corridor or on lots zoned R10, R20, or RF within an EP zone; 30 ft from centerline within an EC zone	<i>These are development standards, not specific buffer widths:</i> 50 ft from boundary of wetland
Rivergrove	Tualatin River: 25 ft	25 ft from boundary of wetland
Sherwood*		60 ft from boundary of wetland, may be reduced to 20 ft if no adverse impacts
Tigard*	Tualatin River: 75 ft Major streams (Fanno Creek, Ash Creek, Ball Creek): 50 ft Major streams in developed subdivisions: 25 ft Minor streams: 25 ft	Wetlands associated with Tualatin River: 75 ft Wetlands associated with major streams: 50 ft Isolated wetlands: 25 ft

Troutdale	Primary water feature, <25% slope: 50 ft Primary water feature, ≥25% slope for less than 150 ft: distance from starting point of measurement to top of ravine, plus 50 ft Primary water feature, ≥25% slope for 150ft+: 200 ft Secondary water feature, <25% slope: 15 ft Secondary water feature, ≥25% slope: 50 ft	50 ft from boundary of wetland Wetland with ≥25% slope for less than 150 ft: distance from starting point of measurement to top of ravine, plus 50 ft Wetland with ≥25% slope for 150ft+: 200 ft
Tualatin*	North bank and most of south bank of Tualatin River: 40 ft South bank of Tualatin River near I-5 right of way: 75 ft Hedges Creek: 25 ft Nyberg Creek: 15 ft	50 ft from boundary of wetlands within the stream riparian area on Hedges Creek and Saum Creek 50 ft from certain wetlands – i.e. Cummins Creek and Kolk Pond 25 ft from boundary of other wetlands
West Linn	Willamette River: 35 ft Tualatin River: vegetation must be retained within 100-yr floodplain and below high water line; development standards within 150 ft of river Slope <10%: 30 ft Man-made drainage ditch: 25 ft Slope 10-25%: 50 ft or to the point where slope tapers off to less than 10% (minimum of 30 ft) Slope>25%: point where slope tapers to less than 10% for more than 50 ft (min. 30 ft), or 150 ft	For wetlands: Slope <10%: 30 ft Slope 10-25%: 50 ft or to the point where slope tapers off to less than 10% (minimum of 30 ft) Slope>25%: point where slope tapers to less than 10% for more than 50 ft (min. 30 ft), or 150 ft
Wilsonville	Significant Resource Overlay Zone (WC Section 4.139) Setback ranges from a minimum of 50 ft to over 200 ft per side in places with steep sided ravines and a defined channel (e.g., Beckman Creek)	Wetland protection standards include a minimum 50 ft setback consistent with Title 3
Wood Village	Primary water feature (Arata Creek), <25% slope: 50 ft Primary water feature, ≥25% slope for less than 150 ft: distance from starting point of measurement to top of ravine, plus 50 ft Primary water feature, ≥25% slope for 150ft+: 200 ft Secondary water feature (No-name Creek), <25% slope: 15 ft Secondary water feature, ≥25% slope: 50 ft	50 ft from boundary of wetland Wetland with ≥25% slope for less than 150 ft: distance from starting point of measurement to top of ravine, plus 50 ft Wetland with ≥25% slope for 150ft+: 200 ft
Clackamas County	Principal River Conservation Area: 100-150 ft Stream Conservation Area Large stream: 100 ft Medium stream: 70 ft Small stream: 50 ft	Minimum of 25 ft
Multnomah County	The <i>Stream Conservation Area</i> extends 300 ft up-slope from protected streams. Development prohibited without a site and mitigation plan.	50 ft from boundary of wetland
Washington County*	Riparian buffer defined as no less than 25 ft	Master plan and site analysis required

Source: Metro 2001.

*These jurisdictions are located within Clean Water Service's (CWS) district, and therefore implement CWS water quality and floodplain protection standards. CWS standards comply with Metro's Title 3 Water Quality and Floodplain Protection standards. These standards were not intended to provide fish and wildlife habitat protection.

Review process

While Metro does not intend to critique local review processes and does not play a role in local review processes, the review process is often the method through which natural resource protection programs are implemented and thus merits consideration. Local natural resource programs often require some level of proposed project review to ensure compliance with the applicable zoning code provisions. Portland’s Code provides a clear statement of purpose, timing, and procedure for the environmental review of development proposals on resource sites. Tualatin states that the city may, “through the subdivision, conditional use, architectural review, or other development approval process, attach appropriate conditions to approval of a development permit.” The architectural review plan approval process requires all building, except for single family dwellings, to go through an architectural review; however, the review process is not specifically limited to environmental considerations of development on resource sites. Table 12 provides examples of several local jurisdictions’ review processes for development occurring in or near natural resource areas.

Table 12. Examples of local jurisdictions’ review processes.

Jurisdiction	Review process
Fairview	Review by Fairview Planning Commission and appropriate state and federal agencies. For example, wetland development is reviewed through DSL and US Army Corp. of Engineers permitting process.
Forest Grove	Requires an Environmental Report for approval of development in an Environmental Review zone. 9.804.
Gresham	City requires a Public Need and Alternative Site/Methods test for development within Natural Resource zones.
Lake Oswego	Environmental Review Process to assure adherence to standards and requirements of EP and EC zoning. 48.17.100. Review also required for development within the Greenway Management Overlay. 48.16.
Milwaukie	Includes an application process and design standards for developments on resource sites.
Portland	Development review is required for all development in Environmental Zones that does not meet development standards.
Tualatin	Architectural Review Plan Approval required (except for single-family dwellings). 73.040. Subdivisions, conditional uses and other development review processes must consider natural resource protection programs.
Wilsonville	Development Review Board process. 4.139.10.
Clackamas County	Requires review of proposed development pursuant to permit submittal for projects in River and Stream Conservation Areas (704.08), Willamette River Greenway (705), and Conservation Wetland District (CWD) (709.07).
Washington County	Requires a preapplication conference with planning staff for development within the county’s Natural Resource zone.

Source: Metro 2001.

As Table 12 shows, there is a diverse array of approaches to the review process for purposes of protecting natural resources. Additionally, the almost all types of review processes are discretionary (with or without natural resources), with the potential result of inconsistent protection of resources even within one jurisdiction.

Mitigation and restoration requirements

Although mitigation is commonly considered in some natural resource programs, the attention to mitigation varies depending on the jurisdiction as shown in Table 13. For example, Tualatin does not require mitigation, whereas Lake Oswego and Clackamas County require mitigation for all development projects on protected resource sites. Tualatin expects developments to pursue appropriate state and federal permitting, and when development occurs in a wetland, the city seeks to have restoration, maintenance or improvement work occur on the same property or nearby. Clackamas County defines its compensatory mitigation requirement in the Conservation Wetland District as “any of the three (3) actions used to replace wetland functions and values resulting from permitted impacts to wetlands including restoration of former wetlands, creation of new wetlands, [or] enhancement of existing wetlands.” Fairview proposed to enhance “valuable fisheries and wildlife habitat,” yet the code requires only that vegetation that is removed be replaced with approved riparian species.

Wilsonville requires a Mitigation Plan for all significant wildlife habitats with limited conflicting uses. The Plans assess the anticipated adverse impacts to the resource site and then present a proposed mitigation action designed to replace the lost or impacted resource functions. Mitigation plans must contain monitoring and maintenance plans for at least five years following the mitigation actions. Wetland mitigation is conducted as part of the permitting process from Oregon Department of State Lands and the US Army Corp of Engineers.

Portland may require mitigation when projects go through the Environmental Review process. Environmental review is required for all development in an environmental zone that *does not* meet the development standards and for violations of the standards. There are three different paths: Type I, II, or III procedures, which depend on the activity proposed or location within the environmental zone. In addition to application requirements under Section 33.730 of City Code, environmental review applications also require a site plan. A mitigation site plan is required whenever the proposed development will result in unavoidable significant detrimental impact on the identified resources and functional values. A remediation site plan is required whenever significant detrimental impacts occur in violation of city code and no permit was applied for.

Portland’s Columbia South Shore Plan goes beyond the Code by requiring that mitigation activities be monitored for at least five years following initial success. Furthermore, the Columbia South Shore Plan requires that (1) if the mitigation area abuts the protected resource, the mitigation area must be 110 percent the size of the altered resource area, or (2) if the mitigation area is within the protected resource area the mitigation area must be at least 330 percent of the size of the altered resource area and 110 percent of the values of the altered resource area. This mitigation structure proposes not only to mitigate (i.e., “no net loss” of a resource), but also to enhance existing environmental quantity and quality. Resource enhancement projects go beyond protection efforts and seek to improve the environmental quality of a site by improving bank stabilization, restoration planting, etc.

Table 13. Examples of jurisdictions’ mitigation and restoration requirements.

Jurisdiction	Mitigation/restoration requirements
Clean Water Services*	Requires enhancement of the first 50 feet (distance varies based on the type of stream) of a vegetated corridor, unless it is determined to be in “good” condition. CWS 3.06.2.c(4)

Fairview	Requires replacement of vegetation that is removed to be replaced with appropriate riparian vegetation. 19.106.030(B)
Forest Grove	Requires mitigation for the removal of significant trees and tree groves. 9.949. Requires slope stabilization and revegetation for development in Environmental Review zones. 9.113
Gladstone	States that the natural vegetative fringe along the river shall be enhanced and protected to the maximum extent practicable. 17.28.050
Gresham	Requires a mitigation plan for development within significant wetland areas. 5.0423(F) Requires a mitigation plan for development on a site with significant trees. 9.1033(B)
Happy Valley	Requires mitigation when impacts to any identified Significant Natural Resource or its buffer areas occurs. 5.119. Allows for natural resource enhancement in the code, but does not require it in addition to mitigation. 5.120
Johnson City	None.
Lake Oswego	Defines mitigation as a way of repairing or compensating for adverse impacts to the functions and values of a natural resource caused by a development. Mitigation may consist of resource area creation, restoration, or enhancement. Policy of avoidance, minimize, and then mitigate. Mitigation ratios are established according to type of mitigation and value of resource. Maintenance and monitoring is required. 48.17.600-610.
Maywood Park	None.
Milwaukie	Requires a mitigation plan if development has the potential for reducing the natural resource value of the site in question to the point of no longer qualifying as a natural resource site. 322.10
Oregon City	Requires mitigation for development of public facilities such as roads. 17.49.080f(2)
Portland	Mitigation plans. 33.430.360. Mitigation required to compensate for degradation/loss of site's functional values (also addresses monitoring). In addition, may provide guidelines for mitigation for resource areas not identified in the plan but protected by state or federal agencies.
Rivergrove	None.
Troutdale	Requires mitigation to ensure that impacts to the functions and values of the vegetation corridor and the integrity of the slope will be mitigated or restored to the extent practicable. 4.315 (3)
Tualatin	Only mentions retaining or improving wetland functions or values through mitigation and/or enhancement. 72.040(2)(iii). Does include minimization as important component of development.
West Linn	Code states that vegetative improvements to areas within the Tualatin Protection Area may be required if the site is in an unhealthy or disturbed state as prerequisite of development. 29.080(D). Requires a mitigation plan for development that occurs in a Wetland and Riparian Area zone. 30.100(F), 30.110
Wilsonville	Mitigation and Enhancement standards depend on the resource condition. 4.139.07. A chart of mitigation ratios is provided based on resource condition (Table 1.1). Mitigation ratios range from [area developed x 1.5] for resources in degraded condition to [area developed x 6] for resources in good condition.
Wood Village	Requires a mitigation plan for development applications seeking an alteration, addition, rehabilitation or replacement of existing structures within a water quality resource area. 430.200(H(7-8)).
Clackamas County	Adverse impacts to river and stream conservation areas associated with road and public utilities development and development within the Wetland Conservation District must be mitigated.
Multnomah County	Requires a mitigation plan for development in natural resource areas, includes an annual monitoring plan for five years. Plan must insure an 80% survival rate of any required plantings.

Source: Metro 2001.

*Jurisdictions in Washington County (Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, Sherwood, Tigard, Tualatin, and Washington County) all implement Clean Water Services' standards for mitigation and restoration.

Monitoring and enforcement requirements

While not required by the Goal 5 Rule, monitoring and enforcement are key components of a successful program. Only a few jurisdictions include monitoring and enforcement provisions in their codes (see Table 14). This lack of enforcement can frequently be attributed to a lack of funding. The few jurisdictions that do mention some form of enforcement appear to rely exclusively on the permitting process and citizen complaints to ensure compliance with code provisions. For example, Portland generally relies on complaints to monitor compliance, and violations are enforced through a development or redevelopment plan submitted to the city for a building permit.

Table 14. Examples of jurisdictions' monitoring and enforcement requirements.

Jurisdiction	Monitoring/enforcement
Lake Oswego	Requires monitoring and enforcement of mitigation activities.
Portland	Monitoring is a complaint driven process. Enforcement through permitting process.
Wilsonville	Yes. Monitoring section (in context of approved encroachment). 4.136.06(F). Enforcement through permitting and possible litigation.
Multnomah County	Monitoring of mitigation projects is required on an annual basis for five years.

Source: Metro 2001.

