

A G E N D A

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METRO

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MEETING: METRO POLICY ADVISORY COMMITTEE

DATE: May 12, 2004

DAY: Wednesday, 5:00-7:00 p.m.

PLACE: Metro Council Chamber/Annex

NO	AGENDA ITEM	PRESENTER	ACTION	TIME
	CALL TO ORDER	Becker		
1	INTRODUCTIONS	All		5 min.
2	ANNOUNCEMENTS	Becker		3 min.
3	CITIZEN COMMUNICATIONS			3 min.
4	CONSENT AGENDA • Meeting Summary for April 28, 2004	Becker	Decision	5 min.
5	COUNCIL UPDATE	Bragdon		5 min.
6	GOAL 5 RESOLUTION 04-3440 For the Purpose of Endorsing Metro's Draft Goal 5 Phase 2 ESEE Analysis, Making Preliminary Decisions to Allow, Limit, or Prohibit Conflicting Uses on Regionally Significant Fish & Wildlife Habitat; and Direction Staff to Develop a Program to Protect and Restore Regionally Significant Fish & Wildlife Habitat	Deffebach	Decision	60 min.
7	CHIEF OPERATING OFFICER RECOMMENDATION ORDINANCE 04-1040 For the Purpose of Amending the Urban Growth Boundary, the Regional Framework Plan and the Metro Code to Increase the Capacity of the Boundary to Accommodate Growth in Industrial Employment	Neill	Discussion	30 min.

UPCOMING MEETINGS:

May 26, 2004 & June 9, 2004

For agenda and schedule information, call Kim Bardes at 503-797-1537. e-mail: bardes@metro.dst.or.us
MPAC normally meets the second and fourth Wednesday of the month.

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METRO POLICY ADVISORY COMMITTEE MEETING RECORD

April 28, 2004 – 5:00 p.m.

Metro Regional Center, Council Chambers

Committee Members Present: Charles Becker, Nathalie Darcy, Dave Fuller, Gene Grant, Ed Gronke, John Hartsock, Deanna Mueller-Crispin, Lisa Naito, Doug Neeley, Martha Schrader

Alternates Present: Larry Cooper, Tim Crail, Meg Fernekees, Jack Hoffman, John Leeper, Karen McKinney, Nick Wilson

Also Present: Betty Atteberry, Westside Economic Alliance; Linda Bauer, Citizen; Hal Bergsma, City of Beaverton; Beverly Bookin, CCA/CREEC; Al Burns, City of Portland; Cindy Catto, AGC; Danielle Cowan, City of Wilsonville; Brent Curtis, Washington County; Bob Durgan, Anderson Construction; Kay Durtschi, MTAC; Dick Feeny, TriMet; Holly Iburg, Newland Communities; Jim Jacks, City of Tualatin; Jim Johnson, Oregon Dept. of Agriculture; Roberta Jortner, Portland Planning Bureau; Norm King, West Linn Council; Jim Labbe, Audubon Society of Portland; Stephen Lashbrook, City of Lake Oswego; Charlotte Lehan, City of Wilsonville; Sue Marshall, Tualatin Riverkeepers; Irene Marvich, League of Women Voters; Doug McClain, Clackamas County; Greg Miller, AGC; Rebecca Ocken, City of Gresham; Pat Ribellia, City of Hillsboro; Thane Tienson, Landye Bennett; David Zagel, TriMet; Ted Wheeler, Citizen, Andrea Vannelli, Washington County Planning

Metro Elected Officials Present: Liaisons – Carl Hosticka, Council District 3, Susan McLain, Council District 4; David Bragdon, Council President

Metro Staff Present: Kim Bardes, Dick Benner, Dan Cooper, Chris Deffebach, Paul Garrahan, Randy Tucker, Mary Weber

INTRODUCTIONS

Mayor Charles Becker, MPAC Chair, called the meeting to order at 5:06 p.m. Those present introduced themselves.

1. ANNOUNCEMENTS

Meg Fernakees announced that there would be a new member and alternate representing DLCD at MPAC. She said that the member would be Margaret Kirkpatrick, the alternate would be Lane Shetterly, and she would continue to serve as a second or back up alternate when needed.

Chair Becker said that the Healthy Centers Subcommittee had met before the meeting. They talked about the purpose of the subcommittee and the ultimate outcome for healthy centers. They considered a possible symposium to help other centers, development of a list of resources that would help policy makers in jurisdictions, and how the subcommittee might help with regional legislative agendas. He said the subcommittee would meet on the 4th Wednesday of each month at 3:30.

3. CITIZEN COMMUNICATIONS

There were none.

4. CONSENT AGENDA

Meeting Summary for April 14, 2004.

Motion:	John Hartsock, Clackamas County Special Districts, with a second from Nathalie Darcy, Citizen, Washington County, moved to adopt the consent agenda without revision.
Vote:	The motion passed unanimously.

5. COUNCIL UPDATE

Council President Bragdon said that the COO recommendation had been introduced at Council which included the UGB expansion areas, language on Title 4, and the Hosticka Ordinance. He said that the recommendation from MPAC was received by Council right after the COO recommendation was formulated. Both of those recommendations would be weighed by Council. The map was in conformity, and the Title 4 language recommended by MPAC was slightly different in some key areas from the language in the COO recommendation. He again announced the upcoming hearings pertaining to that decision. Consideration of amendments to that omnibus ordinance would commence on May 27 at 2 p.m. for the Metro Council meeting. Final action was still scheduled for June 24th. He asked the jurisdictions to keep their testimony at the hearings brief and suggested that they use the established committees to testify rather than the hearing, as citizens had expressed frustration at previous hearings over time management. Tours of successful centers development and redevelopment was organized for July 9th and July 16th. They were working with the cities of Gresham, Beaverton, Hillsboro, and Portland.

Jack Hoffman asked if it was possible to have the elected officials to go first at the upcoming hearings.

Council President Bragdon said that there had been strong input from citizens and the citizen involvement committee indicating that citizens had been short-changed in past hearings. He was, therefore, asking that jurisdictions to limit representation to one person.

Jack Hoffman suggested that only one or two people from each jurisdiction express the opinion of their jurisdiction and then limit the time allotment to 3-5 minutes.

Council President David Bragdon said that he would try to work with them and asked them to work with Metro.

8. CHIEF OPERATING OFFICER RECOMMENDATION ORDINANCE 04-1040

Dick Benner gave an introduction of Ordinance 04-1040.

Chair Becker said that the City of Gresham had a concern about the removal of 90 acres. There was a natural greenway that separated the northern portion from the southern portion of that piece of land, and they would like to encourage the inclusion of the northern portion, but did not have a problem with removal of the southern portion.

Jack Hoffman asked if the COO and Lydia Neill had made a presentation to LCDC.

Dick Benner said it was their third trip to give LCDC an update and to discuss the COO recommendation. Mike Jordan and Lydia Neill were looking for feedback from the commission.

Karen McKinney said that those cities that had ordinances under their industrial components that provided for medical and dental offices should be able to continue business under their ordinances, and

areas that did not have those types of ordinances in place should have further opportunity to study that and weigh in on it. Medical offices and those types of facilities were critical to the economy of the region. She said that the Mayor of the City of Hillsboro would review the recommendations set forth once he returned from his trip. This would help them determine what areas fit in and what areas were not suitable. She said that it was a policy decision that MPAC would have to make in the future. She said that they had narrowed the lands under study from 29,000 down to as low as 1,635 acres, which was a broad span.

Jack Hoffman referred to the map and expressed concern from jurisdictions about the southern part. He said that what concerned the City of Wilsonville, Lake Oswego, and West Linn was that there was a lot of green on the map located in the southern part of the region. He said they were particularly concerned that a majority of warehousing and distribution land would end up in the southern areas because of the access to freeway and space. He said that they would bring in 600 acres and only use 160 acres for industrial purposes. The affected jurisdictions said that they did not think that it was appropriate at this time to bring in that much land for that purpose. Of the 1000 acres in the evergreen area, about 700 acres would be productive job land. They recommended, therefore, that MPAC and Metro Council switch the green and yellow areas on the map.

Charlotte Lehan said that the Frog Pond area was east of Wilsonville. She also said she was concerned about regional equity, especially as it related to trucking in the south I-5 corridor. Between Wilsonville, and Tualatin, they were already handling more trucking than anyone, except Troutdale, in the region. She said that she thought that Wilsonville handled trucking really well. She said that if more industrial land came into Wilsonville, they would be off the charts for percentage of industrial land. They had 35% industrial and while they were not unwilling to take more, the problem was that it would create havoc with trucking going through residential and school zones and ruining their carefully planned and highly livable community.

Ed Gronke reminded Mayor Lehan that she had said she also had an issue with the inventory.

Mayor Lehan said that Metro staff was missing at least 150 acres of industrial land in their inventory for Wilsonville. She said the land was not zoned industrial, but was designed as industrial in Wilsonville's commercial plan.

Carl Hosticka said that the City of Tualatin Council had reported that they had concerns about the Borland area. They also expressed concern about the northern part of the Tualatin area related to the issue of where the potential connector for I-5 and 99 would be located.

Mayor Lehan said that Wilsonville's position on that piece of land, which was called Tualatin but was more accurately Wilsonville/Tualatin (north of the prison and north of Wilsonville's industrial section), was that they were amenable to taking that back, or some portion of it, as industrial. They had been holding off doing that because that part of Tualatin was residential and Wilsonville wanted to wait until the decisions about how to buffer that area and where to place the connector had been made. Wilsonville did not object to taking more land in the northwest quadrant because it would provide excellent access to a trucking interchange.

Ed Gronke asked what the drop dead date for final designation of land was in order to meet the June 24th decision date.

Council President Bragdon said that Metro's deadline to complete periodic review was June 30th. Therefore, the June 24th Council meeting was their final meeting before the deadline. He said that amendments could be made at the May 27th, June 10th, and June 17th Council meetings.

Ed Gronke asked if there would be a legal problem with changing parcels designated after the public hearings took place.

Dan Cooper said that they had given notice to the entire 29,000 acres that were under consideration that they were still possibly under consideration. He said that in the past Metro had encountered problems where land was not on the map, but was added later. Metro was attempting to avoid that and that was why they had alternative sites to consider and that those sites/people were aware that they were being actively considered as well.

Jack Hoffman suggested Noyer Creek be considered as an alternative to the Borland/Frog Pond area. He said that while Noyer Creek might have some issues, it was at 75% efficiency whereas Borland was at about 25% efficiency. He said that he thought Clackamas County had lobbied for that to be brought in.

Martha Schrader said that Clackamas County would be very happy if Noyer Creek would be considered.

Karen McKinney said there had been some concern about what the role under the charter was for Metro and MPAC as it related to these types of policy issues. She wanted to know what the individual roles were and when information should be introduced on an issue as stated in the Charter, especially for Title 4 or Goal 5. MPAC was an advisory body that consulted with Metro on all decisions and whatever came out of MPAC should be received accordingly. She wanted to know how that would all play out pertaining to Metro Council's decision.

Council President Bragdon said that typically Metro Council had an ordinance, it was given to MPAC for advice, the MPAC body voted, minutes were taken, and the MPAC chair would then send Metro Council a letter outlining or explaining the MPAC recommendation.

Karen McKinney said that she did not feel that process had been followed with the last issue. She said that the information that was submitted to the Metro Council was not what MPAC had advised via Mayor Rob Drake's letter, but rather what the Metro Chief Operating Officer had recommended.

Susan McLain said that the Metro Council received advice from many parties: MPAC, citizens, jurisdictions, interested parties, special interest groups, etc. She said that they considered all of that information in making their decisions. She said that they valued the advice from MPAC, but it was not a rubber stamp. Their job, as Metro Council, was to look at all the information, and they had two more months in which to do that before they made a decision.

Council President Bragdon said that they had two ordinances on Title 4, which were sent to MPAC in December, for which they took action on April 14th. Therefore, Metro Council had the MPAC recommendation on that piece. The Council also had an ordinance introduced by the Metro Chief Operating Officer (Ordinance 04-1040), which was officially referred to MPAC for advice and for which they would presumably take a vote on, and then that recommendation would be on record. There was also an Ordinance from Councilor Hosticka that was on the table. He said that Metro Council had submitted all the proper ordinances to MPAC.

7. OREGON DEPARTMENT OF AGRICULTURE REPORT

Chair Becker introduced Jim Johnson.

Jim Johnson gave a presentation on the Oregon Department of Agriculture Report on “Limited Choices: The Protection of Agricultural Lands and the Expansion of the Metro Area Urban Growth Boundary for Industrial Use.” Copies of those slides are attached and form part of the record.

Ed Gronke said that in Texas they had addressed the issue of transportation of farm equipment and farm freight by creating a dedicated agriculture lane that ran along the shoulder of the road. Violators were heavily fined.

Jim Johnson said it was a great idea, but the further problem was that farmers had no place to pull off or turn around.

Jack Hoffman asked Jim Johnson about the map that showed areas that could be included or excluded once they got to that point. He wanted to know if he would consider a map in which areas would be entirely off limits.

Jim Johnson said that they had investigated the entire Metro UGB, so if they were not on the list, then they felt those areas should not be looked at.

Jack Hoffman asked if that meant that from his perspective those areas were off limits.

Jim Johnson said yes. The study was focused on industrial lands needs and no other land.

Karen McKinney complemented the report. She questioned if they had looked at just the agricultural report without involving business. She said there needed to be a balance between the agricultural community and other business interests in terms of looking at land use needs. She also wanted to know when the report would be shared with other constituencies, such as those that participated in the symposiums.

Jim Johnson said his charge was to look at strictly the impact on agriculture. It was Metro’s charge to put all components together. He said that other industries would be impacted by the decision and Metro needed to take all of those into account. He said that their focus was – how could they expand the boundary with the least impact on the agricultural industry?

Doug Neeley wanted to know if other areas that were highly productive but were not Class 2 lands had been factored into the study results, and if those lands were excluded.

Jim Johnson said that they had factored in what they could based on state law. He said the priority was to protect the EFU land over the rural residential land. The nursery industry was very dependent on the land and infrastructure. Agricultural land in the Metro area had the ability to change and adapt, and that made it difficult.

Susan McLain said it was first time that the agriculture community had provided input for this type of decision. She expressed her appreciation for the work done on the report and referenced the GMEL

report. She said that those two pieces of work, along with the ongoing dialogue among industries, Metro, jurisdictions, citizens, etc. would all help piece together the work. That work would always be ongoing.

6. GOAL 5 RESOLUTION 04-3440

Chris Deffebach gave an update on the resolution with the COO recommendation for Fish & Wildlife Habitat Protection, reviewed the introduction of the resolution at MTAC, and spoke about the first public hearing held on April 15th. She also mentioned the future public hearings scheduled for May 4th and May 20th and that the resolution was scheduled for consideration at MTAC on May 5th. She briefly introduced Brent Curtis.

Jack Hoffman said that to make an intelligent decision they would need a map.

Chris Deffebach said that they did have a map and they could also look up their area on the website to see how it would be affected.

Jack Hoffman said he would like a big map of his jurisdiction/city.

Susan McLain said that they could get on the website and blow up their own area.

Chris Deffebach said that they had maps of inventory that were by jurisdiction. She said that they had a USGS scale map for the riparian and the wildlife, but they didn't have the ALP map at that scale.

Jack Hoffman asked if they had done a parallel analysis of the effect on buildable areas for the UGB for December 2007.

Chris Deffebach said that they had been looking at buildable land issues. In terms of the effect on the UGB, the "strictly limit" had the greatest potential for impacting building capacity. The recommendation included "strictly limit" for the Class 1 riparian areas but about 2/3 were already protected on some level by Title 3. A part of the recommendation was to continue to look early in the development program phase, not only as they defined what the "strictly limit" meant, but also while they looked at ways to limit the effects on loss of development capacity. They needed to focus on what could be done to mitigate the loss of habitat and development capacity.

Gene Grant asked if there was a general sense that there was a potential for use of transferable development rights as a way to avoid loss of development.

Chris Deffebach said there was a great deal of skepticism on the use of offsite transfer development rights. It would depend on a case-by-case situation.

Gene Grant asked if they would discuss that before they made a decision. He felt it would make a big difference in terms of what "strictly limit" meant and if they would lose development rights.

Chris Deffebach said that this step was hard because they were asking folks to make a decision on general levels of "light," "limit," and "strictly limit" without definition. She said that changes could be made as they worked through the process and learned more about these other issues between now and the end of the year.

Doug Neeley said that these were things that he would like to see MTAC actually address. He said that he had previously suggested that they develop a plan to distinguish brownfields from land that wasn't brownfields and perhaps produce a cut and fill scenario that might happen in those areas instead. He said that perhaps the cut area could be converted to a more acceptable quality for habitat. He said that undeveloped areas such as a flood plain could be dealt with in two ways: one was through the cut and fill process and the other was to build out of it so that the lower floor could still be flooded. If there was a reasonable degree of quality in the riparian area, then cut and fill would be a disaster because they would be destroying a riparian area. They needed to think about whether they would prevent only some kinds of development in areas that had quality riparian habitat. He said that intermittent streams and steep slope areas were critical. The water in the intermittent streams actually contributed to the quality of streams and he suggested that MTAC consider that perhaps intermittent streams got the same as perennial streams in steep sloped areas. Under Title 3 there was no vegetative protective corridors for drainage land of less than 50 acres in the basin. They needed to consider whether they wanted to have no protection on land that had a watershed of less than 50 acres as that was critical upland waters. He asked that those particular issues were presented to MTAC.

Chris Deffebach said that the combined Goal 5/WRPAC committee meeting was coming up and that those items would be presented at that meeting as well as at MTAC.

Nick Wilson said that it was nearly an impossible task to determine how much land to replace because redevelopable land was subject to multiple restraints. It seemed impossible to map the acreage of the resource itself without also looking at whether taking a portion of a property would render the whole property undevelopable. He was concerned that this would happen region-wide.

Chris Deffebach said that she agreed that it would be difficult to recalculate the exact effect, but she felt they would have time to look at that before the 2007 UGB decision.

Dave Fuller said that he had taken the information back to the staff of his three cities to review and provide feedback. The conclusion was that they agreed with Option 2B with the modification that Town Centers be moved into the high urban development category. He submitted their report for the record and it is attached.

Karen McKinney said that, for the most part, people in Washington County were happy to see Metro's decision as it related to Option 2B. She said that issues that still needed to be resolved were between the basin approach and Metro's approach. She thought that Metro would probably end up with a somewhat stricter approach than the basin would result in. She expressed concern over how the various programs would relate to the revenue issue, and how those would be applied in design. She said that the real discussion would take place at the program stage once things had been more clearly defined.

Brent Curtis reviewed the resolution that was adopted by the Tualatin Basin Natural Resources Coordinating Committee. That resolution is attached and forms part of record.

Deanna Mueller-Crispin asked how many acres of ecological function and habitat would be lost by bringing in the recommended amount of industrial land.

Chris Deffebach said that even if they had "lightly limit," "moderately limit," and "strictly limit" defined, they knew that when they applied it there would be variations on how jurisdictions would choose to apply it. They had estimates of how many acres would be subject to loss, but until it was applied they would not know exactly.

John Leeper said he did not think that that information could be determined until they finished the next stage.

There being no further business, Chair Becker adjourned the meeting at 7:25 p.m.