Key observations

Below are several items that illustrate variation among local Goal 5 programs:

Data available on protection programs

- Local jurisdictions have varying capabilities in terms of mapping natural resources as well as the areas identified for protection.
- Currently, Metro has Goal 5 protection information in GIS format from only 12 jurisdictions. (*Beaverton, Hillsboro, Lake Oswego, Milwaukie, Portland, Tigard, Tualatin, West Linn, Wilsonville, Clackamas County, Multnomah County, and Washington County*)

Program decision to allow, limit, or prohibit conflicting uses

- Most jurisdictions choose to limit conflicting uses in natural resource areas. However, the extent to which the conflicting use is limited varies from one jurisdiction to the next. For example, Lake Oswego allows 50% of upland habitat areas to be developed, while Wilsonville only allows development on 5% of a wildlife habitat area.
- Many jurisdictions choose to prohibit conflicting uses in the natural resources areas found to be most significant. This does not mean that every resource site receiving full protection is granted the same level of protection across jurisdictional boundaries. Tualatin prohibits development within natural resource protection overlay zones, yet allows public streets and facilities to be built within those zones as long as city projects are designed to minimize intrusion into riparian areas. Portland and Lake

Oswego prohibit road and utility in those areas unless no other practicable alternative exists.

- No jurisdictions protect the floodplain solely for fish and wildlife habitat; the main reason for protecting the floodplain is to reduce risk to human life and property.

Variation in the application of the "limit" and "prohibit" decision

- Riparian buffer widths vary across the region for the same type of resource. Some of the riparian buffers indicate a prohibition on development, with few exceptions, while others indicate an area within which certain development or performance standards apply.
- Eighteen jurisdictions' code contains regulations referring to upland tree groves and open space, not associated with water resources. (*Beaverton, Forest Grove, Gladstone, Gresham, Happy Valley, King City, Lake Oswego, Maywood Park, Milwaukie, Portland, Rivergrove, Sherwood, Tigard, West Linn, Wilsonville, Clackamas County, Multnomah County, Washington County*)
- Seven jurisdictions have specifically mentioned wildlife habitat not associated with riparian corridors in local code. (*Lake Oswego, Milwaukie, Portland, Wilsonville, Clackamas County, Multnomah County, and Washington County*)

Review process

- Local jurisdictions typically require some type of review process for development that occurs on or adjacent to a protected resource site. However, jurisdictions vary in terms of review standards applied to development, and the processes appear to be discretionary.

Mitigation and restoration requirements

- All but two jurisdictions require some type of mitigation for intrusion into fish and wildlife habitat. (*Johnson City and Maywood Park do not have mitigation requirements in their code.*)
- 14 jurisdictions vary the amount or type of mitigation required based on the value or condition of the impacted resource. (*Clean Water Services [includes all jurisdictions], Lake Oswego, Portland, West Linn, Wilsonville*)
- Some jurisdictions refer to the importance of restoration (*Clean Water Services, Gladstone, Happy Valley, Portland, Wilsonville*), but no jurisdiction requires restoration actions beyond mitigation requirements. (This may be due to the fact that Goal 5 does not call for restoration, only protection).

Monitoring and enforcement process

- The few jurisdictions that do mention some form of enforcement appear to rely exclusively on the permitting process and citizen complaints to ensure compliance with code provisions.

Outside of the State safe harbor for riparian areas and wetlands, the Goal 5 Rule provides little guidance to local governments on methods of protection, except the requirement that a protection program include clear and objective standards. The Goal 5 protection programs of local jurisdictions within the Metro region are inconsistent with each other on a number of levels. Some programs offer exclusive protection for riparian and wetland areas, prohibiting

development unless exceptional circumstances apply, whereas other jurisdictions offer limited development within their most significant resource areas. Furthermore, protection levels for limited development range anywhere from five percent development to at least fifty percent development on significant natural resource land. Finally, there is no consistency between local jurisdictions' review processes, mitigation and enhancement procedures, or their monitoring and enforcement mechanisms.

Summary of inconsistencies in data and protection

Resources in the Metro region receive inconsistent treatment and protection across jurisdictions, considering the pervasive inconsistencies in Goal 5 inventory methodologies, data layer formats, ESEE analyses, and program decisions of local jurisdictions. While there are several different watersheds within the Metro region with different geological characteristics, the ecosystems within the region are more similar than different, especially in comparison with other ecoregions such as the Columbia Plateau. The inconsistent protection of fish and wildlife habitat across jurisdictional boundaries indicates the need for regional coordination if the vision described in the RUGGOs is to be achieved.

Inadequacies in resource protection

Title 3, Section 5 directs Metro to identify *inadequacies* in local resource protection prior to conducting an ESEE analysis. The Metro Council has not determined what is adequate or inadequate at this time. Accordingly, staff's assessment of the best available science, the listing of the salmon under the federal ESA, and examples of local program implementation are used to address this topic. The Metro Council will ultimately determine the definition of adequacy.

In this section we discuss the ecological needs of fish and wildlife and compare the protection provided by local Goal 5 programs. Additionally, the inconsistencies discussed previously may result in inadequate protection for a natural resource such as a riparian corridor as it moves from one jurisdiction to another. For example, a riparian corridor may receive 50 feet of protection in one jurisdiction and the protection may change to 100 feet as the stream flows to another jurisdiction. Since all water flows downstream, the protection efforts of one upstream jurisdiction impacts the ability of downstream jurisdictions to maintain important functions for fish and wildlife habitat.

Most of the local jurisdictions in the Metro region that have completed Goal 5 programs have been acknowledged by DLCDC as being in compliance with State rules. However, this does not mean that the programs are adequate for protecting fish and wildlife habitat. The State reviews local plans on a case-by-case basis, considering the process required by the Goal 5 Rule, not a specific objective for the protection of habitat. The State does not consider the connectivity of habitat within the region as a factor in evaluating local plans for compliance with Goal 5. Thus, local plans may be in compliance with state rules and yet inconsistent with each other and inadequate in protecting fish and wildlife habitat.

The importance of protecting habitat for fish and wildlife has been elevated in recent years due to the National Marine Fisheries Service (NMFS) listing of 14 salmonid species as threatened in 2000. In the *Purpose, Vision, Goal, Principles and Context* statement adopted by the Metro Council in October 2000, and adopted unanimously by the Metropolitan Policy Advisory Committee, Principle 4 states that:

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.

Thus, the Metro Council has determined that a regional fish and wildlife protection program should serve a dual purpose of meeting state Goal 5 requirements and address the federal ESA. The NMFS published the Final 4(d) Rule providing guidance on what it means to "take" a threatened species and identifying the activities that lead to harming the fish. While the NMFS has not yet provided specific information on the amount of habitat that must be protected, they

have published certain recommendations in the Municipal, Residential, Commercial, and Industrial (MRCI) limit that provides guidelines for best management practices in riparian areas.

Ecological needs and resource protection through Goal 5

In this section we discuss recommendations for resource protection from the scientific literature to assess the adequacy of current regulations. Next, we compare the aforementioned recommendations with local resource protection programs.

Scientific recommendations for resource protection

Metro conducted a literature review of the best available science to provide the foundation for an ecologically sound regional Goal 5 program. The process used to conduct the literature review was:

- a literature search of major scientific journals and the internet, as well as consulting other literature reviews conducted within the Metro region and the Pacific Northwest,
- consultation with experts on specific issues such as species lists, habitat classification systems, and impacts of urbanization,
- review by Metro’s Goal 5 Technical Advisory Committee, and
- peer review by the Oregon State Independent Multidisciplinary Science Team (created by the Governor of Oregon to review the Oregon Plan for Salmon).

The literature review supports a holistic view of watershed function that emphasizes the interconnectedness of the system, including the relationship of riparian corridors with upland habitats and connectivity. Part of the literature review included recommendations for riparian buffer widths to protect aquatic and terrestrial riparian habitat, as well as guidelines for protecting upland habitat for wildlife.

Riparian Corridors

While studies recommend a variety of minimum buffer widths for the riparian area, all recommend some level of protection for this important resource for fish and wildlife. If riparian buffers of sufficient width are maintained along streams in the urban area, they can provide good quality habitat within an altered landscape (Knutson and Naef 1997). Table 15 below summarizes the range of riparian area widths recommended in the scientific literature to protect fish and wildlife habitat.

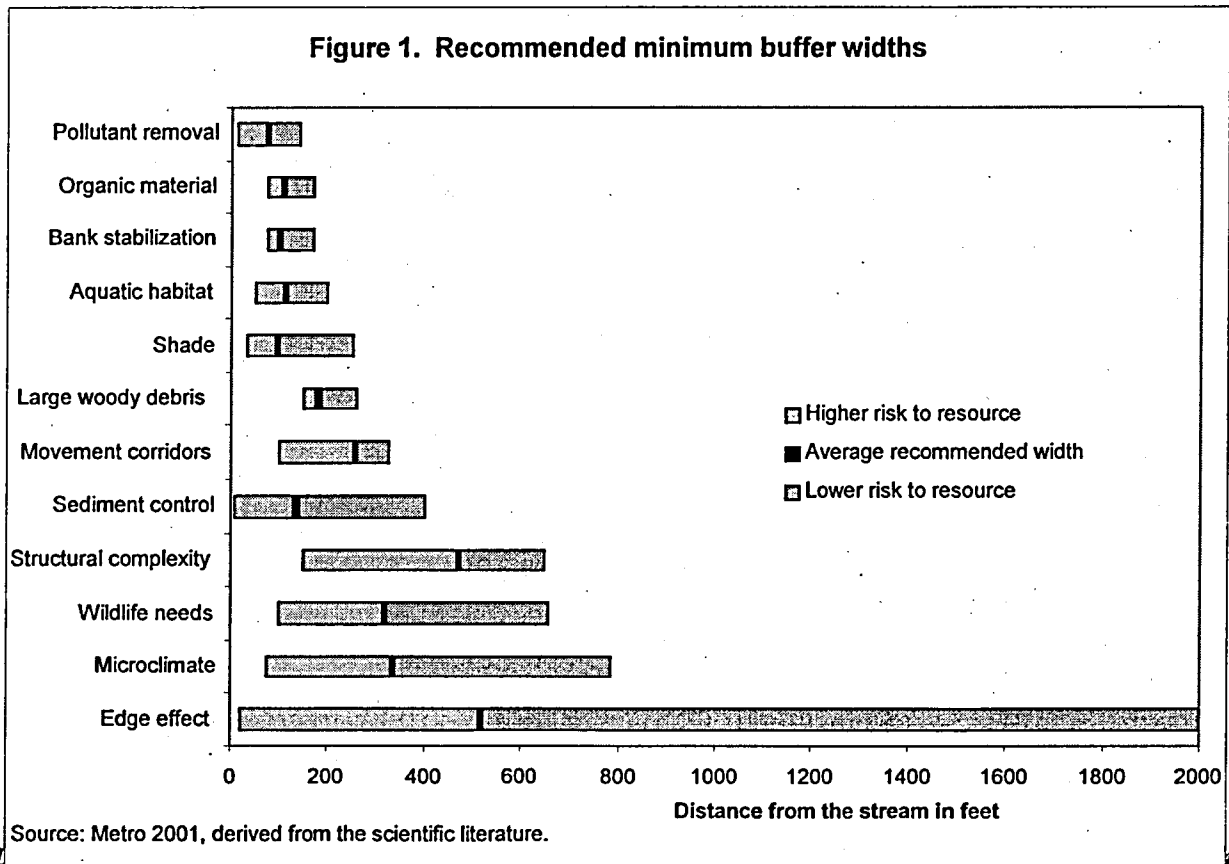
Table 15. Range of recommended minimum buffer widths to maintain riparian functions.

Function	References	Range of widths
Microclimate and shade	Johnson and Ryba 1992; FEMAT 1993; Osborne and Kovacic 1993; Castelle et al. 1994; Chen et al. 1995; Spence et al. 1996; Brosofske et al. 1997; Knutson and Naef 1997; Pollock and Kennard 1998; May 2000	<i>Shade:</i> 33 to 250 ft <i>Microclimate:</i> 75 to 787 ft
Streamflow moderation and water storage	FEMAT 1993; Knutson and Naef 1997; Pollock and Kennard 1998; Wenger 1999; May 2000	All riparian associated wetlands and floodplains should be protected. Riparian and upland vegetation should be protected to moderate streamflow and store water.
Bank stabilization, sediment, and	Erman et al. 1977; Moring 1982; Clinnick et al. 1985; Johnson and Ryba 1992; FEMAT 1993; Castelle et	<i>Bank stabilization:</i> ½ site potential tree height to 170 ft

pollution control	al. 1994; Cederholm 1994; Spence et al. 1996; Wenger 1999; May 2000	<i>Sediment control:</i> 10 ft (sand) to 400 ft (clay) <i>Pollutant removal:</i> 13 to 141 ft Vegetated steep slopes adjacent to all streams provide bank stabilization, sediment and pollution control.
Large wood and channel dynamics	McDade et al. 1990; FEMAT 1993; Spence et al. 1996; Wenger 1999; May 2000	<i>Large woody debris:</i> one site potential tree height; 150 to 262 ft The scientific literature indicates that frequently flooded areas should be maintained to allow for the channel migration zone.
Organic material sources	Erman et al. 1977; FEMAT 1993; Spence et al. 1996; Pollock and Kennard 1998	½ site potential tree height to 170 ft
Riparian wildlife habitat and connectivity	Erman et al. 1977; Tassone 1981; Hickman and Raleigh 1982; Raleigh 1982; Small 1982; Allen 1983; Raleigh et al. 1984; Harris 1985; Raleigh et al. 1986; Wilcove et al. 1986; Gregory et al. 1987; Jones et al. 1988; Groffman et al. 1990; Rudolph and Dickson 1990; Castelle et al. 1992; FEMAT 1993; Keller et al. 1993; NRCS 1995; Hodges and Krementz 1996; Knutson and Naef 1997; Environment Canada 1998; May 2000; Hennings 2001	<i>Aquatic habitat:</i> 50 to 200 ft <i>Edge effect:</i> 20 ft (noise) to 2,000 ft (minimize predation) <i>Terrestrial LWD and structural complexity:</i> 1 site potential tree height outside a buffer to 650 ft <i>Movement corridors:</i> 328 ft <i>Specific wildlife needs:</i> 100 ft (e.g. frogs & salamanders) to 656 ft (Rufous-sided towhee breeding populations)

Source: Metro 2001.