Respectfully submitted,

Kim Bardes
MPAC Coordinator

ATTACHMENTS TO THE RECORD FOR APRIL 28, 2004

The following have been included as part of the official public record:

AGENDA ITEM	DOCUMENT DATE	DOCUMENT DESCRIPTION	DOCUMENT NO.
#8 Chief Operating Officer Recommendation Ord. 04-1040	4/26/04	Letter from Mayor Rob Drake, Beaverton, to David Bragdon and Council Members re: Amendments to Title 4 of the Urban Growth Management Functional Plan	042804-MPAC-01
#8 Chief Operating Officer Recommendation Ord. 04-1040	4/27/04	Letter from David Bragdon to Mayor Rob Drake in response to above letter	042804-MPAC-02
#7 Oregon Department of Agriculture Report		Color maps re: Oregon Department of Agriculture Areas	042804-MPAC-03
#7 Oregon Department of Agriculture Report	April 2004	Copies of slides from Jim Johnson's PowerPoint presentation "Limited Choices: The Protection of Agricultural Lands and the Expansion of the Metro Area UGB for Industrial Use"	042804-MPAC-04
#6 Goal 5 Resolution 04-3440	April 2004	Copies of slides from the Metro Fish and Wildlife Habitat Protection Phase II ESEE Analysis Staff Recommendation	042804-MPAC-05

#6 Goal 5 Resolution 04-3440	4/27/04	Memorandum from Rich Faith to Troutdale Mayor Paul Thalfhofer, Wood Village Mayor Dave Fuller, and Fairview Mayor Mike Weatherby re: Metro's Goal 5 ESEE Analysis: Phase II Analysis of program options	042804-MPAC-06
#6 Goal 5 Resolution 04-3440	4/19/04	Tualatin Basin Natural Resources Coordinating Committee Resolution No. 2004-01 In the Matter of An Interim Decision for Metro Goal 5 Draft ESEE Analysis and Allow-Limit-Prohibit Recommendation Map and Staff Report	042804-MPAC-07

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ENDORSING METRO'S DRAFT)
GOAL 5 PHASE 2 ESEE ANALYSIS, MAKING) RESOLUTION NO. 04-3440
PRELIMINARY DECISIONS TO ALLOW, LIMIT, OR)
PROHIBIT CONFLICTING USES ON REGIONALLY) Introduced by Michael Jordan, Chief
SIGNIFICANT FISH AND WILDLIFE HABITAT; AND) Operating Officer, with the concurrence
DIRECTING STAFF TO DEVELOP A PROGRAM TO) of the Council President
PROTECT AND RESTORE REGIONALLY
SIGNIFICANT FISH AND WILDLIFE HABITAT

WHEREAS, Metro is developing a regional fish and wildlife habitat protection and restoration program consistent with the state planning Goal 5 administrative rule, OAR 660-023-0000 through OAR 660-023-0250; and

WHEREAS, Metro is conducting its analysis of the economic, social, environmental, and energy (ESEE) consequences of allowing, limiting, or prohibiting conflicting uses on identified habitat land and impact areas in two phases; and

WHEREAS, on October 30, 2003, Metro Council adopted Resolution No. 03-3376B for the purpose of endorsing Metro's draft Goal 5 Phase 1 Economic, Social, Environmental and Energy Analysis and directing staff to conduct more specific ESEE analysis of multiple fish and wildlife habitat protection and restoration program options; and

WHEREAS, Metro has now completed a draft Phase 2 ESEE consequences analysis of the tradeoffs identified in Phase 1 as applied to six program options for protection of regionally significant resource sites, attached as Exhibit A (the "Draft Phase 2 ESEE Analysis"); and

WHEREAS, based on the Draft Phase 2 ESEE Analysis, Metro is prepared to make a preliminary decision of where to allow, limit, or prohibit development on regionally significant fish and wildlife habitat lands and impact areas and, based on that preliminary decision, to develop a Program to Achieve Goal 5; and

WHEREAS, throughout its ESEE analysis, Metro has continued to rely on the input and advice of the Goal 5 Technical Advisory Committee, the Water Resources Policy Advisory Committee, the Goal 5 Economics Technical Advisory Committee, the Goal 5 Independent Economic Advisory Board, and an independent, well-respected economic consultant, ECONorthwest, and those advisors reviewed the Draft Phase 2 ESEE Analysis and provided input and advice on that document; and

WHEREAS, Metro engaged in extensive public outreach to inform the citizens of the region about this stage of Metro's work to develop a fish and wildlife habitat protection and restoration program consistent with the Goal 5 administrative rule, including participating in seven public open houses, distributing material at public events, and presenting Goal 5 material to other interested organizations, groups, businesses, non-profit agencies, and property owners; now therefore

BE IT RESOLVED:

1. Endorse Draft Phase 2 ESEE Analysis

The Metro Council endorses the Draft Phase 2 ESEE Analysis in Exhibit A and reserves the opportunity to minimally or substantially alter the ESEE analysis prior to adoption of a final ESEE analysis and Program to Achieve Goal 5, after additional public comment and review. The Metro Council further directs staff to address and consider comments regarding Exhibit A that were received from several Metro advisory committees, as identified on the “Addendum to Exhibit A,” and to revise the Draft Phase 2 ESEE Analysis accordingly. As used in this resolution, “Exhibit A” includes both the Draft Phase 2 ESEE Analysis and the Addendum to Exhibit A.

2. Preliminary Allow-Limit-Prohibit Decision

Based upon and supported by the Metro Council’s review of the economic, social, environmental, and energy consequences of decisions to allow, limit, or prohibit conflicting uses in identified fish and wildlife habitat resources and impact areas, on the technical and policy advice Metro has received from its advisory committees, and on the public comments received regarding the ESEE analysis, the Metro Council concludes that the preliminary allow, limit, and prohibit decisions described in Exhibit B, which represent a modified regulatory Option 2B, best reflect the ESEE tradeoffs described in Exhibit A.

3. Direct Staff to Develop Regulatory Program

The Metro Council directs staff to develop a program to protect and restore fish and wildlife habitat as described in Exhibit C. Such regulatory program shall be consistent with the preliminary allow, limit, and prohibit decision described in Exhibit B.

4. Direct Staff to Develop Non-Regulatory Program

The Metro Council directs staff to further develop and analyze a non-regulatory program to protect and restore fish and wildlife habitat as described in Exhibit D.

5. This Resolution is Not a Final Action

The Metro Council’s action in this resolution is not a final action designating regionally significant fish and wildlife habitat areas, a final action on an ESEE analysis, a final action on whether and where to allow, limit, or prohibit conflicting uses on regionally significant habitat and impact areas, or a final action to protect regionally significant habitat through a Program to Achieve Goal 5. Pursuant to OAR 660-023-0080, when Metro takes final action to approve a Program to Achieve Goal 5 it will do so by adopting an ordinance that will include an amendment to the Urban Growth Management Functional Plan, approval of the final designation of significant fish and wildlife habitat areas, and approval of a final ESEE analysis (including final allow, limit, and prohibit decisions), and then Metro will submit such functional plan amendments to the Oregon Land Conservation and Development Commission for acknowledgement under the provisions of ORS 197.251 and ORS 197.274.

ADOPTED by the Metro Council this ____ day of _____ 2004.

David Bragdon, Council President

Approved as to Form:

Dan Cooper, Metro Attorney

M:\attorney\confidential\DOCS#07.P&D\04 2040 Growth Concept\03 UGMFP\02 Stream Protection (Title 3)\02Goal5\R04-3440 with exhibits 040804.DOC

EXHIBIT B TO RESOLUTION NO. 04-3440

REGULATORY PROGRAM OPTION

Based on the results of the Phase II ESEE analysis, public comments, and technical review, Metro Council recommends Option 2B as modified (shown in the table below) to form the basis for a regulatory program to protect fish and wildlife habitat.

Option 2B (modified): Low level of protection in high urban development value areas, moderate level of protection in other areas.

Fish & wildlife habitat classification	HIGH Urban development value	MEDIUM Urban development value	LOW Urban development value	Other areas
	Primary 2040 components, ¹ high employment value, or high land value ⁴	Secondary 2040 components, ² medium employment value, or medium land value ⁴	Tertiary 2040 components, ³ low employment value, or low land value ⁴	Parks and Open Spaces, no design types outside UGB
Class I Riparian/Wildlife	ML	SL	SL	SL
Class II Riparian/Wildlife	LL	LL	ML	ML
Class III Riparian/Wildlife	LL	LL	LL	ML
Class A Upland Wildlife	LL	ML	ML	SL
Class B Upland Wildlife	LL	LL	ML	ML
Class C Upland Wildlife	LL	LL	LL	ML
Impact Areas	A	A	A	A

¹Primary 2040 components: Regional Centers, Central City, Regionally Significant Industrial Areas

²Secondary 2040 components: Town Centers, Main Streets, Station Communities, Other Industrial areas, Employment Centers

³Tertiary 2040 components: Inner and outer neighborhoods, Corridors

⁴ Land value excludes residential lands.

Key to abbreviations

SL = strictly limit

ML = moderately limit

LL = lightly limit

A = allow

EXHIBIT C TO RESOLUTION NO. 04-3440

DEVELOPING A REGULATORY PROGRAM

The third step of the Goal 5 process calls for the development of a program to protect habitat areas by allowing, limiting, or prohibiting conflicting uses on habitat land based on the results of the ESEE analysis. Council directs staff to address the following concerns when developing a regulatory program to protect fish and wildlife habitat:

A. Defining limit in the program phase

- Specifically define limit. As a guiding principle, first avoid, then limit, and finally mitigate adverse impacts of development to protect fish and wildlife habitat. Some of the key issues in the definition relate to expected impact on housing and employment capacity, disturbance area extent and location, and mitigation, as illustrated below:
 - ❖ **Strictly Limit** – Strict avoidance of the habitat (especially Habitats of Concern) with maximum allowable disturbance areas, design standards, and mitigation requirements. Allow trails, roads and other public access to meet the public good (e.g. construction and maintenance of public utilities such as water storage facilities). Expect some overall loss of development capacity; consider development of a transfer of development right (TDR) program to compensate for lost development capacity.
 - ❖ **Moderately Limit** – Avoid impacts, limit disturbance area, require mitigation, and use design standards and other tools to protect habitat (especially Habitats of Concern) while achieving goals for employment and housing densities. Work to minimize loss of development capacity; consider development of a TDR program to compensate for lost capacity.
 - ❖ **Lightly Limit** – Avoid impacts (especially Habitats of Concern), allow development with less restrictive limits on disturbance area, design standards, and mitigation requirements. Assumes no loss of development capacity.

B. Effect on existing development and redevelopment

- Clarify that a regulatory program would apply only to activities that require a land use permit and not to other activities (such as gardening, lawn care, routine property maintenance, and actions necessary to prevent natural hazards).
- Clarify that redevelopment that requires permits could be subject to new regulations, which could depend on a redevelopment threshold determined in the program.

C. Regulatory flexibility

- Include regulatory flexibility that allows development while avoiding, minimizing and mitigating impacts on habitat in the program. Some ways in which regulations could limit development include lowered density, minimum disturbance areas, and setbacks from significant resources. Development can occur in a manner that avoids or reduces the impact on the habitat, for example: cluster development, streamside

buffers, and habitat-friendly development techniques can all provide some level of regulatory flexibility that allows development to occur while protecting habitat. A transfer of development rights (TDR) program could also compensate for loss of development capacity.

D. Mitigation, mitigation banking and restoration

- Include mitigation requirements for development in habitat areas to minimize habitat degradation, and consider methods for implementing a mitigation bank and enforcement mechanisms to ensure success. Mitigation could be targeted in accordance with an overall restoration plan.

E. Program specificity and flexibility

- As part of the regulatory program, provide a specific program that can be implemented without further local analysis.
- Provide a general framework for local jurisdictions to implement, as part of the regulatory program, through standards or other guidelines, flexibility during implementation for consideration of regionally significant public facilities (such as hospitals and educational institutions), riparian and wildlife district plans, and other case-by-case decisions.
- Clarify a timeline for when the program would be adopted by local governments after acknowledgement by the State.

F. Map corrections and inventory maintenance

- Continue addressing map corrections and complete the process by the adoption of the final program and define the on-going responsibilities for maintaining habitat maps.

G. Long-term monitoring

- Develop a plan to monitor program performance in protecting fish and wildlife habitat while meeting housing and employment capacity (both regulatory and non-regulatory) to determine the effectiveness of the regional fish and wildlife habitat protection plan and identify potential adjustments to the program in the future.

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EXHIBIT D TO RESOLUTION NO. 04-3440

DIRECTION ON NON-REGULATORY PROGRAMS

Although the Goal 5 rule does not require the consideration of non-regulatory tools to protect fish and wildlife habitat, the Metro Council has previously indicated a commitment to include incentives and restoration as part of an overall regional program to protect fish and wildlife habitat. Council directs staff to develop a proposal for implementing the most promising non-regulatory habitat protection and restoration programs to supplement and complement a regulatory program. Based on public comments and staff analysis of the effectiveness of non-regulatory programs, Council directs staff to further develop the following non-regulatory tools:

- A. **Technical assistance.** Determine if technical assistance is most effective when directed at individual owners, developers, or local jurisdiction staff, or a combination of the potential audiences. Develop a plan to implement a technical assistance program to assist in the implementation of habitat-friendly development techniques, better stewardship of habitat, and restoration on public and private land.
- B. **Grants for restoration and protection.** Develop a proposal for a grant program that could be aimed at individual property owners, public land model examples, habitat-friendly development, or green streets, wildlife crossings, and culvert replacements. Grants could also be targeted to agency-led efforts to restore habitat on public land, possibly utilizing volunteers. Identify potential sources of funding for grants. Develop a plan to define restoration priorities to effectively allocate restoration efforts and investments.
- C. **Willing-seller acquisition.** Develop a proposal for a targeted acquisition program that could work as a revolving acquisition fund. Identify a funding source for acquiring habitat land from willing sellers. Consider potential for encouraging expansion of local programs that use system development charges to purchase land that provides habitat functions for the public good (such as floodplains).
- D. **Property tax reductions.** Identify steps to encourage implementation of property tax reduction programs in the Metro region. There are two state programs that could be applicable within the urban area: the *Riparian Lands Tax Incentive Program* and the *Wildlife Habitat Conservation and Management Program*. Both of these programs would require county or city action to be implemented.

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DRAFT STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO 04-3440 FOR THE PURPOSE OF ENDORSING METRO'S DRAFT GOAL 5 PHASE II ESEE ANALYSIS, MAKING PRELIMINARY DECISIONS TO ALLOW, LIMIT, OR PROHIBIT CONFLICTING USES ON REGIONALLY SIGNIFICANT FISH AND WILDLIFE HABITAT; AND DIRECTING STAFF TO DEVELOP A PROGRAM TO PROTECT AND RESTORE REGIONALLY SIGNIFICANT FISH AND WILDLIFE HABITAT.

Date: April 7, 2004

Prepared by: Andy Cotugno and Chris Deffebach

CONTEXT AND BACKGROUND

The region's 2040 Growth Concept and other policies call for protection of natural areas while managing housing and employment growth. In 1998 the Metro Council adopted Title 3 of the Urban Growth Management Functional Plan to protect water quality and for flood management. Title 3 also included a commitment to develop a regional fish and wildlife habitat protection plan. As defined in a Vision Statement that was developed in cooperation with local governments at MPAC in 2000, the overall goal of the protection program is: "...to conserve, protect and restore a continuous ecologically viable streamside corridor... that is integrated with the urban environment." The Vision Statement also refers to the importance that "...stream and river corridors maintain connections with adjacent upland habitats, form an interconnected mosaic of urban forest and other fish and wildlife habitat..." Metro is currently developing this program, following the 3-step process established by the State Land Use Planning Goal 5 administrative rule (OAR 660-023).

In the first step, Metro identified regionally significant fish and wildlife habitat using the best available science, computer mapping, and fieldwork. In 2002, after review by independent committees, local governments and residents, Metro Council adopted the inventory of regionally significant fish and wildlife habitat lands. The inventory includes about 80,000 acres of habitat land inside Metro's jurisdictional boundary.

The second step of the process is to evaluate the Economic, Social, Environmental and Energy (ESEE) consequences of a decision to allow, limit or prohibit conflicting uses on these regionally significant habitat lands and on impact areas adjacent to the habitat areas. The impact areas add about 16,000 acres to the inventory. Metro is conducting the ESEE analysis in two phases. The first phase was to evaluate the ESEE consequences at a regional level. This work was completed and endorsed by the Metro Council in October 2003 (Resolution #03-3376). The resolution also directed staff to evaluate six regulatory program options and non-regulatory tools for fish and wildlife habitat protection in Phase II of the ESEE analysis. Staff has completed the Phase II ESEE analysis and is seeking direction from Metro Council on where conflicting uses within the fish and wildlife habitat areas and impact areas should be allowed, limited, or prohibited, as required in the Goal 5 administrative rule.

The Phase II analysis evaluates the ESEE consequences of possible protection and restoration options that include a mix of regulatory and non-regulatory components. Five potential

regulatory treatments are applied in each of the six regulatory options, ranging from allowing conflicting uses to prohibiting conflicting uses in habitat and impact areas. The consequences identify the effects on key ESEE issues identified in the Phase I analysis, including:

- Economic implications of urban development and ecosystem values
- Environmental effects including ecological function loss, fragmentation and connectivity
- Social values ranging from property owner concerns about limitations on development to concerns about loss of aesthetic and cultural values
- Energy trade-offs such as temperature moderating effects of tree canopy and potential fuel use associated with different urban forms.

In addition, the analysis considered how well the six regulatory options would assist in meeting the requirements of the federal Endangered Species Act and the Clean Water Act.

The third and final step of the process is to develop a program that implements the habitat protection plan by ordinance through Metro's Urban Growth Management Functional Plan. After acknowledgment by the State Land Conservation and Development Commission, cities and counties within the Metro jurisdiction will be required to amend their comprehensive plans to be in compliance with the regional habitat protection program.

Cities and counties in the region currently have varying levels of protection for fish and wildlife habitat. As a result, similar quality streams or upland areas in different parts of the region receive inconsistent treatment. In addition, one ecological watershed can cross several different political jurisdictions – each with different approaches to habitat protection. With the adoption of the regional habitat protection program, cities and counties will adjust their protection levels, to a greater or lesser degree, to establish a consistent minimum level of habitat protection.

In January 2002 Metro entered into an intergovernmental agreement with local governments and special districts in the Tualatin Basin setting forth a cooperative planning process to address regional fish and wildlife habitat within the basin. The Tualatin Basin recommendation will be forwarded to the Metro Council for final approval as part of the regional habitat protection plan.

Current Action

Based on the results of the Phase II ESEE analysis and public comment, Resolution 04-3440 presents the staff recommendation for Metro Council consideration on a regulatory approach to fish and wildlife habitat protection and requests Council direction to staff on developing a program to implement the regulatory approach and to further develop non-regulatory options.

These recommendations and the key issues for Council consideration are highlighted below.

Public comment

Metro's fish and wildlife habitat protection (Goal 5) communications and community involvement program is designed to support the technical work and Council decision-making process. Its goal is to provide effective means of informing and engaging citizens in the making of important regional habitat protection policy. Metro held public outreach events, mailed notices to property owners in fall 2001 and summer 2002, and held public hearings prior to identifying regionally significant habitat. Upon completion of Phase I of the ESEE analysis, Metro conducted public outreach and held public hearings on Resolution 03-3376.

In the spring 2004 public outreach effort there were many opportunities for citizens to be informed and participate in the decision-making process: newspaper advertisements, information materials and interactive maps (by mail, online), property owner notices (mailed), comment cards (by mail, online), non-scientific survey (keypad, online), workshops, community stakeholder meetings and special events, open houses and formal public hearings.

Generally, people were supportive of habitat protection. Very few people expressed opposition to protecting habitat in the metropolitan area. Rather, opposition expressed was towards imposed regulations, especially those that reduce the development potential or economic value of private property. Overall, there seems to be a desire for a balance between regulatory and non-regulatory program options. Support is expressed for a variety of protection tools and recognition is generally given to the need for a mixed approach to protection. For a complete summary of the comments received see the March 2004 Public Comment Report in Attachment 1.

Technical review

This resolution and staff report will be reviewed by Metro's advisory committees including Economic Technical Advisory Committee (ETAC), Goal 5 Technical Advisory Committee (Goal 5 TAC), Water Resources Policy Advisory Committee (WRPAC), the Independent Economic Advisory Board (IEAB), and Metro Technical Advisory Committee (MTAC). The staff report will be updated to reflect technical committee comments.

Policy review

The Metro Policy Advisory Committee (MPAC) will review this resolution and staff report. This staff report will be updated to reflect MPAC comments.

1. RECOMMENDATION ON REGULATORY OPTIONS

Staff analyzed six regulatory options and evaluated their performance in the ESEE analysis. Three of the options apply regulatory treatments based on habitat quality alone (Options 1A, 1B and 1C), while three options (2A, 2B, 2C) apply regulatory treatments based on habitat quality and urban development value.

Habitat quality was measured during Metro's Goal 5 inventory process and was based on landscape features (e.g., trees, woody vegetation, wetlands, etc.) and the ecological functions they provide (e.g., shade, stream flow moderation, wildlife migration, nesting and roosting sites, etc.). The inventory was then classified into six categories for the ESEE analysis (Class I-III riparian/wildlife corridors and Class A-C upland wildlife habitat) to distinguish higher value habitat from lower value habitat. Class I riparian/wildlife corridors and Class A upland wildlife habitat are the highest valued habitats and include the identified habitats of concern (HOC) in the region, such as wetlands, bottomland hardwood forests, oak woodlands and other rare and declining habitat types.