Figure 1 below graphically depicts the range of recommended minimum widths described in Table 15 above. The chart shows the average recommended width for each function, with all widths below the average characterized as a high risk for maintaining the function provided by the area, and widths above the average as being of relatively lower risk for maintaining functionality.



Wildlife habitat

Although wildlife frequently use riparian corridors, the Goal 5 rule includes a separate section on wildlife habitat. Scientific recommendations for protecting wildlife habitat not related to riparian corridors are typically ambiguous due to the fact that the upland areas are less studied, particularly in urban environments. The lack of specificity in the science may explain the general dearth of upland habitat protection programs at the local level in this region. However, there are general planning guidelines to use in the development of conservation and protection plans for upland wildlife habitat.

The guidelines for protecting upland wildlife habitat identified in the scientific literature are:

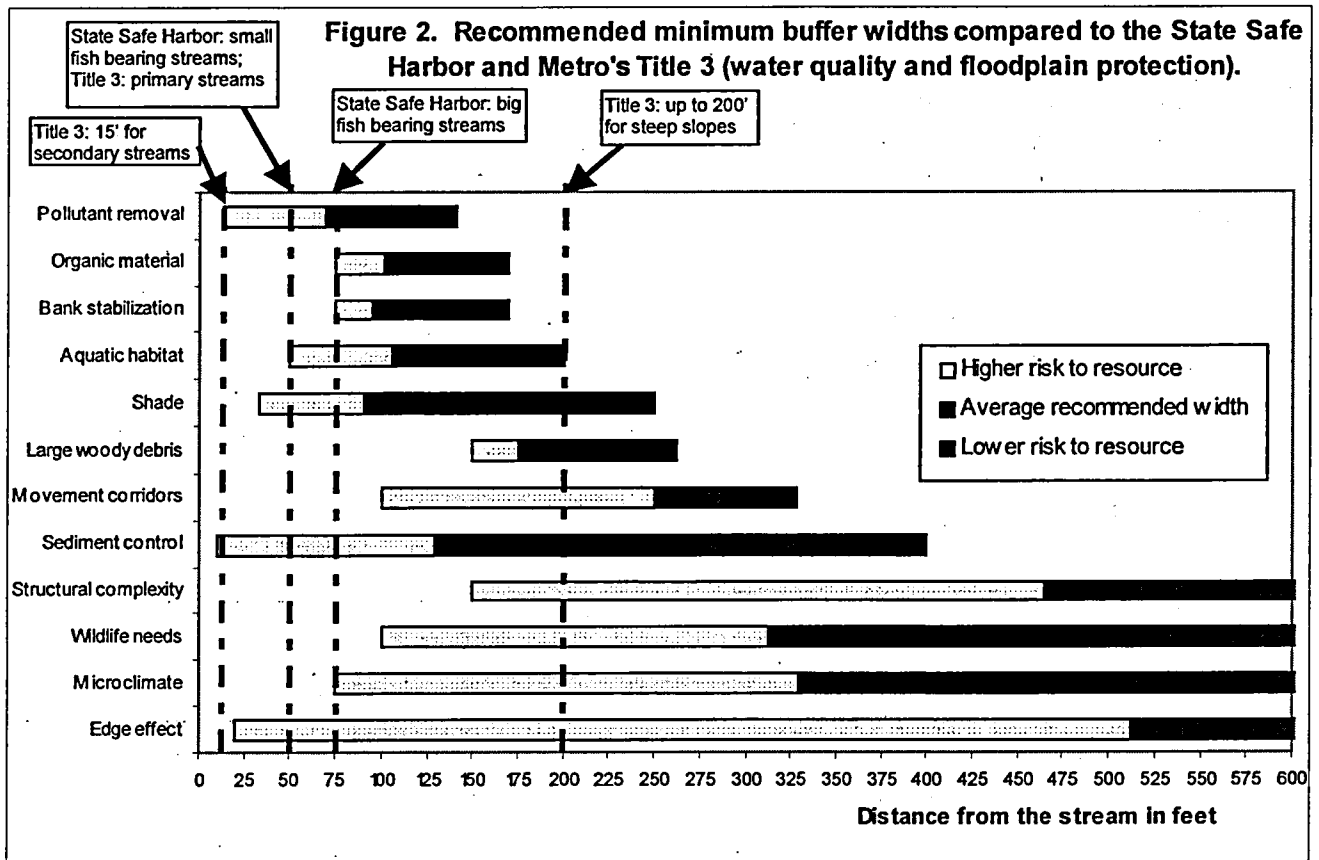
- Bigger patches of habitat are better than small
- Connectivity and proximity of habitat patches is important (more patches are better than fewer)
- Interior habitat should be maximized
- Protect habitat for unique and sensitive species
- Connectivity to water resources is important

Comparison with local resource protection programs

As discussed in the *Inconsistencies* section, it is often difficult to determine what specific protection will be applied to resources by local governments when implementing Goal 5 programs. This not only leads to inconsistent protection around the region, but also may result in inadequate protection of natural resources. The most consistent protection is Metro's Title 3 regulations for protecting water quality and floodplain function. In addition, several jurisdictions in the region have adopted the State's Safe Harbor provisions under Goal 5, which provide protection specific to fish-bearing streams based on stream size. Local jurisdictions' riparian corridor protection programs that do vary from either Title 3 or the State Safe Harbor range from 30 feet on a class I stream (Lake Oswego) to as much as 150 feet on a principal river (Clackamas County). (See *Inconsistencies – program decisions for more detail on local jurisdictions' programs.*)

Figure 2 compares the minimum widths recommended in the scientific literature (discussed above) to the riparian corridor protection provided by Metro's Title 3 regulations and the State Safe Harbor. As the figure illustrates, even the maximum protection provided by Title 3 on steep slopes (200 ft) meets the average recommended width for only seven of the twelve functions included on the chart. However, the 200-foot vegetated corridor provides some protection for all twelve functions. Furthermore, the State Safe Harbor, when applied to larger fish-bearing streams (75 ft), only meets the average recommended minimum width for one function, pollutant removal. The 75-foot buffer does not even meet the minimum recommendations for four functions, including one of the most important for listed salmon – large woody debris¹¹. The 50-foot buffer provided by the State Safe Harbor on smaller fish-bearing streams and by Metro's

¹¹ Obviously, large woody debris does reach the stream at distances of less than 75 feet, providing some level of function to instream habitat. However, several studies have shown that larger buffer widths are necessary to provide adequate levels of large woody debris to both instream and riparian (terrestrial) habitats. Thus, any distance that is less than one site potential tree height (average in Metro region determined to be 150 ft) allows for a very high risk to the resource.



Title 3 on primary streams only provides minimal protection for five functions. For smaller streams, those draining less than 50 acres, Title 3 provides for a 15-foot buffer that barely meets the most minimal scientific recommendations for two functions.

In effect, there is not a regulatory program in the region that provides sufficient protection for riparian corridors based on consideration of all the functions necessary for fish and wildlife habitat. While it is unlikely that any regulatory program could be implemented that would fully protect all of the functions depicted in Figure 2, resource protection in the Metro region does not comport with the scientific knowledge of what is needed for full fish and wildlife habitat protection.

As mentioned previously, local protection of upland wildlife habitat is limited throughout the region. Only eight jurisdictions¹² have identified upland areas not associated with streams or wetlands for regulatory protection. By default, some steeply sloped areas are regulated due to natural hazards, such as earthquakes and landslides. The planning guidelines for upland habitats, described above, recommend protection of large areas and retention of native vegetation. However, based on our review of local regulations, protection of these areas in the region does not meet the scientific recommendations. Tree protection ordinances occur most frequently.

¹² Beaverton (not yet acknowledged by DLCD), Lake Oswego, Milwaukie, Portland, Wilsonville, Clackamas County, Multnomah County, and Washington County have specifically mentioned wildlife habitat not associated with riparian corridors in local code.

However, ordinances that specifically protect upland habitat by limiting development are more effective but less common. Lake Oswego requires protection of significant tree groves, but allows for up to 50 percent of the trees on a site to be removed for development purposes. Other jurisdictions such as Sherwood and Tigard require a tree inventory and provide incentives for retention of trees through the permit process.

ESA and 4(d) limit protection recommendations

In 1973, Congress adopted the Endangered Species Act (ESA) to conserve the ecosystems upon which endangered and threatened species depend and to provide a program for the conservation of such endangered and threatened species.¹³ Section 4(d) of the ESA directs the implementing agencies, NMFS and United States Fish and Wildlife Services (USFWS), to issue regulations that are “necessary and advisable to provide for the conservation of [threatened] species.” In June of 2000, NMFS, acting pursuant to section 4(d), implemented a regulation prohibiting the “take” of fourteen groups of salmon and steelhead listed as threatened under the ESA. In the context of the ESA, “take” means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct” *Id.* § 1532(18).¹⁴

The salmon and steelhead were listed as threatened due to the fact that their populations have declined to the point that they are likely to become endangered species within the foreseeable future (NMFS 2000). The threatened status of the fish cannot be attributed to changes in ocean and weather conditions, but is due to the impact of several different activities such as harvest, destruction of freshwater and estuarine habitat, hydropower dams, and hatchery practices. Many of the fourteen listed species are present in the Metro region at some point during their life cycles. Fish migrate through the metropolitan area along the Columbia River and its tributaries as adults and juveniles. Others spawn and/or rear in metropolitan area streams.

The final rule limits the take prohibitions for certain land and water management activities that NMFS has determined will conserve listed salmonids’ habitat even though they may incidentally take individual listed fish. To make these determinations, NMFS evaluated whether the activities would allow properly functioning habitat condition to be attained and persist. Thus, programs under one of the thirteen limits identified by NMFS must allow for properly functioning condition (PFC).

The NMFS defines PFC as the sustained presence of natural habitat-forming processes (e.g., hydraulic runoff, bedload transport, channel migration, riparian vegetation succession) that are necessary for the long-term survival and recovery of the species (The Habitat Approach, NMFS,

¹³ Endangered Species Act of 1973, 16. U.S.C. § 1531(b) (1998 & Supp. I). The Secretary (Interior or Commerce) determines whether a species is threatened or endangered. *Id.* § 1533(a)(1). An “endangered species” is “any species which is in danger of extinction throughout all or a significant portion of its range . . .” *Id.* § 1532(6). A “threatened species” is “any species which is likely to become an endangered species within the foreseeable future though out all of a significant portion of its range.” *Id.* § 1532(19).

¹⁴ “Harass” is defined as an intentional or negligent act that creates the likelihood of injuring wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns such as breeding, feeding, or sheltering. “Harm” is defined as an act that actually kills or injures protected species. Harm can arise from significant habitat modification or degradation where it actually kills or injures protected species by significantly impairing essential behavior patterns, including breeding, spawning, rearing, migrating, feeding, or sheltering.

1999). Thus, PFC constitutes a species' habitat-based biological requirements – the essential physical features that support spawning, incubation, rearing, feeding, sheltering, migration, and other behaviors. Such features include adequate instream flow, appropriate water temperature, loose gravel for spawning, unimpeded fish passage, deep pools, and abundant large tree trunks. (NMFS 2000).

NMFS identified several activities that may be likely to cause harm to salmonids and thus violate the ESA regulations. Many of the activities could occur in an urban environment, such as:

- construction barriers to fish passage;
- removing or altering physical structures such as rocks, soil or gravel that are essential to fish habitat;
- construction of bridges, roads or trails on unstable or erosive slopes near fish habitat;
- harvesting timber, grazing, mining, or moving earth in such a way that increases the sediment level in streams;
- conducting land use activities in riparian areas and areas susceptible to mass wasting in a manner that increases sediment;
- disturbing the shoreline or riparian areas in a way that retards or prevents the development of certain habitat characteristics on which the fish depend (e.g., vegetation, development, armoring shorelines);
- filling or isolating side channels, ponds and intermittent waters can destroy fish refuge areas. (50 CFR Part 223, pp. 42472-73)

One of the thirteen limits identified by NMFS, the Municipal, Residential, Commercial, and Industrial (MRCI) development limit could apply to Metro and its planning jurisdiction. If Metro complies with the MRCI requirements, it would be exempt from the ESA “take” prohibitions. The Metro Council has determined that Metro’s Goal 5 fish and wildlife protection work should be developed in such a way that the resulting program could be submitted to NMFS for compliance under the MRCI 4(d) limit. The MRCI limit outlines twelve evaluation considerations for MRCI development or redevelopment ordinances or plans that will be considered adequate to conserve listed fish, shown below in Table 16.

Table 16. Requirements for a MRCI ordinance or plan.