Urban development values were categorized as high, medium or low. Areas without urban development value – parks and open space (both inside and outside the UGB) and rural areas outside the UGB – were not assigned a value. All other areas were assigned to categories based

on commercial and industrial land value, employment density, and 2040 design type. In the recent expansion areas, interim design types were used to determine urban development value. Areas receiving a high score in any of the three measures are called “high urban development value”, areas receiving no high scores but at least one medium score are called “medium urban development value”, and areas receiving all low scores are called “low urban development value.” High priority 2040 Growth Concept design types include the central city, regional centers and regionally significant industrial areas. Medium priority 2040 Growth Concept design types include town centers, main streets, station communities, other industrial areas and employment centers. Inner and outer neighborhoods and corridors are considered low priority 2040 Growth Concept design types.

In Resolution 03-3376 Council directed staff to define regionally significant public facilities, including major educational and medical institutions, and recommend the appropriate urban development value rank during Phase II of the ESEE analysis to determine appropriate habitat protection levels for these land uses. Staff is still working on this issue and expects that additional consideration will be appropriate during the program development phase. This analysis could lead to modifications in the recommendation for these locations.

Based on the ESEE analysis and public comment, staff recommends Option 2B, with a few modifications, as a starting place for Metro Council consideration for fish and wildlife habitat protection. Option 2B reflects the balancing of habitat protection and development needs described in Phases I and II of the ESEE analysis. This option applies a low level of habitat protection in high urban development value areas and a moderate to strict level of protection in other areas. This option recognizes habitat values and urban development values, accounting for the goals described in the 2040 Growth Concept. Option 2B ranked third or fourth (out of six) on all the ESEE consequences described by the evaluation criteria – falling in the middle of the range of regulatory options and balancing the conflicting goals of habitat protection and allowing conflicting uses.

The Phase II ESEE analysis and public comments highlighted the importance of accounting for urban development values in the development of a regional fish and wildlife habitat protection plan. Option 2A applies a very strict level of protection to Class I Riparian, including a *prohibit* treatment in low urban development value areas. Prohibiting conflicting uses on most residential land does not address the social considerations or potential impact on housing capacity within the existing urban growth boundary. On the other hand, Option 2C applies an *allow* treatment to all habitat types in high urban development value areas while substantially limiting conflicting uses in residential lands. This option does not balance habitat protection with the other ESEE factors.

While Option 2B best balances the ESEE factors, staff has recommended areas where changes to the option could improve its performance and identified issues associated with Option 2B for further Council consideration. The 2B Option, recommended modifications and other issues for consideration are described below.

**Option 2B: Low level of protection in high urban development value areas,
moderate level of protection in other areas.**
(Modifications are shown)

Fish & wildlife habitat classification	HIGH Urban development value	MEDIUM Urban development value	LOW Urban development value	Other areas
	Primary 2040 components, ¹ high employment value, or high land value ⁴	Secondary 2040 components, ² medium employment value, or medium land value ⁴	Tertiary 2040 components, ³ low employment value, or low land value ⁴	Parks and Open Spaces, no design types outside UGB
Class I Riparian/Wildlife	LL ML	ML -SL	SL	SL
Class II Riparian/Wildlife	LL	LL	ML	ML
Class III Riparian/Wildlife	A LL	LL	LL	ML
Class A Upland Wildlife	LL	ML	ML	SL
Class B Upland Wildlife	LL	LL	ML	ML
Class C Upland Wildlife	A LL	LL	LL	ML
Impact Areas	A	LL A	LL A	LL A

¹Primary 2040 components: Regional Centers, Central City, Regionally Significant Industrial Areas

²Secondary 2040 components: Town Centers, Main Streets, Station Communities, Other Industrial areas, Employment Centers

³Tertiary 2040 components: Inner and outer neighborhoods, Corridors

⁴Land value excludes residential lands.

Key to abbreviations

SL = strictly limit

ML = moderately limit

LL = lightly limit

A = allow

Recommended modifications and issues for Council consideration on regulatory option 2B

A. **No allow treatments of habitat.** Option 2B applies an allow treatment in high urban development areas to Class III riparian habitat and Class C upland habitat. To ensure that existing functions are preserved and to maintain opportunities for mitigation, staff recommend that Class III Riparian and Class C Wildlife areas in high urban development value areas receive a **lightly limit** treatment instead of an allow treatment. Over eighty percent of Class III Riparian habitat is currently developed and would not be subject to new regulatory programs until redevelopment. Much of the Class III habitat is developed floodplain where low impact development techniques such as pervious pavers and stormwater runoff containment can improve nearby stream quality. In Class III areas with high urban development value, 96% is developed. If an allow decision is applied to these areas the opportunity to require redevelopment standards would be lost. Class C Wildlife habitat provides important connections between riparian areas and other upland wildlife habitats and 60% of this habitat area is currently vacant. The loss of Class C areas can subsequently reduce the quality of nearby higher quality habitats and can also reduce opportunities for restoration in the future. In Class C areas with high urban development value, 80% is vacant.

B. **Impact areas.** Option 2B applies an allow treatment to impact areas in high urban development value areas and a lightly limit treatment to impact areas in other urban development value categories. To achieve a better balance between environmental

effectiveness and regulatory effort, staff recommends that impact areas have an **allow** treatment. Much of the impact areas are developed (66%), and are, by definition, adjacent to the habitat and not the habitat itself. However, development or redevelopment in these areas can affect habitat conditions. Impact areas add 15,721 acres to the inventory, about half of which (7,152 acres) is residential land. Regulatory treatments applied to the impact area affect a large number of property owners. Yet, because the land has no resource value now, regulations would have a minor effect on improving habitat values until it redevelops. Metro staff identified two types of impact areas: riparian impact areas (land with no regionally significant habitat value within 150 feet of a stream) and other impact areas (a 25-foot buffer around all other habitat areas). Land uses within the riparian impact area have a direct effect on the stream due to their proximity. This affects the ecological integrity of the riparian habitat and water quality. Land uses within the other 25-foot impact area have more of an indirect effect on the surrounding habitat, especially when conflicting uses are allowed within the habitat lands. Staff recommends that the effects of conflicting uses in impact areas be addressed in broader watershed planning efforts that apply low impact design standards and other stormwater management tools to the broader area. Staff also recommends that the areas within 150 feet of a stream be considered when developing a restoration strategy. As an alternative, Council may want to consider regulations in the riparian-related impact areas only, where the negative environmental effects of development affect stream health most directly.

- C. ***High value habitat land.*** Option 2B applies a lightly limit treatment to the highest value habitat (Class I Riparian and Class A Wildlife) in high urban development value areas, while applying a moderate or strict level of protection in the other areas. Staff recommends increasing the level of protection for the Class I Riparian habitat in high urban development value lands to **moderately limit** and in medium urban development value lands to **strictly limit**. Staff also identifies the need for additional Council consideration of whether to increase protection in the Class A habitat, particularly for steep slopes and other sensitive areas in the program phase. The level of protection for these habitat types is important for several reasons. These habitat types encompass Habitats of Concern, which have been identified as the most scarce and declining habitats in the region. Class I Riparian habitat is critically important to maintain the ecological health of the stream system and connectivity of the riparian corridor. While many environmental issues are important to supporting requirements of the Endangered Species Act and the federal Clean Water Act, efforts to protect and improve the functions provided along the streams are some of the most important. Class I Riparian habitat is also associated with some of the strongest cultural and amenity values from the social perspective. Existing Title 3 Water Quality and Floodplain Protection standards cover about 72 percent of Class I Riparian habitat, which establishes an existing level of protection and limits on development.

Class A Wildlife habitat provides the most valuable environment for many species of concern and also provides important connections to and between riparian corridors. High value upland habitat areas are located in medium, low and other urban development areas. Title 3 Water Quality and Floodplain protection standards cover a little over one percent of Class A wildlife, which leaves it most vulnerable to loss. On the other hand, while protection

of the high value Class I and Class A habitat is critical from the ecological standpoint, this land also encompasses a large percent of the region's vacant and buildable land. About 42 percent (19,922 acres) of this high value habitat is currently in park status, 14 percent (6,578 acres) is considered developed, and 44 percent (21,057 acres) is vacant. High levels of habitat protection could impact the region's ability to meet housing and employment needs within the existing urban growth boundary. In high urban development value areas, 87% of the Class I Riparian is vacant, 41% of the vacant Class I habitat is not constrained for development by Title 3, utility location, or other factors (other than local regulations). A similar proportion of Class A habitat is vacant (75%), but of that vacant habitat most (78%) is considered buildable. A smaller number of vacant acres, about 200, is high urban value in Class A habitat. Any decision on Class I and A will have a significant impact because these areas include the greatest percentage (60 percent) of the habitat inventory.

An important consideration in weighing the choices between lightly, moderately and strictly limit treatments is the extent to which loss of buildable land can be replaced elsewhere within the UGB or outside of the UGB on non-habitat land. Staff recommends that Council provide direction to fully explore tools such as transfer of development rights to mitigate the loss of building capacity as part of developing the protection program. In the program development phase, based on this analysis, Council may want to reconsider the recommendations for Class I and Class A habitat.

Class II Riparian, like Class I Riparian, is also important for riparian corridor health, but provides fewer primary functions than Class I. Council may want to consider increasing the level of protection in Class II riparian areas and to more closely match the level of protection in the Class I habitat areas.

D. Definition of urban development value and appropriate applications of different treatments. The modified Option 2B varies the level of protection by different urban development values. The 2040 design types in high, medium and low urban development values were defined by Council for the ESEE analysis. The staff recommendation recognizes the need to meet capacity needs in the Regional Centers, Central City and regionally significant industrial areas by reducing protection in areas of high urban development value compared to protection in low urban development value areas. Staff do not recommend changes to these definitions or to the range of protection, from lightly limit to strictly limit, from low to high development value. However these definitions and ranges of protection will require further consideration as the program develops. Another consideration may be redefining the boundaries of regional centers to avoid habitat areas.

E. Residential Land. In Option 2B, the residential land that makes up a significant portion of "low urban development value" receives stronger regulatory treatment (strictly or moderately limit) than the commercial and industrial land that comprises "high" and "medium" urban development value areas. Residential land makes up a significant portion of the habitat inventory (34 percent), especially within the UGB (48 percent) making development on vacant residential land and consideration of existing residential areas an important part of the fish and wildlife habitat protection program. While staff does not recommend a change in

the treatment of “low” urban development value, staff recognizes this as a continuing issue for consideration in the development of the program.

2. DIRECTION ON DEVELOPING A REGULATORY PROGRAM

The third step of the Goal 5 process calls for the development of a program to protect habitat areas by allowing, limiting, or prohibiting conflicting uses on habitat land based on the results of the ESEE analysis. Based on comments from public open houses and technical committees, the Metro staff has identified several areas of concern when developing a regulatory program. Staff requests Metro Council to give staff direction in these areas.

A. Defining limit in the program phase

The most commonly asked question from the public and technical review committees relates to how limit is defined in the program. The definitions of limit that have been described generally in the ESEE analysis will be further defined in the program phase. The definition of limit describes how well habitat is protected while maintaining development opportunities. The definition of limit will be one of the most important tasks in the program phase. As a guiding principle, the intent is to first avoid, then limit, and finally mitigate adverse impacts of development to protect fish and wildlife habitat. Some of the key issues in the definition relate to impacts on housing and employment capacity, disturbance area, mitigation, and allowable public uses such as roads, trails and other infrastructure as illustrated below:

- **Strictly Limit** – This treatment applies a high level of habitat protection. It would include strict avoidance of the habitat (especially Habitats of Concern) with maximum allowable disturbance areas and mitigation requirements. Based on technical review, Metro staff proposes to allow trails, roads and other public access to meet the public good (e.g., construction and maintenance of public utilities such as water storage facilities) subject to minimize and mitigate. Applying strong habitat protection would result in some overall loss of development capacity; however, there are some tools such as transfer of development rights (TDR) or cluster development that could compensate somewhat for lost development capacity.
- **Moderately Limit** – This treatment balances habitat protection with development needs, and does not preserve as much habitat as strictly limit. It would avoid habitat, limit disturbance areas, require mitigation, and use design standards and other tools to protect habitat (especially Habitats of Concern) while striving to achieve goals for employment and housing densities. Metro staff would work to define moderately limit to minimize the loss of development capacity, which could include development of a TDR program and other tools to compensate for lost capacity.
- **Lightly Limit** – This treatment would avoid habitat as possible to preserve habitat function (especially Habitats of Concern) while allowing development to occur. It would include less restrictive limits on disturbance area and encourage other low impact design considerations and mitigation requirements. Metro staff assumes that application of lightly limit treatments would result in no loss of development capacity.

B. Effect on existing development and redevelopment

Many of the comments received from the public were focused on how a regulatory program to protect habitat would affect existing development. Due to the fact that a substantial portion of the habitat inventory is on developed residential land (15,271 acres) there are

many property owners concerned with the results of the program phase. Since Metro's regulatory program would be triggered by land use activities it would not apply to actions that do not require a land use permit (such as gardening, lawn care, routine property maintenance, and actions necessary to prevent natural hazards). However, many citizens will not be aware that their activities would not be affected; therefore the program clarification would help people understand the potential effect on existing development. Redevelopment (subject to some threshold size or valuation) offers the potential to restore habitat functions in areas in which development patterns have not protected the habitat. Clarification in the program of the intended effects on redevelopment will be important.

C. Regulatory flexibility

Regulations to protect fish and wildlife habitat limit development options on land with habitat value. Some ways in which regulations could limit development include lowered density, minimum disturbance areas, and setbacks from significant resources. Development can occur in a manner that avoids or reduces the impact on the habitat, for example: cluster development, streamside buffers, and habitat-friendly development techniques can all provide some level of regulatory flexibility that allows development to occur while protecting habitat. A transfer of development rights (TDR) program could also compensate for loss of development capacity. Providing flexible regulations and tools to allow for development while protecting as much habitat as possible could allow Metro's goals of habitat protection and maintaining housing and job capacity within the UGB to be met. In addition, variations for local governments to implement the program at the district or other discretionary sites will be considered in the program phase, as described in section E below.

D. Mitigation, mitigation banking and restoration

Development within habitat areas degrades existing ecological function. To better achieve the goals described in Metro's Vision Statement, mitigation for these negative impacts could be required to reduce the effect of allowing conflicting uses on habitat lands. The regulatory program could include mitigation ratios and mitigation banking to facilitate efficient and effective use of mitigation to restore valuable habitat areas. Development on high value habitat land could require more mitigation than on low value habitat land, since the environmental effects would be greater. There will also be the question of where mitigation occurs – on-site, in the same stream reach, within the same watershed, in a neighboring watershed, or anywhere in the region. Mitigation banking could preserve the opportunity to require mitigation when there are no opportunities on-site by requiring funds to be paid into a bank, to be spent at a later date in an area identified through a subwatershed or watershed restoration plan. Monitoring and enforcement of mitigation requirements are an important component of maintaining ecological health. Long-term monitoring can measure the success of mitigation efforts to direct and adjust the magnitude of mitigation requirements. Enforcement of mitigation requirements is essential to ensure that the impacts of development on habitat are minimized. Mitigation can be targeted in accordance with an overall restoration plan.

E. Program specificity and flexibility

Local jurisdiction partners have indicated a need for a regulatory program that could serve both as a general framework for local jurisdictions to implement and as a specific program

that could be implemented without further local analysis. Stakeholder groups have continued to express interest in the possibility of planning for the unique habitat and economic concerns within a smaller area, such as in the existing major medical and educational campuses as regional public facilities, other regional public facilities and in riparian or wildlife districts.

In addition, questions about the reasonable timeframe for local implementation of fish and wildlife habitat have also been raised. Title 3 currently exempts some local jurisdictions from complying with a regional habitat protection until their next scheduled periodic review. This could be a challenge for developing regionally consistent protection and standards in the region, especially since the State may not be reviewing local plans with as much frequency as they have in the past. Review of the implementation schedule during the development of the program will be an important consideration.

F. Map corrections and inventory maintenance

The resolution adopting the regionally significant habitat inventory included a process for accepting habitat inventory corrections and requires Metro to complete the map correction process when the final program is adopted and to develop a post-adoption correction process. Metro has been accepting corrections to the habitat inventory map since it was released in 2002. Metro staff will continue reviewing map corrections and will adjust the inventory maps as required until the adoption of the final program. Direction during the program phase for the on-going responsibilities between Metro and local governments regarding maintaining the inventory maps in the post-adoption phase of the program will be important and will have implications for Metro's budget.

G. Long-term monitoring

Monitoring is important to mitigation as described above, but it is also critical to the success of the overall fish and wildlife habitat protection program. Monitoring how well the regulatory and non-regulatory program elements protect fish and wildlife habitat while meeting housing and employment capacity will be important in determining the effectiveness of Metro's efforts and identifying potential adjustments to the program in the future. Monitoring could be included as part of Metro's Performance Measures efforts.

3. DIRECTION ON NON-REGULATORY PROGRAMS

While not a requirement of the Goal 5 rule, Metro has committed to include incentives and non-regulatory tools to protect and restore habitat to complement regulatory program elements. Non-regulatory tools are a key component of a strategy to protect fish and wildlife habitat. Incentives, education, and acquisition strategies are popular among landowners and can be used in situations where regulations do not apply. For example, regulations only come into effect when a land use action is taken. Non-regulatory strategies can apply to other activities such as landscaping, reducing pesticide/herbicide use, and voluntary restoration.

Restoration is a critical component of an effective fish and wildlife habitat protection program. Without active restoration efforts, ecological conditions will likely deteriorate further, even if most habitat lands are protected through regulations. Mitigation for the negative environmental impacts of development may be included as part of a regulatory program. However, actions to

restore habitat to a condition better than exists today cannot be required as part of a regulatory program; restoration could be included as a major part of a non-regulatory approach. Regulations can protect land that can then be restored through non-regulatory approaches to provide better functioning habitat.

Metro staff examined the following potential non-regulatory tools:

- Stewardship and recognition programs
- Financial incentives (grants, incentives for green streets, property tax reduction)
- Education (information center, technical assistance, other education activities)
- Volunteer activities
- Agency-led restoration
- Acquisition (outright purchase, conservation easements, revolving acquisition fund)

Based on public comments and staff analysis of the effectiveness of non-regulatory programs, staff recommends that the program phase include further development of technical assistance, restoration grants, acquisition programs and property tax reduction incentives. Key issues for consideration in further development include the level of funding or commitment that would be needed, possible funding sources, an implementation schedule and an assessment of responsibilities between local and regional governments, the private sector and non-governmental organizations. Staff request Metro Council to give direction in how these issues are further developed as non-regulatory approaches to habitat protection.

A. ***Technical assistance.*** Whether directed at individual owners, developers, or local jurisdiction staff, technical assistance could assist in the implementation of habitat-friendly development techniques, better stewardship of habitat, and restoration on public and private land. Technical assistance would be particularly useful in conjunction with the application of limit treatments to allow for development within habitat areas that protects the most habitat while also meeting capacity needs. Habitat-friendly, low-impact development and green building techniques are innovative methods of minimizing the impacts of the built environment on surrounding habitat. Assistance in these areas for developers, citizens, and local jurisdictions could help to ensure the success of a regulatory program.

Technical assistance programs are noted for being responsive to landowner needs, providing practical information, and having knowledgeable resource staff. Such a program would not provide direct protection to habitat, but would offer a means of improving stewardship and enhancement by private landowners. Technical assistance could help supplement cost-sharing programs, such as grants, to further protection and restoration efforts. Technical assistance could be focused on landowners, development practices, and/or local partners. Metro has provided technical assistance to local partners throughout the implementation of the Regional Framework Plan and the Regional Urban Growth Management Functional Plan. This has proved especially important in the implementation of Title 3 (stream and floodplain protection) and planning for centers.

Metro could work with local partners to develop technical assistance, incentives, recognition programs, and awards for development that helps protect fish and wildlife habitat. Metro, in conjunction with local partners, could develop regional low impact development standards to

reduce development impacts on fish and wildlife habitat. The Green Streets Handbook serves as a successful model of technical assistance aimed at minimizing environmental impacts of transportation infrastructure. The cost of providing technical assistance could vary depending on the use of existing staff or the need to use new staff and other resources.

As part of a regional, habitat-friendly development program, Metro could develop a *Habitat-oriented Development Program* similar to Metro's Transit-oriented Development (TOD) Program to encourage construction of new developments or redevelopment that protects and restores fish and wildlife habitat. As part of the technical assistance program, this would require funds to provide the incentives for developers to practice habitat friendly development.