- 1) Ensures that development avoids inappropriate areas (unstable slopes, wetlands, areas high in habitat value, and similarly constrained sites).
- 2) Adequately prevents stormwater discharge impacts on water quality and quantity and stream flow patterns in the watershed (avoid impairing water quality and quantity).
- 3) Protects riparian areas well enough to attain or maintain properly functioning conditions (PFC) around all rivers, estuaries, streams, lakes, deepwater habitats, and intermittent streams.
- 4) Avoids stream crossings (roads, utilities, or other linear development) where possible, and where crossing must be provided, minimize impacts.
- 5) Protects historical stream meander patterns and channel migration zones and avoids hardening of stream banks and shorelines.
- 6) Protects wetlands, wetland buffers, and wetland functions—including isolated wetlands.
- 7) Preserves permanent and intermittent streams' ability to pass peak flows.
- 8) Stresses landscaping with native vegetation to reduce the need to water and apply herbicides, pesticides, and fertilizers.
- 9) Contains provisions to prevent erosion and sediment run-off during (and after) construction and to prevent sediment and pollutant discharge to streams, wetlands, and other water bodies that support listed fish.
- 10) Ensures that demands on the water supply can be met without affecting the flows salmon need.
- 11) Provides mechanisms for monitoring, enforcing, funding, reporting, and implementing its program.
- 12) Complies with all other state and Federal environmental and natural resource laws.

Source: NMFS, Endangered and threatened species: final rule governing take of 14 threatened salmon and steelhead evolutionarily significant units (ESUs), 50 CFR Part 223, 2000.

NMFS has not yet released recovery guidelines, but there is a description of riparian zones included in the Critical Habitat definition in the Final Rule. NMFS defines steelhead critical habitat “based on key riparian functions.” However, the area within which those key functions occur is not delineated, as it varies throughout the range of the fish. While the NMFS does not provide specific recommendations as to adequate riparian area width or upland wildlife habitat protection, it does emphasize an approach for retaining the functions necessary for the survival of the listed salmonid species. We utilized this functional approach to describe the recommendations identified in our scientific literature review and for assessing the adequacy of resource protection programs currently in place in the region.

Summary of inadequacies in data and protection

The levels of protection called for by the science in riparian corridors and upland wildlife habitat are not being provided by current regulations in the Metro region. Further analysis of on-the-ground conditions within the minimum buffer areas recommended by the scientific literature indicates that additional protection of natural resources is necessary in order to provide adequate fish and wildlife habitat. However, there are limitations on what level of habitat function can be provided in an urban area. In Oregon, land within the urban growth boundary is intended to be urbanized, yet the listing of the salmon as “threatened” indicates the need for additional habitat protection in urbanized environments.

Conclusion

This local plan analysis has shown that there are many inconsistencies and inadequacies in natural resource protection in the Metro region. An important reason for the inconsistency in local protection is that the Goal 5 rule does not set a specific standard, rather it lays out a process for jurisdictions to follow. The process described by state law allows jurisdictions to choose which resources to protect and the level of protection received after balancing the consequences of protection with the economic, social, and energy needs within the jurisdiction. Most jurisdictions choose to “limit” conflicting uses in resource areas, the Goal 5 Rule defines this choice as “conflicting uses should be allowed in a limited way that protects the resource to the desired extent.” This language gives local governments wide discretion in designing protection programs.

If protecting natural resources is an important piece of maintaining livability within the region, as stated in Metro’s Regional Urban Growth Goals and Objectives (RUGGOs), then it is critical to provide a more consistent level of protection throughout the region.

In this analysis we found *inconsistencies* in both data and protection, as called for in Title 3, Section 5:

- 1) **Data.** Inconsistencies in data range from the date inventories were conducted to the ESEE analysis methodologies.
 - **Date of inventory:** Several jurisdictions have never completed an inventory for one or more resources: riparian area (3 jurisdictions); wetlands (3 jurisdictions); wildlife habitat (8 jurisdictions). Two jurisdictions have never completed a Goal 5 inventory for any resource, and one jurisdiction completed but never adopted inventories for riparian areas and wetlands. Only nine jurisdictions have completely updated their inventories since they were first acknowledged. Eight jurisdictions have completed inventories for some resources under the new Goal 5 rule (revised in 1996).
 - **Resource definition:** The old Goal 5 rule, under which most jurisdictions developed their Goal 5 programs (only eight jurisdictions have completed a Goal 5 program under the new rule), provides no specific guidance on how Goal 5 resources should be defined. Thus, jurisdictions have inconsistent definitions of resources.
 - **Data collection methodology:** The data used in local Goal 5 inventories ranges from current 2001 information gathered using field biologists and the latest technology to information gathered in 1983. Jurisdictions may inventory a single resource category, or may choose to inventory several Goal 5 resources. All but five jurisdictions have inventoried streams/riparian corridors in the region, while 10 jurisdictions have not yet inventoried upland wildlife habitat.
 - **Data format:** Data on natural resource inventories are found in notebooks, hand-drawn on paper maps, and on electronic GIS systems. This lack of consistency in data format adds to the difficulty in comparing data across the region.
 - **Comparability of data from one jurisdiction to another.** Inventories are not comparable based on the time data was collected and the varying methodologies employed.
 - **Methods of significance determination:** Jurisdictions may develop unique criteria to determine the significance of the same resource (with the exception of wetlands which

require the use of specific criteria identified by the Division of State Lands). The approaches may or may not result in similar outcomes, but exemplify the inconsistent treatment of natural resources between jurisdictions in the region. For some jurisdictions, the criteria for determining significance are stated explicitly in planning documents. Other jurisdictions, especially those that completed Goal 5 several years ago, may simply state that they determined certain sites to be significant. This makes it difficult to compare the factors used by various jurisdictions in determining which resources are significant.

- *Variability in inventory approaches:* Six jurisdictions have utilized the State safe harbor option for inventorying and significance determination for one or more riparian resources. Beaverton is the only jurisdiction in the Metro region to have implemented the State safe harbor for wildlife habitat (not yet acknowledged by DLCD).
- *Status of the ESEE analysis:* Only 13 jurisdictions have an adopted ESEE analysis that has been acknowledged by DLCD, while two jurisdictions have completed ESEE analyses and await acknowledgement. Six jurisdictions have adopted the State safe harbor for one or more resources. Nine jurisdictions do not have an adopted ESEE analysis.
- *Method of conducting the ESEE analysis:* Five jurisdictions utilized the standard DLCD worksheet methodology under the old Goal 5 rule. Four jurisdictions took a site-by-site or resource-by-resource approach. Six jurisdictions used a two-tiered approach to the ESEE analysis: generic and site-specific. One jurisdiction took a watershed approach to analyze the impacts in the ESEE analysis.

2) **Protection.** The level of protection for natural resources is inconsistent from one jurisdiction to another. The protection varies by the type of resource protected. Streams and wetlands receive relatively consistent protection, but upland wildlife habitat receives very little protection across the region. Even when resources are protected the amount of protection they receive varies.

- *Decisions to allow, limit, or prohibit conflicting uses:* Most jurisdictions choose to limit conflicting uses on a majority of sites. However, the extent to which the conflicting use is limited varies from one jurisdiction to the next. Many jurisdictions choose to prohibit conflicting uses in the natural resources areas found to be most significant. This does not mean that every resource site receiving full protection is granted the same level of protection across jurisdictional boundaries.
- *Variation in the application of the "limit" and "prohibit" decision:* Riparian buffer widths vary across the region for the same type of resource. Some of the riparian buffers indicate a prohibition on development, with few exceptions, while others indicate an area within which certain development or performance standards apply. Eighteen jurisdictions' code contains regulations referring to upland tree groves and open space, not associated with water resources. Seven jurisdictions have specifically mentioned wildlife habitat not associated with riparian corridors in local code.
- *Mitigation and restoration requirements:* All but two jurisdictions require some type of mitigation for intrusion into fish and wildlife habitat. 14 jurisdictions vary the amount or type of mitigation required based on the value or condition of the impacted resource. Some jurisdictions refer to the importance of restoration, but no jurisdiction requires restoration actions beyond mitigation requirements.

- **Monitoring and enforcement process:** The few jurisdictions that do mention some form of enforcement appear to rely exclusively on the permitting process and citizen complaints to ensure compliance with code provisions.

We also found *inadequacies* in data and protection:

- 1) **Data.** Local jurisdictions have varying capabilities in terms of mapping natural resources as well as the areas identified for protection. Currently, Metro has Goal 5 protection information in GIS format from only 12 jurisdictions. This makes it difficult to analyze the level of protection provided by local jurisdictions.
- 2) **Protection.** Based on the level of protection for fish and wildlife habitat called for in the recommendations from the scientific literature, current regulations do not adequately protect fish and wildlife habitat in the Metro region.

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STAFF REPORT

FOR THE PURPOSE OF COMBINING METRO'S DRAFT INVENTORY MAPS OF REGIONALLY SIGNIFICANT RIPARIAN CORRIDORS AND WILDLIFE HABITAT FOR THE GOAL 5 ESEE ANALYSIS, AND APPROVING METRO'S LOCAL PLAN ANALYSIS

Date: July 24, 2002

Presented by: Andy Cotugno

BACKGROUND

The Metro Council is inventorying riparian corridors and wildlife habitat as defined by State Planning Goal 5. This is the first step in the three steps outlined in the Goal: 1) inventory; 2) analyzing the economic, social, environmental and energy consequences (ESEE analysis) and 3) program choices (incentives, acquisition from willing sellers, regulation, education, etc.).

In order to proceed with the second step, the ESEE analysis, two products have been produced for Metro Council consideration. One product is a map that combines the geographic extent of the riparian corridors and the wildlife habitat inventories to show the extent of those areas determined to be regionally significant and worthy of analysis of the economic, social, environmental and energy consequences. The second product is the Local Plan Analysis - an analysis of existing city and county fish and wildlife habitat programs within the Metro boundary. This product is required by Title 3, Section 5 which states in part that Metro must undertake an analysis "...to identify inadequate or inconsistent data and protection in existing Goal 5 data, reports and regulations on fish and wildlife habitat..." and "...shall complete Goal 5 ESEE analyses...only for those areas where inadequate or inconsistent data or protection have been identified." The Local Plan Analysis was prepared to address this Metro requirement and has been provided to all planning directors within the region and revisions made based on all specific concerns stated.

ANALYSIS/INFORMATION

1. **Known Opposition** Each Planning Director within the region has been contacted about the content of the Local Plan Analysis. There have been numerous Metro Technical Advisory Committee meetings in which the document has been discussed. Staff is not aware of any remaining specific issues remaining that pertain to the analysis.

There have been concerns expressed about the riparian corridor and wildlife habitat inventories, by individuals and organizations, but a map combining them would not result in any additional areas shown and there are no known additional issues connected with such a combined map.

2. **Legal Antecedents** There is a myriad of legislation that relates to this resolution. Relevant legislation includes Federal, State, regional and local laws. At the Federal level there is the Clean Water Act and the Endangered Species Act. At the State level there are State planning laws, goals and administrative rules (especially OAR chapter 660 and sections 660-023-090 and 660-023-110). At the regional level there is the Regional Framework Plan, the Urban Growth Management Functional Plan and resolutions 01-3141C, 02-3176 and 02-3177. Local governments within the region have also enacted a range of local policies and regulations and these are documented in the draft Local Plan Analysis, Metro, 2002.

3. **Anticipated Effects** The anticipated effect of the adoption of this ordinance is to begin the analysis of the economic, social, environmental, and energy consequences of allowing, limiting or prohibiting uses that conflict with the protection of those areas determined to be regionally significant riparian corridors and/or wildlife habitat. This information should help inform the issues and concerns that some individuals or organizations have stated about the draft inventories.
4. **Budget Impacts** The cost to implement this legislation is not possible to estimate until after the Council considers the second and third of three steps required by the state - the economic, social, environmental and energy consequences and the program alternatives. These steps have not been completed.

RECOMMENDED ACTION

Adopt Resolution No. 02-3218 and direct staff to continue analysis of the economic, social, environmental and energy consequences of allowing, limiting or prohibiting conflicting uses.

Agenda Item Number 6.4

Resolution No. 02-3209, For the Purpose of Issuing a Final Order in the Matter of the Imposition of a Civil Penalty against Speyfly, Inc. dba Roofgone and the Revocation of Roofgone's Solid Waste Facility License.

Metro Council Meeting
Thursday, August 8, 2002
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ISSUING A FINAL ORDER) RESOLUTION NO. 02-3209
IN THE MATTER OF THE IMPOSITION OF A CIVIL)
PENALTY AGAINST SPEYFLY, INC. dba)
ROOFGONE AND THE REVOCATION OF) Introduced by Mike Burton,
ROOFGONE'S SOLID WASTE FACILITY LICENSE) Executive Officer

WHEREAS, Speyfly, Inc. has operated a roofing waste processing facility under authorization of a Metro solid waste facility license since April, 2001; and,

WHEREAS, Speyfly has violated the provisions of its license; and,

WHEREAS, Speyfly has failed to abate license violations for which it has received notices of noncompliance; and,

WHEREAS, Speyfly abandoned the RoofGone facility in January, 2002; and,

WHEREAS, Metro's Regional Environmental Management Department initiated enforcement actions against Speyfly to impose a monetary penalty for Speyfly's failure to abate such license violations; and,

WHEREAS, Metro's Regional Environmental Management Department issued Speyfly a notice of the revocation of Speyfly's solid waste facility license; and,

WHEREAS, Speyfly has been provided an opportunity for a contested case hearing in the matters of the imposition of monetary penalties and the revocation of its solid waste facility license but has not requested such a hearing; and,

WHEREAS, Speyfly has failed to pay its penalty or to respond in any way to the imposition of such penalty; and,

WHEREAS, Metro Code Chapter 2.05 stipulates that the district may enter an order that supports district action and that such orders shall be approved by the Council; and,

WHEREAS, The resolution was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now therefore,

BE IT RESOLVED that the Metro Council approves the Final Order attached hereto as Exhibit A.