- B. ***Grants for restoration and protection.*** Achieving restoration on private and public lands typically requires some type of financial incentive to induce property owners to conduct activities such as planting of native vegetation, removal of invasive species, and other habitat improvements. Grants could be aimed at individual property owners, at public agencies that create model examples of habitat restoration, habitat-friendly development, or green streets, wildlife crossings, and culvert replacements. Grants could also be targeted to agency-led efforts to restore habitat on public land, possibly utilizing volunteers. Defining restoration priorities is important to effectively allocate restoration efforts and investments.

Grants for restoration can provide the incentive for supportive landowners and other organizations to restore habitat on private and public lands. A small grant program, targeted to watershed councils, friends organizations, or local governments could be created similar to Metro's recent grants for Regional and Town Center planning efforts. Applicants could submit projects one or two times per year, and they could be reviewed and ranked based on set criteria. Small grants given in strategic places could build on existing work and encourage more efforts in targeted areas.

Funding can leverage additional benefits such as education and volunteerism. Private landowners may be interested in the concept of improving the habitat value on a portion of their land, and the availability of dollars can provide the impetus to conduct restoration activities. Many grants are provided with a required match of either dollars or in-kind materials or labor. These incentives provide landowners who contribute a portion of the proposed cost for conservation or restoration activities with additional funding opportunities. There are several programs in place for rural land in agriculture or forestry use, and some for urban lands. A grant program could target specific activities along stream reaches or within watersheds in coordination with Watershed Action Plans to accomplish the most effective restoration. A monitoring component of a restoration plan would be essential to assess effectiveness over time at restoring habitat function.

- C. ***Willing-seller Acquisition.*** The most certain way to protect habitat is to publicly acquire it for open space preservation. There are various ways to acquire land (outright purchase, easements, development rights, transfers, etc.) and all acquisition programs involve the expenditure of a significant amount of money. Acquisition is the most effective non-regulatory tool to achieve definitive habitat protection. Acquisition can achieve permanent

protection and also preserves land to be restored at a later date. However, the high cost of purchasing land, especially within the urban growth boundary, and the dependence of an acquisition program on willing sellers limits the effectiveness of such a program.

If additional funding to purchase habitat land was secured, an acquisition program could focus on regionally significant fish and wildlife habitat, targeted to achieve specific goals. The goals could include protection of Habitats of Concern, floodplains, regional connector habitat, strategically located high-value habitat, and key restoration opportunities. Acquisition may also target land when the regulatory approach could not protect it to the level desired. Riparian Class I habitat contains over 11,000 acres of undeveloped habitat land. Based on the cost of land purchased through the Metro Greenspaces Acquisition program, land costs inside the UGB average about \$45,000/acre and outside the UGB average about \$8,600/acre. Due to the expense, acquisition clearly is not a tool that could be used alone to protect even this most ecologically valuable habitat.

One way to maximize limited acquisition dollars is to create a revolving acquisition fund. A program could be developed to purchase habitat land, place development restrictions or conservation easements to protect the habitat areas, or subdivide the property to separate the resource land from the developable land and then sell or exchange (via land swaps) the remainder of the land for development or continued use. Funds from the sale could then be used to protect additional land. Such a program could maximize the use of conservation dollars by protecting only the habitat areas on a parcel of land, rather than the entire parcel.

Some jurisdictions currently use surface water management fees or system development charges (SDCs) to purchase land that provides habitat functions for the public good (such as floodplains); these programs could be expanded. However, there may be concerns about raising SDCs or other fees in the current economic environment

- D. **Property tax reductions.** There are two state programs that could be applicable within the urban area; the *Riparian Habitat Tax Incentive Program (OAR 308A.350 to 308A.383)* and the *Wildlife Habitat Conservation and Management Program (2003 Oregon Laws Ch. 539)*. Both of these programs would require county or city action to be implemented.

Property tax reduction is a useful tool to provide motivated landowners with an incentive to manage their land for habitat values, and can also serve as a mechanism to achieve some restoration if a habitat management plan includes requirements for enhancement of existing habitat. However, property tax reductions would reduce jurisdictional revenues. Alternatively, these properties could be included by agencies such as Metro, Portland's Bureau of Environmental Services, Water Environmental Services in Clackamas County or Clean Water Services in Washington County that conduct restoration activities. Habitat protection and restoration may be most effective ecologically if this tool is applied strategically, for example in a specific stream reach or headwater area. This tool could serve as an important incentive to encourage landowners to work in a coordinated fashion to leverage ecological improvements in a specific area. A downside to using property tax relief as a tool for habitat protection is that a landowner can leave the program at any time, the only

penalty being payment of back taxes, similar to opting out of a farm or forest tax deferral program.

ANALYSIS/INFORMATION

1. **Known Opposition.** Metro has received public comments from individuals and interest groups representing a broad spectrum of viewpoints as to whether and how Metro should protect fish and wildlife habitat. (See, for example, the "public comment" section of this staff report for a general summary of such comments received at the March 2004 public open houses.) Metro staff expect comments both in favor of, and opposed to, this draft resolution and Metro's approach to fish and wildlife habitat planning between the time this resolution is first introduced and the time a resolution is approved by the Metro Council
2. **Legal Antecedents.** Policies in Metro's Regional Framework Plan and Section 5 of Title 3 in Metro's Urban Growth Management Functional Plan support the development of a Fish and Wildlife Habitat Protection Program. In addition, the two phases of Metro's ESEE analysis continues compliance with the State Land Use Planning Goal 5 administrative rule (OAR 660-023). Metro's adoption of the Draft Regionally Significant Fish and Wildlife Habitat Inventory and a Local Plan Analysis by Resolution No. 02-3218A formed the basis for the ESEE analysis and development of a habitat protection program that this resolution endorses.
3. **Anticipated Effects.** Approval of this resolution will allow Metro to complete the ESEE analysis as required by State Land Use Goal 5 and provides a preliminary decision on where to allow, limit or prohibit development on regionally significant fish and wildlife habitat lands. With the completion of the analysis as directed by this Resolution and a Metro Council decision on an Allow/Limit/Prohibit map, the third step of the Goal 5 process, development of a protection and restoration program for adoption into Metro's Functional Plan, can begin.
4. **Budget Impacts.** The adopted budget for FY04 includes resources for staff and consultants to initiate development of a program that includes regulatory and non-regulatory components. The proposed baseline FY05 budget has identified resources to support completion of the program depending upon the breadth and scope of the program direction in this resolution. On-going implementation of non-regulatory and regulatory elements will have long-term budget and staffing implications, depending on how the program is defined and decisions by the Metro Council should be made with the intent that budget resources will be sufficient to implement the direction.

RECOMMENDED ACTION

Staff requests that Metro Council endorse the Phase II ESEE analysis as described in Exhibit A to the Resolution and direct staff to develop a program to protect fish and wildlife habitat that includes regulatory and non-regulatory components as described in Exhibits B, C and D.

ATTACHMENTS TO THE STAFF REPORT

Attachment 1. Public comment report

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METRO

TO: Metro Technical Advisory Committee

FR: Chris Deffebach, Long Range Planning Manager

DATE: May 4, 2004

RE: *MPAC COMMENTS ON RESOLUTION NO. 04-3440*

You will be considering Resolution No. 04-3440 and making a recommendation at your meeting this week (May 5th). As you are aware, the resolution is for the purpose of (1) endorsing the Goal 5 Phase II ESEE analysis; (2) making preliminary decisions to allow, limit or prohibit conflicting uses on regionally significant fish and wildlife habitat; and (3) directing staff to develop a program to protect and restore regionally significant fish and wildlife habitat. MPAC discussed the resolution at its meeting last Wednesday (April 28th) and several MPAC members made comments and recommendations for your consideration before you make a recommendation. The comments are summarized below and mostly focus on program direction.

Comments on Allow, limit or prohibit decision

- A strictly limit designation on industrial lands will restrict too much industrial development, especially in some jurisdictions with limited industrial lands (e.g. Wood Village, Troutdale and Fairview). Industrial lands are currently identified within medium urban development value areas. The protection level in Class I habitat and medium urban development value areas should be moderately limit. (This could also be achieved by moving all industrial areas into high development value category.)
- Habitat in town centers should get no more than a lightly limit designation because many jurisdictions do not have regional centers and have made significant investments in developing their town centers (e.g. Wood Village, Troutdale and Fairview). (This could be partially achieved by moving town centers into high development value category.)

Comments on program direction

- Look for opportunities for turning required floodplain “cuts” (current Title 3 balanced cut and fill requirements) into wetlands habitat in developed flood management areas that are being redeveloped.
- Do not allow development in undeveloped floodplains; it will be a disaster for habitat.
- Consider giving intermittent streams in steep sloped areas the same protection as perennial streams in other areas (intermittent streams are given less protection under Title 3).
- Consider giving intermittent streams draining less than 50 acres the same protection as

other intermittent streams (those streams were excluded from Title 3 requirements).

- Consider whether a TDR program can release pressure of a Goal 5 program that puts additional limits on development.
- Calculate the lost development capacity for the 2007 UGB changes and for when land is redeveloped and subject to multiple constraints.
- Provide more information regarding the impact of this decision on habitat functions, not just the loss of development capacity.
- Provide detailed ALP decision maps for MPAC members to review before MPAC makes its recommendation.

I'll be out of the office until Thursday or Friday. If you have any questions, please call Carol Krigger at (503) 797-1817.



METRO

TO: Metro Policy Advisory Committee

FROM: Andy Cotugno, Planning Director

DATE: May 5, 2004

SUBJECT: MTAC recommendation on Resolution 04-3440 relating to the Metro fish and wildlife program

MTAC met this morning to consider Resolution 04-3440, a memo dated May 3rd summarizing comments made by MPAC members at your April 28th meeting, and the Goal 5TAC/WRPAC recommendation. Based on its discussion, MTAC made a recommendation on decisions to allow, limit or prohibit conflicting uses in regionally significant fish and wildlife habitat. The committee also provided comments on program direction.