ADOPTED by the Metro Council this ____ day of _____, 2002.

Carl Hosticka, Metro Council Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

EXHIBIT A
Resolution No. 02-3209

BEFORE THE METRO REGIONAL GOVERNMENT

IN THE MATTER OF THE IMPOSITION OF A)	NON-108-01
CIVIL PENALTY AND SOLID WASTE FACILITY)	
LICENSE REVOCATION AGAINST:)	
)	FINAL ORDER
SPEYFLY, INC., an Oregon corporation, Metro Solid)	
Waste Facility License No. L-038-01, Respondent)	

On October 22, 2001, pursuant to Metro Code § 5.01.200(c), Metro issued Speyfly, Inc., dba Roofgone ("Speyfly"), a Finding of Violation and Notice of Imposition of Penalty (NON-108-01) for Speyfly's continuing violations of sections 5.2 and 11.0 of Metro Solid Waste Facility License No. L-038-01. That notice informed Speyfly that Metro would be imposing certain civil penalties against Speyfly, and ordered Speyfly to cure its violations or else face the imposition of additional civil penalties.

Speyfly did not respond to Metro's October 22, 2001, notice, and did not cure its violations of License sections 5.2 and 11.0. On November 30, 2001, Metro issued Speyfly another notice, imposed a civil penalty of \$3,575, and provided Speyfly an opportunity for a hearing, if requested within 30 days of Metro's mailing of the contested case notice. Speyfly did not request a hearing in this matter.

In early January, Metro suspended RoofGone's license in order to prevent a further accumulation of waste roofing. On March 31, 2002, Metro issued Speyfly notice of the revocation of its license based upon a finding that the facility had been abandoned. With the notice of revocation, Metro included another contested case notice and provided Speyfly an opportunity for a hearing on this matter if requested within 30 days of Metro's mailing of the contested case notice. Again, Speyfly did not request a hearing.

NOW THEREFORE, after considering Metro's file relating to this matter, Metro enters the following Order.

FINDINGS OF FACT

1. On April 12, 2001, Metro issued Solid Waste Facility License No. L-038-01 to Speyfly, Inc., dba Roofgone ("Speyfly").
2. Section 5.2 of License No. L-038-01 required Speyfly to submit to Metro a facility operating plan that addresses certain specific items.
3. Section 11.0 of License No. L-038-01 required Speyfly to close and clean up its waste roofing processing facility located at 4044 North Suttle Road in Portland within 120 days of the issuance of its license (by August 10, 2001).
4. As of July 1, 2002, Speyfly had not submitted an acceptable facility operating plan.
5. As of July 1, 2002, Speyfly had not removed all material that it had accumulated at that facility.
6. In January, 2002, Speyfly abandoned the RoofGone facility, leaving over 10,000 tons of waste roofing on site.

CONCLUSION OF LAW

Speyfly violated sections 5.2 and 11.0 of Metro Solid Waste Facility License No. L-038-01, and, as of the date of this Final Order, has not cured its violations.

ORDER

IT IS HEREBY ORDERED that Respondent, Speyfly, Inc. pay to Metro a civil penalty in the amount of \$3,575.00 plus interest from the date this Final Order is signed below until paid, pursuant to Oregon Revised Statute (ORS) 82.010. It is further ordered that if Speyfly fails to pay this civil penalty within ten (10) days of the date of this Order, this Order may be filed with each County Clerk in Oregon and execution shall issue therefor. It is further ordered that solid waste facility license No. L-038-01 is revoked. Pursuant to ORS 34.010 to 34.102, appeal of this Order may be initiated by filing a petition for

a writ of review with the Circuit Court of the State of Oregon for Multnomah County within 60 days of this date.

METRO REGIONAL GOVERNMENT

Date

Carl Hosticka
Metro Council Presiding Officer

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing FINAL ORDER on:

Dennis Brown, President

Speyfly, Inc.

P.O. Box 23846

Tigard, OR 97281-3846

and

William A. Whitlock, Registered Agent

Speyfly, Inc.

1019 28th St.

Springfield, OR 97477

by causing a full, true, and correct copy thereof, contained in a sealed envelope addressed to the last-known office address, to be sent via certified mail, with postage prepaid, and deposited in the U.S. post office at Portland, Oregon, on the date set forth below:

DATE: _____

Roy W. Brower
Regulatory Affairs Manager
Metro

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STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 02-0309, FOR THE PURPOSE OF ISSUING A FINAL ORDER IN THE MATTER OF THE IMPOSITION OF A CIVIL PENALTY AGAINST SPEYFLY, INC., dba ROOFGONE AND THE REVOCATION OF ROOFGONE'S SOLID WASTE FACILITY LICENSE

June 26, 2002

Presented by: Terry Petersen

BACKGROUND

Speyfly, Inc. holds a Metro solid waste facility license to operate the RoofGone facility located at 9645 N. Columbia Boulevard in Portland. On October 22, 2001, Metro staff issued a citation to Speyfly, Inc. and imposed a \$3,575 penalty for license and Code violations which it failed to cure after being issued earlier Notices of Noncompliance (NONs). On May 15, 2002, Metro staff issued notice to Speyfly, Inc. that its license was being revoked due to its abandonment of the RoofGone facility. Speyfly did not respond to the NONs, citation, or notice of revocation. Metro staff now seek Council's approval of a final order affirming its enforcement actions in this matter.

RoofGone's license required the licensee to establish and follow an operating plan that addressed four specific items. Specifically, Section 5 of the RoofGone solid waste facility license stipulates that the licensee shall establish and follow a written operating plan that includes:

- a. Objective criteria for accepting and rejecting loads;
- b. Methods of inspecting incoming loads for the presence of Prohibited and Unauthorized Wastes;
- c. Methods of managing and transporting for disposal at an authorized disposal site any Prohibited and Unauthorized Wastes inadvertently received; and
- d. Method of managing stockpiles to assure that they remain within the authorized volume.

The licensee was given 90 days from issuance of the license to submit such a plan but failed to do so despite being issued a written reminder. On August 9, 2001, RoofGone was issued a NON for failure to submit an acceptable plan. In response, the licensee submitted a two-page plan that still failed to address the four items required in the license. A second NON was issued on September 19, 2001.

Additionally, Section 11 of the RoofGone solid waste facility license stipulates that the licensee shall complete the processing of accumulated waste roofing and cease performing unlicensed roofing waste processing operations at a site located at 4044 N. Suttle Road in Portland within 120 days of the granting of the license (i.e., by August 10, 2001). The licensee failed to remove all waste roofing from the site and this was also listed as a violation on the September 19th NON. The September 19th NON warned that penalties would be imposed for continued failure to abate these violations beyond October 10, 2001.

The licensee failed to abate either of the violations listed above and, on October 22, 2001, Metro staff issued another NON, this one imposing monetary penalties for each of the violations

beginning on October 11, 2001. The penalty imposed for failure to submit an adequate operating plan was \$25 per day until the earlier of when such a plan was submitted or October 31. The penalty imposed for failure to remove all roofing waste from the N. Suttle Road site was \$50 per day until such waste was completely removed or October 31, whichever was earlier. The NON stipulated that, pursuant to Metro Code section 5.01.200(d), an additional penalty of \$1,000 for each violation would be imposed if the violations continued after October 31, 2001.

The licensee did not respond to the October 22 NON and on November 30, 2001, Metro staff notified the licensee that it was imposing a \$3,575 penalty. Included with that notice was a contested case notice. Mr. Brown, president of Speyfly, Inc., did not request a contested case hearing, did not abate the violation, failed to pay the penalty and, by early 2002, had abandoned the RoofGone facility, leaving over 10,000 tons of roofing waste on the site. Since then, the licensee has refused to return phone calls or to accept registered mail from Metro. Pursuant to Metro Code section 5.01.200(f), the Executive Officer suspended RoofGone's license on January 22, 2002, and revoked the license on March 31, 2002. The notice of revocation also included a contested case notice. Mr. Brown did not respond to that notice, and, specifically has not requested a contested case hearing in this matter.

ANALYSIS/INFORMATION

1. Known Opposition

No known opposition.

2. Legal Antecedents

Section 2.05.015 of the Code stipulates that when a party is given an opportunity for a hearing and no hearing is requested, the district may enter an order that supports the district action and that such order shall set forth the facts on which the order is based. Section 2.05.045(e) of the Code stipulates that final orders in cases other than urban growth boundary amendments shall be approved by the Council.

3. Anticipated Effects

Passage of Resolution No. 02-3209 will adopt a final order that affirms the penalty imposed on Speyfly, Inc. and revokes solid waste facility license No. L-038-01.

4. Budget Impacts

No impact unless the \$3,575 penalty is collected. That amount will then be counted as revenue to Metro.

RECOMMENDED ACTION

The Executive Officer recommends approval of Resolution No. 02-3209, for the purpose of approving a final order imposing a \$3,575 penalty on Speyfly, Inc., dba RoofGone for unabated license violations and revoking solid waste facility license No. L-038-01. Such order shall be substantially similar to the final order attached as "Exhibit A" to Resolution No. 02-3209.

Agenda Item Number 6.5

Resolution No. 02-3217, For the Purpose of Authorizing Release of RFB#03-1028-REM for the Construction of a Maintenance Building at the St. John's Landfill, and Authorizing the Executive Officer to Execute a Contract with the Lowest Bidder.

Metro Council Meeting
Thursday, August 8, 2002
Metro Council Chamber

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING RELEASE OF) RESOLUTION NO. 02-3217
RFB #03-1028-REM FOR THE CONSTRUCTION OF A)
MAINTENANCE BUILDING AT THE ST. JOHNS)
LANDFILL, AND AUTHORIZING THE EXECUTIVE)
OFFICER TO EXECUTE A CONTRACT WITH THE) Introduced by Mike Burton,
LOWEST RESPONSIVE BIDDER) Executive Officer

WHEREAS, Metro must comply with the regulatory requirements associated with the closure and long term maintenance of the St. Johns Landfill as described in the accompanying staff report; and,

WHEREAS, For reasons of ensuring that any risks to humans and/or the surrounding environment of the St. Johns Landfill are detected, predicted and minimized, Metro requires an onsite presence at the landfill; and,

WHEREAS, Personnel and extensive equipment are required onsite to carry out these responsibilities as described in the accompanying staff report; and,

WHEREAS, These responsibilities are of a long term nature, it is appropriate to construct a maintenance building at the site; and,

WHEREAS, The project was identified in Metro's Adopted Capital Improvement Plan; and,

WHEREAS, The resolution was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now therefore,

BE IT RESOLVED,

1. That the Metro Contract Review Board authorizes issuance of RFB #03-1028-REM attached hereto as Exhibit "A".
2. That the Metro Council, pursuant to Section 2.04.026(b) of the Metro Code, authorizes the Executive Officer to execute a contract with the lowest responsive bidder.

ADOPTED by the Metro Council this ___ day of _____, 2002.

Carl Hosticka, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

REQUEST FOR BIDS

FOR

CONSTRUCTION OF A MAINTENANCE

FACILITY AT ST. JOHNS LANDFILL

RFB #03-1028-REM

AUGUST 2002

Metro
Regional Environmental Management Department
600 N.E. Grand Avenue
Portland, OR 97232-2736

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**SECTION 00030
INVITATION TO BID**

Metro is soliciting bids for construction of a maintenance facility for the St. Johns Landfill located in the vicinity of 9363 N. Columbia Blvd., Portland, OR 97203. Sealed Bids must be delivered to Metro, Regional Environmental Management Department (REM), 600 N.E. Grand Avenue, Portland, OR 97232 to the attention of Pete Hillmann, Project Manager, no later than 11:00 am PST, on August 20, 2002. All contractors must submit a form in its bid submission or within four (4) working hours after bid closing listing all first tier subcontractors supplying labor, or labor and materials with a contract amount greater than or equal to; 1) 5% of the project base bid, but at least \$15,000, or 2) \$350,000 regardless of the percentage. At that time, the Bids will be opened and publicly read aloud in Conference Room _____ located in the Metro Regional Center.

Drawings and Specifications may be examined at the REM Department in the Metro Regional Center. Copies of the Bidding Documents may be obtained at REM Department or by calling 797-1650.

Background/History of Project

Metro requires work to construct a maintenance facility for the St. Johns Landfill

The St. Johns Landfill is located at 9363 N. Columbia Blvd. It is bounded on three sides by the Columbia Slough and is adjacent to the Smith & Bybee Lakes Wildlife Management Area. It was operated as a landfill from the late 1930's to 1991, when it was closed. Metro constructed an engineered landfill cap, mainly consisting of a 12" layer of clay, a 40 mil low-density polyethylene (LDPE) layer, an 19" sand drainage layer and 12" of topsoil, planted with grass. The surface of the landfill is sloped to drain by sheet flow to drainage ditches which transport runoff to settlement basins prior to discharge to the Columbia Slough. The landfill cap was constructed between 1991 and 1996. Landfill gas produced by the anaerobic decomposition of the refuse is extracted, compressed and transported by pipeline to the Ashgrove Cement facility.

Metro has recently arranged a lease with the City of Portland for 250' x 300' tract on which to construct a maintenance facility for personnel assigned to maintain the closed landfill. The site is located northeast of Columbia Blvd along the landfill access road between the landfill bridge over Columbia Slough and the United Pacific Railroad (UPRR) tracks.

Statement of Work

- a) Contractor will construct a maintenance facility for the St. Johns Landfill in accordance with the plans and specifications included in these Contract Documents
- b) The work will include but is not limited to the following construction:
 - 1. A pre-engineered metal building of approximately 3,247 sf which includes approximately 1,620 sf of office space and 1627 sf of garage area.
 - 2. A new water supply for fire and potable water (approximately 1,000 lf) which will also include a crossing under Union Pacific Railroad tracks.
 - 3. A sewage handling system with connection to an existing 6" pressure main.
 - 4. New electrical service
 - 5. Limited site and parking lot improvements

- c. The expected result of the work will be an attractive, serviceable facility with a structural life span of at least 20 years.

Each Bid must be submitted on the prescribed form and accompanied by a certified check or cashier's check or Bid Bond executed on the prescribed form, payable to Metro in the amount of ten percent (10%) of the total bid amount. The Bid and bid security should be delivered in a sealed envelope marked "Maintenance Facility at St. Johns", Attention: Pete Hillmann. The successful Bidder will be required to furnish the necessary additional Bonds for the faithful performance of the Contract and for the payment of all persons supplying labor and materials as prescribed in the Contract Documents.

Before a contract is awarded, Metro may conduct such additional investigations as are necessary to determine whether a Bidder is qualified. Upon request, the Bidder shall promptly submit such additional information as deemed necessary by Metro to evaluate the Bidder's qualifications.

Bidders shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.

This is a public works project. The contractor and all subcontractors and suppliers, shall be required to comply with ORS 279.350 through 279.354 and ensure that all workers are paid not less than, and in accordance with, the Prevailing Wages published by the Oregon Labor of Industries. In order to insure compliance of prevailing wage requirements, under Chapter 279, Metro will require that all payrolls be submitted on a schedule to be determined by Metro.

The contractor is required to pay a fee equal to one-tenth of one percent ((0.1 percent) of the price of the contract, but not less than \$100 nor more than \$5,000, under ORS 279.352 (2) and section 5 (1), Ch 594, 1995 Oregon Laws. The fee shall be paid on or before the first progress payment or 60 days from the date work first began on the contract, whichever comes first. The fee is payable to the Bureau of Labor and Industries at the following address:

Bureau of Labor and Industries
Wage and Hour Division
Prevailing Wage Unit
800 NE Oregon Street, #32
Portland, OR 97232

Each Bid must contain a statement as to whether the Bidder is a resident bidder, as defined in ORS 279.029.

Bidders and Subcontractors must be registered with the Oregon Construction Contractor's Board pursuant to ORS 701.035-90.

Bidders must comply with Metro's Minority, Women-Owned and Emerging Small Business Enterprise Program. The purpose of the program is to establish and implement a program to encourage the utilization by Metro of minority, women-owned and emerging small businesses, to the greatest extent permitted by law, by creating for such businesses the maximum possible opportunity to compete for and participate in locally funded Metro contracting activities. All Bidders must certify and document compliance with the Minority, Women-Owned and Emerging Small Business Enterprise Program. Failure to complete and submit the Program Compliance Forms, Utilization Forms, and adequately document good faith efforts will constitute a non-responsive Bid. See "Instructions to Bidders" for references to applicable procedures and further details concerning this program. Any questions regarding MBE/WBE/ESB requirements should be addressed to the Metro MBE/WBE/ESB Program Advocate, Cinna'Mon Brannon-Williams at (503) 797-1816.

The Economic Feasible Units (EFU's) identified for the MBE/WBE/ESB program by Metro for this project are grading, site work, plumbing, electrical, concrete and structural steel fabrication and erection.

A Pre-Bid Conference for prospective Bidders will be conducted in Room ___ located at Metro Regional Center, Portland, OR, on August __, 2002 at 10:00 am. Attendance at this meeting is mandatory for all potential prime bidders to comply with Metro's Minority, Women-Owned and Emerging Small Business Enterprise Program. A site visit is planned following the meeting.

Metro reserves the right to reject all Bids or any Bids not conforming to the intent and purpose of the Contract Documents, to reject for good cause any and all Bids upon a finding of Metro that it is in the public interest to do so or to waive any informality or irregularity in any Bid or Bids. Metro further reserves the right to award the Contract at any time within sixty (60) days following the Bid opening date.

For information concerning the proposed work, or to make an appointment to visit the site of the proposed work, contact Pete Hillmann, Project Manager, at (503) 797-1696.

SECTION 00110 INSTRUCTIONS TO BIDDERS

1. DESCRIPTION OF WORK

The work to construct the maintenance facility will include removal of existing asphalt, grading, foundation excavation and backfill removal and disposal of unsuitable materials, design and construction of a pre-engineered metal building; installation of a new water supply for fire and potable water (which includes a crossing under Union Pacific Railroad Tracks); a sewage handling system with connection to an existing 6" pressure main, electrical work including installation of a new electrical service; and limited site and parking lot improvements.

2. DEFINITIONS

Except as otherwise specifically provided herein, all words and phrases defined in the General Conditions shall have the same meaning and intent in these Instructions to Bidders. Bidders should refer to those definitions as they read these Instructions.

3. DOCUMENT INTERPRETATION

The Contract Documents are intended to be complementary and to provide all details reasonably required for the execution of the proposed Work. Any person contemplating the submission of a Bid shall have thoroughly examined all of the various parts of these Contract Documents. If the Bidder has any doubt as to the meaning or the intent of the Contract Documents or finds any inconsistency or discrepancy within the Contract Documents, the Bidder must provide and Metro must receive a written request for interpretation, **at least seven (7) working days prior to Bid opening**. Likewise, the Bidder may request substitutions for materials, processes or equipment as described in the Contract Documents. Such requests for interpretation or substitution shall be mailed or delivered to Metro REM Department, 600 N.E. Grand Avenue, Portland, OR 97232, to the attention Pete Hillmann, Project Manager.

Any interpretations or changes in the Contract Documents will be made only in writing, in the form of Addenda to the Contract Documents which will be furnished to all Bidders receiving a set of the Bidding Documents and which shall be binding upon all Bidders as if set forth in the original Contract Documents. Bidders shall indicate receipt of all Addenda on their Bids. Metro will not be responsible for any other explanation or interpretation of the Bidding Documents. Bidders shall have no right to rely on any oral interpretation or instructions made by Metro or the Architect/Engineer, unless it is also committed to writing and issued as an Addendum.

In the absence of any pre-bid request for clarification, or any interpretation of the Contract Documents, as outlined above, any subsequent interpretation shall be made by Metro, and shall be final and binding on the successful Bidder, and Metro shall pay no extra costs or expenses to such Bidder resulting from such interpretation.

4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE AND COMPLIANCE WITH LAWS

Before submitting a Bid, Bidders shall fully examine and read the Contract Documents; visit the site of the proposed Work, and examine the Site and the surrounding areas; and fully inform themselves of all conditions on, in, at and around the Site, the surrounding areas, and any work that may have been done thereon. The Bidder acknowledges by the submission of its Bid that it understands the nature and

location of the Work, the general and local conditions, conditions of the Site, availability of labor, electric power, water, and the kind of surface materials on the Site, the kind of equipment needed, and all other matters which may in any way affect the Work or the cost, including utilities not identified in the Contract Documents.

Information derived from inspection of the Contract Documents and any specific sections thereof showing location of utilities and structures will not in any way relieve the Contractor from any risk, or from properly examining the Site and making such additional investigations as it may elect, or from properly fulfilling all the terms of the Contract Documents.

Any failure of a Bidder to acquaint itself with all of the available information concerning conditions or having such additional investigations of Site and soil conditions conducted, as may be necessary, will not relieve it from responsibility for estimating properly the difficulties or cost of the Work and the Bidder shall, regardless of such failure, be bound to its Bid.

Each Bidder shall inform itself of, and the Bidder awarded a Contract shall comply with, federal, state, and local laws, codes, statutes, ordinances, and regulations, as amended, relative to the execution of the Work. Each Bidder shall prepare its Bid in accordance with, and all Bid prices shall assume compliance with, such laws, codes, statutes, ordinances and regulations. This requirement includes, but is not limited to, applicable regulations concerning minimum wage rates, prevailing wage rates, nondiscrimination in the employment of labor, protection of public and employee safety and health, environmental protection, the protection of natural resources, fire protection, burning and non burning requirements, permits, fees, and similar subjects.

If any portion of the Contract Documents does not conform to such laws, codes, statutes, ordinances or regulations as amended, the Bidder shall so advise Metro in writing at least seven (7) days before Bids are due. If it is shown that the Contractor, as Bidder, knew or should have known that any portion of the Contract Documents does not conform to such laws, codes, statutes, ordinances or regulations and had failed to so advise Metro, it shall be liable for costs of making any deviation(s) required for compliance with such laws, codes, statutes, ordinances or regulations.

Each Bidder, in submitting its Bid, certifies that the Bidder is eligible to bid on and to receive a contract for a public work, as set forth in ORS 279.361 and agrees, if awarded the Contract, that each of its Subcontractors will be required to certify such compliance, and certification will be filed with Metro prior to such Subcontractor commencing any work.

5. MINORITY, WOMEN-OWNED AND EMERGING SMALL BUSINESS PROGRAM COMPLIANCE

Minority, Women and Emerging Small Business Enterprise Program

In the event that any subcontracts are to be utilized in the performance of this agreement, the Bidder's/Proposer's attention is directed to Metro Code Section 2.04.100.

The following program information is intended to succinctly outline the prime action steps required of all Bidders/Proposers. It is not a substitute for and shall not be construed as a complete recital of all issues, concerns, and program instructions contained within that ordinance. Therefore, all Bidders/Proposer's are specifically advised to consult the original document for definition of the specific terminology contained herein and complete insight into all program requirements.

Copies of that document are available from the Contracts Services Division of the Department of General Services, Metro Regional Center, 600 NE Grand Avenue, Portland, OR 97232-2736 or call (503) 797-1816.

Metro Extends Equal Opportunity to all persons and specifically encourages MBE/WBE/ESBs to access and participate in this and all Metro projects, programs and services.

Metro Prohibits Discrimination against any person or firm based upon race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

Metro Specifically Requires all Bidders/Proposer's to demonstrate and document good faith efforts reasonably expected to produce and maximize the opportunities for subcontractor and supplier involvement by MBE/WBE/ESBs.

For purposes of this program, performing, documenting, and certifying compliance with all of the actions outlined on the attached forms shall constitute a rebuttable presumption that the Bidder/Proposer has made the good faith efforts required by this program.

The attached Compliance Forms are the basis for recording and documenting the completion of the above-listed actions. Completion of the Compliance Form and Documentation of all six (6) actions outlined therein is mandatory. Failure to complete and submit the forms and all required support documentation at the time of Bid opening/Proposal submission and all required documentation subsequently requested, will result in rejection of the Bid/Proposal as nonresponsive to Metro's procurement requirements.

By signing the forms, the Bidder/Proposer thereby certifies that it has not discriminated against MBE/WBE/ESBs in obtaining any subcontracts for this project, and that its documented good faith efforts were reasonably expected to result in participation by those enterprises in this project.

Conversely, failure to provide such documentation by the Bid or submission deadline shall create a rebuttable presumption that the respondent has not made a good faith effort as required by the program.

Furthermore, Metro reserves the right, at all times during the subsequent course of any awarded contract, to monitor compliance with the terms of this program, require additional written documentation or proof of good faith efforts, and depend upon the Contractor's immediate compliance.

6. PREPARATION OF BIDS

All blank spaces in the Bid Forms must be completed either by typing or in ink. Amounts shall be shown in both words and figures. Any Bids that do not include prices on all Bid Items will be considered non-responsive and will be rejected. No changes shall be made in the phraseology of the forms.

Metro reserves the right to declare any bid non-responsive and reject it without further consideration if it is deemed to contain errors, omissions, erasures, alterations, additions, deletions, unbalanced pricing, is conditioned by the Bidder, or in any manner, extent or way fails to conform to each and every specific requirement(s) of these Contract Documents.

Each Bid shall give the full business address of the Bidder and be signed by it with its legal signature.

- a. Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership authorized to sign contracts on behalf of the partnership, or by an authorized representative, followed by the printed name and title of the person signing.
- b. Bids by corporations must be signed with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the president, secretary or other person authorized to bind it in the matter. When requested by Metro, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.
- c. If a Bid is submitted by a joint venture, a certified copy of the legal agreement constituting the joint venture shall be attached to the Bid.

The name of each person signing shall also be typed or printed below the signature. Signatures of all individuals must be in longhand.

Failure to fulfill any of the above requirements may render the Bid non-responsive.

7. SUBMISSION OF BIDS

All bids must be submitted not later than the time prescribed, at the place, and in the manner set forth in the INVITATION TO BID. Bids must be made on the forms provided under separate cover as the BID BOOK; these forms are also contained herein as the Bid Forms. Each Bid and all other documentation required to be submitted with the Bid must be submitted in a sealed envelope, so marked as to indicate its contents without being opened, and addressed in conformance with the instructions in the INVITATION TO BID and the ADVERTISEMENT FOR BIDS.

8. MODIFICATION OR WITHDRAWAL OF BIDS

Any Bid may be modified after delivery to the location specified in the Invitation to Bid by delivering to the same location before the time fixed for the Bid opening, a written sealed supplement to the original Bid, marked "Supplement to Bid of (Name of Bidder) for the "Construction of a Maintenance Facility at St. Johns Landfill", Attention Pete Hillmann, Project Manager. A supplement shall clearly identify the Bid item(s) that are changed by setting forth the original Bid item(s), and the modified item(s). Metro may reject any Bid supplement that, in its opinion, does not set forth the proposed modifications clearly enough to determine the definiteness and certainty of the item(s) offered by the Bidder. No Bidder shall be allowed to submit more than one (1) Bid for this Contract.

Bids may be withdrawn by the Bidder prior to the time fixed for the receipt of Bids by having an authorized representative of the Bidder with sufficient identification personally pick up the Bid. Bids may not be withdrawn for a period of sixty (60) days from and after the opening of Bids or on or prior to the last date of any extension of such time as may be agreed upon between Metro and the Bidder.

9. BID SECURITY

Bids must be accompanied by a certified check or cashier's check drawn on a bank in good standing, or a Bid Bond on the form provided herein by Metro, issued by a surety authorized to issue such bonds in Oregon, named on the current list of approved surety companies acceptable on federal bonds, and conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of Accounts and the US. Treasury Department, in the amount of not less than Ten Percent (10%) of the bid amount. This bid security shall be given as a guarantee that the Bidder will not withdraw its Bid for a period of sixty (60) days after Bid opening, and that if awarded the Contract, the successful Bidder will execute the attached Agreement and furnish a properly executed Performance Bond and a properly executed Labor and Materials Payment Bond, each in the full amount of the Bid, within the time specified. Bid security deposited in the form of a certified check or cashier's check shall be subject to the same requirements as a Bid Bond.

The Attorney-in-Fact (Resident Agent) who executes these bonds on behalf of the surety must attach a notarized copy of his/her Power of Attorney as evidence of his/her authority to bind the surety on the date of execution of the bond.

10. EXPERIENCE AND ABILITY TO PERFORM THE WORK

Bidders must present information indicating that the Bidder has the necessary experience and qualifications in the class of Work to be performed, and the ability, equipment, key personnel and financial resources to perform the Work satisfactorily within the time specified. In determining the award of this

Contract, such information will be considered, and the Bidder is cautioned to make complete and comprehensive presentation of its abilities and resources.

Bidder must complete the Contractor Qualification Statement Form included in Section 00300 - Bid Forms. Failure to complete and submit the form and all required support documentation at the time of Bid opening/Proposal submission and all required documentation subsequently requested, will result in rejection of the Bid/Proposal as non-responsive to Metro's procurement requirements.

No Bidder will be considered for contract award unless such Bidder is authorized by law to execute the Contract or perform the Work for which such Bid is received. Should it appear, at any time, that any Bidder is not or might not be authorized by law to execute the Contract or perform such Work, then such Bidder may at any time be rejected and Metro may refuse to execute any contract with such Bidder regardless of whether or not the contract had been previously awarded by the Metro Council and without any liability whatever on the part of Metro, its Council, or any member of its Council, or Metro's officer, employees, or its agents, either as individuals or in official capacities.

11. REJECTION OF BIDS

Metro reserves the right to reject all Bids or any Bid not conforming to the intent and purpose of the Contract Documents, to waive any informality or irregularity in any Bid or Bids, to reject any Bid not in compliance with all prescribed public bidding procedures and requirements and, for good cause, to reject any or all Bids upon a finding by Metro that it is in the public interest to do so.

12. BASIS OF AWARD

Metro reserves the right to make award of this Contract to the lowest responsible Bidder submitting the lowest responsive bid, which shall include the base bid plus any owner selected alternates.

Under Oregon Law ORS 279.570, public agencies, including Metro, must give preference to the purchase of materials and supplies manufactured from recycled materials. All Bidders are required to specify the minimum, if not exact, percentage of recycled product in each product offered, and both the post-consumer and secondary waste content of each product offered. A Bidder may also specify that none of the products offered contain any recycled product. The definitions of "recycled product," "post-consumer waste," and "secondary waste material," as well as other explanatory materials, are included in the Appendix.

A form is included for submittal of recycled product information. The form allows a bidder to specify that different portions of a single bid item contain different amounts of recycled product. If the recycling information form is not submitted with the bid, Metro will assume that none of the products offered contain any recycled product. In addition, Metro will assume that a bid item contains no recycled product if information submitted for the item is in Metro's opinion incomplete, incorrect, or unintelligible.

Metro will calculate the recycled product preference as follows: If any Bidder submits a bid price for an item that (1) meets the definition of "Recycled Product" (see Oregon Laws 1991, Chapter 385, Section 59, in Appendix), (2) meets applicable standards, and (3) can be substituted for a comparable non-recycled product, Metro will subtract 5 percent of that item's materials cost from the Total Bid Price for the purpose of comparing bids. It is Metro's responsibility to calculate any preferences required under Oregon law and to establish the materials cost of any proposed bid item. A Bidder who claims a recycled product preference shall utilize in this Work, all of the recycled product claimed.

In determining the lowest responsive bid and responsible Bidder, Metro shall, for the purpose of awarding the Contract, add a percent increase on the Bid of a non-resident Bidder, as that term is defined in ORS 279.029(6)(c), equal to the percent, if any, of the preference given to that non-resident Bidder in the state in which that Bidder resides. For purposes of determining the percent increases to be applied pursuant to

this section, Metro shall rely on the list published by the Oregon Department of General Services pursuant to ORS 279.029(3), and Metro shall not incur any liability to any Bidder by relying on such list.

13. ALTERNATES

Metro will select, at its discretion, any of the proposed alternates described in the SCHEDULE OF BID PRICES, which will be part of the Basis of Award (see Article 12 in this Section - Basis of Award.)

14. FIRST-TIER SUBCONTRACTOR DISCLOSURE

Bidders are required by law (ORS 279.027) to disclose information about certain first-tier subcontractors when the contract value for a Public Improvement is greater than \$75,000. Specifically, when the contract amount of a first-tier subcontractor furnishing labor, or labor and materials is greater than or equal to: 1) 5% of the project bid, but at least \$15,000, or 2) \$350,000 regardless of the percentage, Contractor must disclose the following information about that subcontract in its bid submission or within four (4) working hours after bid closing:

The subcontractor's name and,
The category of work that the subcontractor would be performing.

If the bidder will not be using any subcontractors that are subject to the above disclosure requirements, you are required to indicate "NONE" on the form supplied in Section 00300.

Metro must reject a bid if the bidder fails to submit the disclosure form with this information by the stated deadline. Compliance with the disclosure and submittal requirements of ORS 279.027(2) and these instructions is a matter of responsiveness. Bids that are submitted by Bid Closing, but for which the separate disclosure submittal of first-tier subcontractors has not been made by the specified deadline, shall be considered non-responsive and shall not be considered for Contract award. Metro shall obtain, and make available for public inspection, the disclosure forms required by ORS 279.027 and shall also provide copies of the forms to the Bureau of Labor and Industries as required by ORS 279.363. Metro is not required to determine the accuracy or completeness of the information submitted. Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279.322.

15. LIST OF PROPOSED SUBCONTRACTORS

Within five (5) days after Notice of Award and as a condition precedent to the award of the Contract, the apparent low responsible Bidder shall submit to Metro in writing the names of all Subcontractors and Suppliers which Bidder proposes to use in completing the Work along with a brief description of the subcontract or supply work involved and the subcontract or supply work dollar amount. Metro will notify the Bidder in writing within ten (10) days following receipt from Bidder of the above-described information if Metro has any reasonable objection to any such proposed Subcontractor or Supplier. The Bidder shall not subcontract with any proposed Subcontractor or Supplier to whom Metro has made a reasonable objection. In the event of such objection, Bidder shall propose another entity to whom Metro has no reasonable objection. No amounts or prices bid by the Bidder shall be increased by any difference occasioned by such substitution. Failure of Metro to reply within the above-described time period shall be

construed to mean that Metro has no objection at that time. Failure of the Bidder to comply with this section shall be cause for rejection of Bidder's Bid and, in such event, the bid security submitted by Bidder shall be taken by Metro and considered as liquidated damages. Prospective Bidders are encouraged to verify the qualifications of proposed subcontractors/suppliers and be prepared to furnish Metro with a list of similar projects performed by the proposed subcontractors/suppliers.

16. AWARD AND EXECUTION OF CONTRACT

Within sixty (60) days after the opening of bids, Metro will accept one of the Bids or reject all of the bids. The acceptance of the Bid will be by written Notice of Award, mailed or delivered to the office designated in the Bid. The Notice of Award shall not entitle the party to whom it is delivered to any rights whatsoever.

The successful Bidder shall, within seven (7) days after award of the Contract by the Metro Council, sign and deliver to Metro the Agreement attached hereto together with an acceptable Performance Bond and a Labor and Materials Payment Bond, certificates of insurance and certified copies of insurance policies as required in these Contract Documents.

Upon receipt of the signed Agreement and all other documents required to be submitted by the successful Bidder, as prescribed herein, Metro shall sign the Agreement and issue a written Notice to Proceed to Contractor. Contractor shall commence work within five (5) days of issuance of the Notice to Proceed.

In the event of failure of the lowest responsible Bidder to sign and return the construction Agreement and all other documents required to be submitted, as prescribed herein, Metro may award the Contract to the next lowest responsible Bidder.

17. PERFORMANCE BOND AND LABOR AND MATERIALS PAYMENT BOND

The successful Bidder shall file with Metro a Performance Bond on the form bound herewith and in the amount described below, as security for the faithful performance of this Contract and to cover all guarantees against defective workmanship or materials, or both. The successful Bidder shall additionally file a Labor and Materials Payment Bond on the form bound herewith and in the amount described below, as security for the payment of all persons supplying labor and materials for the performance of the Work. The surety furnishing these bonds shall have a sound financial standing and a record of service satisfactory to Metro, shall be authorized to do business in the state of Oregon, and shall be named on the current list of approved surety companies acceptable on federal bonds and conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of Accounts and US. Treasury Department. If more than one surety is on a bond, then each surety must agree that it is jointly and severally liable on the bond for all obligations on the bond. A Letter of Credit, in a form suitable to Metro and otherwise in conformance with the Contract, may be substituted for a bond.

The amount of each bond described above shall be a sum not less than 100 percent of the Contract Amount. The Attorney-in-Fact (Resident Agent) who executes the Performance Bond and the Labor and Materials Payment Bond on behalf of the surety must attach a notarized copy of his/her Power of Attorney as evidence of his/her authority to bind the surety on the date of execution of the bond.

18. FAILURE TO EXECUTE CONTRACT AND FURNISH BONDS

The Bidder to whom a Contract is awarded who fails to promptly and properly execute this Contract and furnish the required bonds, certificates of insurance and certified copies of insurance policies shall forfeit the bid security that accompanied its Bid and the bid security shall be retained as liquidated damages by Metro. It is agreed that this sum is a fair estimate of the amount of damages Metro will sustain if the Bidder fails to enter into a Contract and furnish the bonds, certificates of insurance and certified copies of insurance policies required.

19. BID BACK-UP (Bid Preparation Documents)

Within five (5) days after Notice of Award and as a condition precedent to the award of the Contract, the apparent low responsible Bidder shall submit to Metro in a sealed envelope their complete bid summary, along with corresponding back-up including, but not limited to: quantity take-off sheets, pricing sheets and information/data substantiating the Total Bid amount. The back-up data provided shall include that of all Subcontractors listed in the Bid, as well as all lower-tier Subcontractors. This bid summary and back-up data will be held in strict confidence by Metro in its original sealed envelope and will not be opened except in the event of dispute between Metro and Contractor. Bid back-up shall be delivered to Metro REM Department, 600 N.E. Grand Avenue, Portland, OR 97232, Attention Pete Hillmann, Project Manager, enclosed in a double envelope to prevent accidental opening. The envelope shall be marked "Bid backup Documents of (Name of Bidder) for "Construction of a Maintenance Facility at St. Johns Landfill."

20. DRUG TESTING PROGRAM

Bidders are required by law (ORS 279.312) to demonstrate that it has an employee drug testing program. Bidders must certify to Metro that they have an employee drug testing program by completing the form provided in Section 00300 and including it in the Bid Book.

21. PROMPT PAYMENT TO SUBCONTRACTORS

Contractor and all first-tier subcontractors must pay, within thirty (30) days of receipt of payment from Metro or contractor, any person furnishing labor or materials in connection with this Contract. If Contractor or first-tier subcontractor fails, neglects or refuses to make such payment within the thirty day

period, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279.445 (4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279.445. The rate of interest charged to the contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payments was received from Metro or from the contractor, but the rate of interest shall not exceed 30 percent. The amount of interest may not be waived. If the contractor or first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279.445.

*** END OF SECTION ***

**SECTION 00200
INFORMATION AVAILABLE TO BIDDERS**

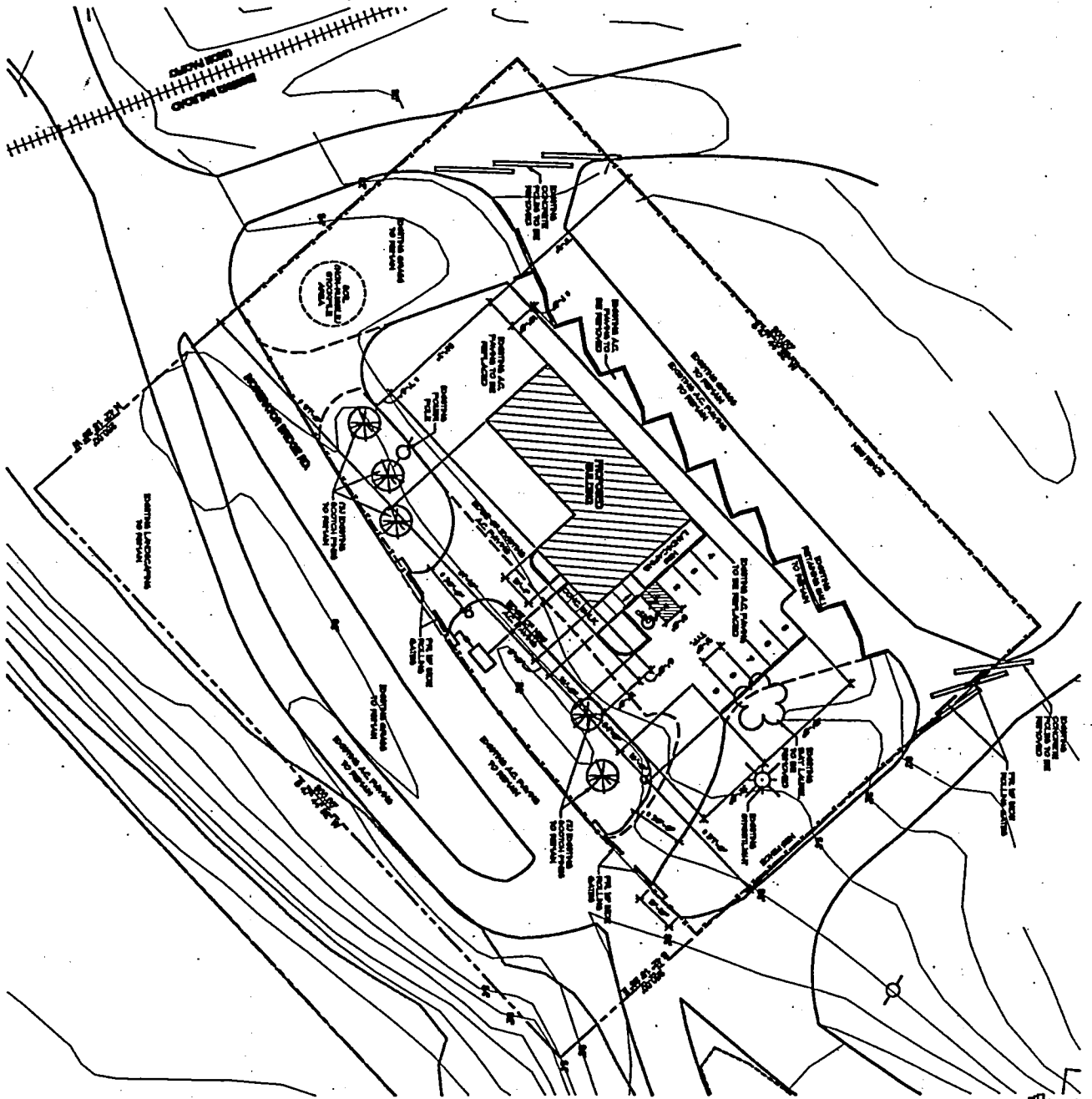
A copy of the following permits and reports are available for review at the Metro Regional Center, REM Department Office, 600 N.E. Grand Avenue, Portland, OR 97232.

PLANS & Specifications

Geotechnical Investigation Parcel A St. Johns Landfill, H.G. Schlicker & Associates, June 17, 2002.

***** END OF SECTION *****

PARTIAL SITE PLAN



1/2" = 1'-0"

PARTIAL SITE PLAN

A2

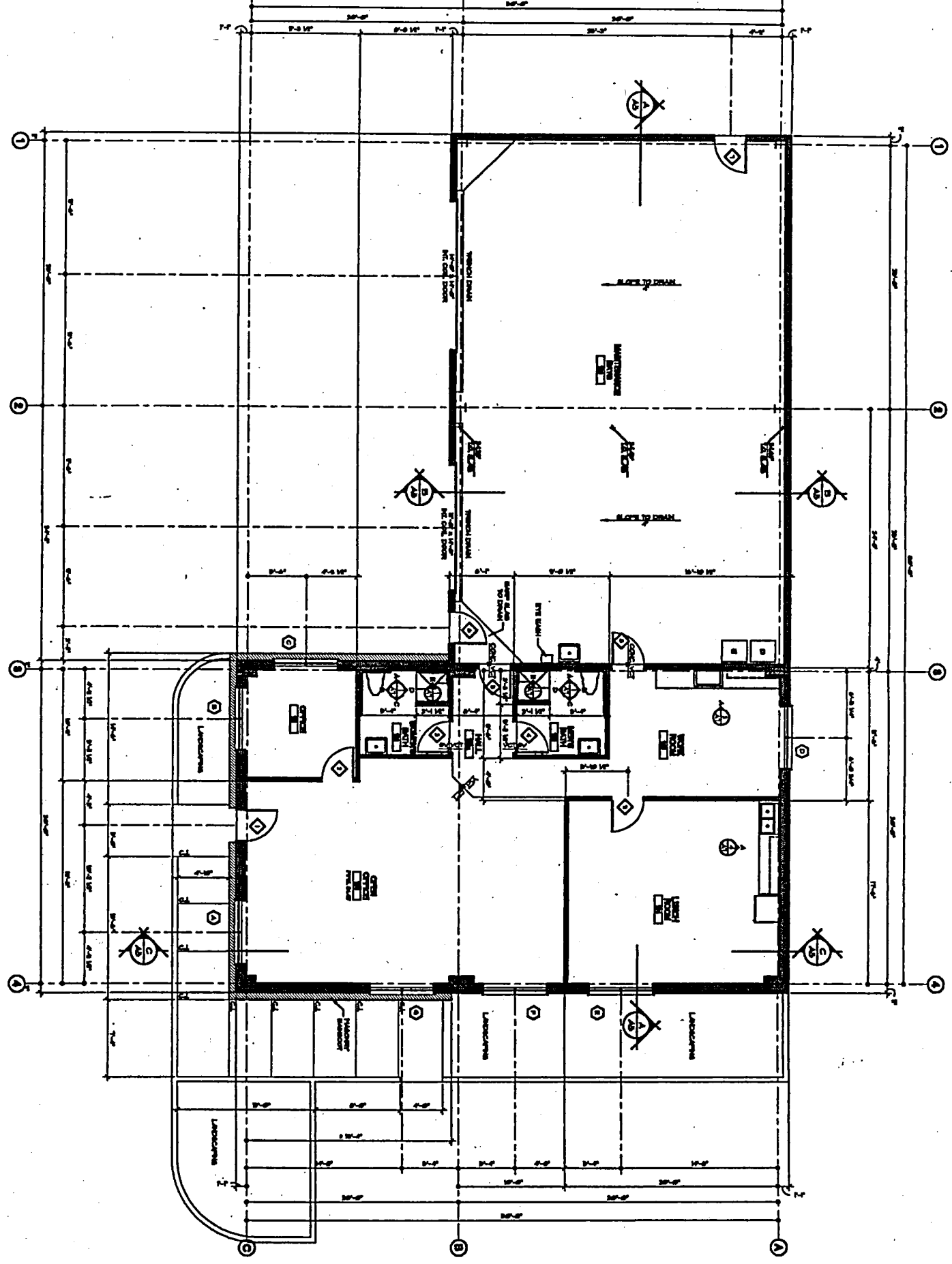
PROJECT NO. 88-08
 DATE 8/24/88
 DRAWN BY JWB
 CHECKED BY JWB

METRO REGIONAL ENVIRONMENTAL MANAGEMENT
 800 N.E. GRAND AVENUE PORTLAND, OR 97232

MAINTENANCE FACILITY
 AT ST. JOHN'S LANDFILL
 8888 N. COLUMBIA BOULEVARD PORTLAND, OR

ISELIN ARCHITECTS P.C.
 1000 N. COLUMBIA BOULEVARD
 PORTLAND, OREGON 97228
 PHONE 503-253-1111
 FAX 503-253-1112


MAN LEVEL FLOOR PLAN
 NOTES:
 1. DIMENSIONS ARE BASED ON THE ASSUMPTION THAT PERMANENT FINISH LINE IS 1" UP AND 2" DOWN
 FROM THE EXISTING FINISH LINE. 2. DIMENSIONS ARE TO CENTER OF WALL UNLESS OTHERWISE NOTED.



A3
 PROJECT: 98-08
 TITLE: 9803-1-17
 DATE: 7/98
 SHEET NO. 1

METRO REGIONAL ENVIRONMENTAL MANAGEMENT
 400 NW GRAND AVENUE PORTLAND, OR 97208

MAINTENANCE FACILITY
 AT ST. JOHN'S LANDFILL
 4000 NE 173RD AVE. ST. JOHN, OR 97136

ISELTI ARCHITECTS P.C.
 1000 NE 173RD AVE. ST. JOHN, OR 97136
 503-325-1111

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 02-3217 FOR THE PURPOSE OF AUTHORIZING RELEASE OF RFB # 03-1028-REM FOR THE CONSTRUCTION OF A MAINTENANCE BUILDING AT THE ST. JOHNS LANDFILL, AND AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE A CONTRACT WITH THE LOWEST RESPONSIVE BIDDER

July 17, 2002

Drafted by: Chuck Geyer

BACKGROUND

Metro is responsible for the proper closure and long term operation, maintenance, and monitoring of the 238-acre St. Johns Landfill. Beginning in 1991, the site stopped taking waste and Metro began environmental improvements in compliance with its closure plan as approved by the Department of Environmental Quality. The purpose of these improvements was to ensure that any risks to humans and/or the environment are detected, predicted and minimized.

The main components of the environmental improvements are:

- a multi-layered cover cap to prevent water from entering the waste, covered by grasses requiring regular mowing to reduce fire hazards;
- a gas recovery system of 170 wells, a compressor to deliver gas for sale offsite, flares to burn gas not sold, a condensate collection system to collect moisture generated by gas collection, and a leachate collection system for liquids from the buried waste;
- a dike system around the landfill to prevent erosion from the surrounding slough to the landfill;
- over 30 groundwater monitoring wells to detect the migration of pollutants from the site.

To maintain the closure system in place and carry out monitoring responsibilities requires both five onsite staff and a variety of equipment including heavy equipment such as a tractor, backhoe, all terrain vehicles, as well as a boat to conduct sampling. Staff have been housed in a scalehouse remaining from when the landfill was operating, as well as in onsite trailers. Equipment that must be both maintained and properly stored to protect Metro's investment, has been housed in containers or left outside.

Metro has been attempting to locate a permanent facility at the site for over five years to replace the current temporary and inadequate facilities. The preferred location has been on the parcel of land owned by the City of Portland that is between the entrance to the site on Columbia Boulevard and the slough that delineates the boundary of the landfill. It is preferred because locating a facility on the landfill itself is an environmental, engineering and regulatory challenge that would increase the project's cost and risk of long term success.

In December 2001, the Metro Council authorized an agreement with the City of Portland. This agreement included a twenty-year lease for 75,000 square feet of City property adjacent to the landfill in order to build an operation and maintenance facility. The agreement also entails Metro's maintenance of the KFD landfill owned by the City. The same staff that maintains the St. Johns Landfill performs this maintenance.

The project that would be authorized by approval of the resolution is construction of a 3,287 square foot, pre-engineered metal building (see attached site plan, floor plan and elevation drawings). Approximately half of the space would be used for onsite personnel (including the Smith-Bybee Wildlife Refuge

Manager) and half as garage/maintenance area. The project also includes a new water supply for fire control and potable water through a pipe crossing under the Union Pacific railroad tracks, a sewage handling system with connection to the existing pressure main, and limited site and parking lot improvements. The building will be located between the railroad tracks and the slough, at approximately the site of the old public unloading area when the site was in operation.

ANALYSIS/INFORMATION

1. Known Opposition

Staff knows of no opposition to this project.

2. Legal Antecedents

Metro Code 2.04.058(b) requires Council approval of contracts designated as having a significant impact on Metro. The Council designated the project as having a significant impact during its approval of the FY 2002-03 budget. The project is contained in Metro's approved Capital Improvement Plan and approved FY 2002-03 budget.

3. Anticipated Effects

Approval of the resolution would result in construction of the project and improve both working conditions and operations associated with the closure of the St. Johns Landfill. It should also reduce the amount of theft and vandalism that has plagued the site for several years.

4. Budget Impacts

\$590,000 has been budgeted for the project. The Engineers Estimate for the project is \$400,000 based on a final design that reduced the size of the building from the one contemplated in the budget estimate originally developed in 1998.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 02-3217.

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