Included with this memo are two attachments. Attachment 1 is a table that compares the staff recommendation (Option 2B modified), the G5TAC/WRPAC recommendation and MTAC's recommendation. MTAC's recommendation modifies the staff recommendation in three ways:

- 1) Moves "medium urban development value" components (other industrial areas [14-7-3], town centers [18-1-3], employment areas [13-7-3], main streets [10-6-8] and station communities [11-2-9]) into the "high urban development value" category to reflect their importance in meeting the goals of the 2040 Growth Concept.
- 2) Applies stricter protection (SL+) to parks designated as natural areas (with understanding that areas with other critical public need uses, such as for current or future water supply infrastructure, would not fall into this "natural area" category); applies staff recommendation to rural areas, active parks and other public lands in this category [15-1-7].
- 3) Retains staff recommendation to apply the "allow" treatment in impact areas but recommends that an education component be implemented as part of the non-regulatory program to teach property owners in these areas about the impacts of their actions on habitat resources [15-1-7].

Five motions failed that would have provided more habitat protection than the staff recommended modified Option 2B. These motions, based on Goal 5 TAC/WRPAC recommendations, include:

- 1) Apply the lightly limit treatment to impact areas [3-13-7].
- 2) Apply the strictly limit treatment to undeveloped floodplains in Class II riparian/wildlife habitat [4-15-5].
- 3) Apply the strictly limit treatment to unmapped streams and steep slopes in Class A upland wildlife habitat [4-15-3].
- 4) Apply the strictly limit treatment to Class I riparian/wildlife habitat in “high” urban development value areas [3-18-3].
- 5) Apply the moderately limit treatment to Class II riparian/wildlife habitat in “high” urban development value areas and strictly limit to “medium” urban development value areas [4-16-3].

Attachment 2 is a list of comments, concerns and recommendations regarding program direction that MTAC endorsed and asked to be forwarded to you. Of particular note among several important items on that list, MTAC has recommended that staff not develop or include an off-site transfer of development rights (“TDR”) approach in the final program. MTAC believed that on-site TDR approaches could sometimes be effective, to permit a greater degree of development on one portion of a property in order to protect habitat, but that a program designed to transfer development rights off-site was infeasible given other requirements of the Urban Growth Management Functional Plan and Oregon land use planning law.

If you have any questions, please feel free to contact me.

cc: MTAC

Attachment 1.
**Comparison of staff recommended modified Option 2B with Goal 5 TAC/WRPAC
and MTAC recommendations**

Fish & wildlife habitat classification	HIGH Urban development value	MEDIUM Urban development value	LOW Urban development value	Parks and rural areas
	Primary 2040 components, ¹ high employment value, or high land value ⁴	Secondary 2040 components, ² medium employment value, or medium land value ⁴	Tertiary 2040 components, ³ low employment value, or low land value ⁴	Parks and Open Spaces, no design types outside UGB
Class I Riparian/Wildlife				
STAFF	ML	SL	SL	SL
G5TAC/WRPAC	SL ⁵	SL	SL	SL/SL+ ⁶
MTAC	ML	ML	SL	SL/SL+ ⁶
Class II Riparian/Wildlife				
STAFF	LL	LL	ML	ML
G5TAC/WRPAC	ML/SL ^{5,7}	ML/SL ⁷	SL	SL/SL+ ⁶
MTAC	LL	LL	ML	SL/SL+ ⁶
Class III Riparian/Wildlife				
STAFF	LL	LL	LL	ML
G5TAC/WRPAC	LL	LL	LL	ML
MTAC	LL	LL	LL	ML
Class A Upland Wildlife				
STAFF	LL	ML	ML	SL
G5TAC/WRPAC	LL ⁸	ML/SL ⁹	ML/SL ⁹	SL/SL+ ⁶
MTAC	LL	LL	ML	SL/SL+ ⁶
Class B Upland Wildlife				
STAFF	LL	LL	ML	ML
G5TAC/WRPAC	LL	LL	ML/SL ⁹	ML/SL+ ⁶
MTAC	LL	LL	ML	ML/SL+ ⁶
Class C Upland Wildlife				
STAFF	LL	LL	LL	ML
G5TAC/WRPAC	LL	LL	LL	ML
MTAC	LL	LL	LL	ML
Impact Areas				
STAFF	A	A	A	A
G5TAC/WRPAC	A/LL ¹⁰	A/LL ¹⁰	LL	LL
MTAC	A ¹¹	A ¹¹	A ¹¹	A ¹¹

¹Primary 2040 components: Regional Centers, Central City, Regionally Significant Industrial Areas

²Secondary 2040 components: Town Centers, Main Streets, Station Communities, Other Industrial areas, Employment Centers. **(MTAC recommended moving all of these components to the “high” urban development value category).**

³Tertiary 2040 components: Inner and outer neighborhoods, Corridors

⁴Land value excludes residential lands.

⁵Provide a very high level of protection for resource areas, and promote rezoning and other strategies to reduce conflicts and compensate for lost development capacity. This comment can be extended to other resource categories as well. (G5TAC/WRPAC)

⁶“Other areas” includes rural lands and various public lands that have been acquired for different land uses that call for different levels of protection (i.e., public lands for active parks, natural areas and/or utilities). Because the conflicting uses on these lands varies, we recommend that the differences be addressed in the program in a way that provides the highest level of habitat protection for all public lands, while maintaining enough flexibility to allow for publicly beneficial development to occur. In any case, the

program should strive to achieve a net ecosystem benefit, to the maximum extent practicable. If possible, “conflicting uses” should be redefined to exclude actions that will benefit the resource (e.g., habitat restoration, reconfiguring trails to improve habitat protection, reducing erosion, replacing problem culverts, etc.), and the “prohibit” level of protection should be revisited on a site-specific basis in the program development phase. (G5TAC/WRPAC, MTAC)

⁷The recommended level of protection is split to provide a higher level of protection (“Strictly Limit”) for all sites that contain undeveloped floodplains. (G5TAC/WRPAC)

⁸Pending more information about these areas. (G5TAC/WRPAC)

⁹The recommended level of protection is split to provide a higher level of protection for all sites that include steep slopes, hazard areas for development (i.e., ODF and USFS forest fire risk areas, DOGAMI maps for earthquakes and areas prone to landslide/mass wasting), headwater or intermittent streams not covered by Title 3 Water Quality Management Areas, and Habitats of Concern. (G5TAC/WRPAC)

¹⁰Impact areas for Riparian/Wildlife areas are defined differently than those for Upland Wildlife areas, and we recommend they be split accordingly. Riparian/Wildlife impact areas include the area within 150’ of streams where the resources and their associated functions no longer exist. For Upland Wildlife and Riparian/Wildlife areas that extend beyond 150 feet, the impact area includes the area within 25 feet of the resource. Prior to development, the riparian impact areas were important components of riparian corridor systems. Therefore, they have the potential to play significant roles in restoration efforts as redevelopment occurs, and for the application of low impact development practices that can help maintain the integrity of adjacent resource areas. For this reason, we recommend that the lightly limit option apply to all Riparian/Wildlife impact areas so appropriate treatments can be developed as part of the program. This is not intended to imply that the Upland Wildlife impact areas do not also provide restoration potential and opportunities for low impact development strategies that could benefit and improve the resource areas, and we encourage the development of program elements to address these opportunities. (G5TAC/WRPAC)

¹¹ Non-regulatory education programs should be targeted in impact areas to reduce further degradation of the nearby habitat. (MTAC)

Key to abbreviations

SL = strictly limit

ML = moderately limit

LL = lightly limit

A = allow

Attachment 2. MTAC comments on program direction and ESEE analysis.

Program direction

- ***Local implementation.*** Concerns have been expressed about local implementation of the regional fish and wildlife habitat protection program. Concerns include a revenue source to pay for the cost of regulatory and non-regulatory programs, program complexity, and the desire to provide a program that can be implemented without additional local work, but which also provides flexibility to permit jurisdictions to adapt the program to local conditions. There are also concerns about the accuracy of the regional inventory maps, and local jurisdiction responsibility to “fix” them during program implementation.
- ***Regional tree protection program.*** A regional tree protection program should be considered to address both Goal 5 habitat needs and stormwater management issues.
- ***Transfer of Development Rights (TDRs) and development capacity.*** Strong reservation has been expressed about reliance on a TDR program to mitigate for lost development capacity resulting from a regulatory program. Off-site TDRs should not be considered in the program development.
- ***Vegetation clearing standards.*** Several jurisdictions have adopted Goal 5 ordinances that limit vegetation removal, a similar approach could be included in the regional program.
- ***Mitigation.*** Strong concern has been expressed about excessive reliance on mitigation to blunt the impact of development in habitat areas. Mitigation may not always be effective, the costs of mitigation can be substantial, and the relative importance and effectiveness of mitigation in actually compensating for the loss of ecological functions in specific habitat areas depends on the location of the mitigation (for example, whether it occurs in the same stream reach or sub-watershed as the habitat disturbance).
- ***Concept planning areas.*** More habitat exists in the concept planning areas than within the already urbanized areas. The presence of more habitat will result in higher levels of protection, but the same treatments should apply in the concept planning areas and future expansion areas as within the old UGB. However, there may be unique restoration opportunities in these areas.
- ***Unmapped headwater and intermittent streams and steep slopes.*** Many unmapped streams and steep slopes are currently classified as upland wildlife habitat, not as riparian habitat. Concern has been expressed that this does not provide enough protection to preserve the riparian functions provided by these habitats.
- ***Major transportation facilities and other infrastructure.*** Concern was expressed that major transportation facilities, roads, and public and private utilities were not assigned an economic value in the discussion of the ESEE tradeoffs regarding potential habitat protection.
- ***Impact on existing development.*** Concern was expressed that Metro currently defines a land use action that would trigger fish and wildlife habitat regulations as requiring a building permit when there are some jurisdictions that define a land use action to include grading and vegetation removal. The definition of land use action will affect the magnitude of regulatory impact on existing development.
- ***Redevelopment.*** Redevelopment plays a critical role in meeting the objectives of the 2040 Growth Concept. Program development should include specific standards for redevelopment, especially in brownfield areas, that are different than protection standards for new development.

- **Performance standards.** The program could include performance standards to promote or require low impact development, green streets, and green building design both within and outside significant resource areas.
- **Unmapped habitat.** The program should describe a process for adding habitat areas that are not currently on Metro's inventory map.
- **Quantify impact on UGB.** Once the program is developed an analysis on the effect on housing and employment capacity within the urban growth boundary should be performed. How lost capacity relates to other Metro Functional Plan requirements should be established (especially Title 1 capacity requirements), and Metro should recognize the difficulty of further increasing density within the urban growth boundary.
- **Guiding principles.** Staff should develop principles to guide program development that will allow local flexibility to optimize habitat protection and urban development values.
- **Riparian district plans.** The work plan for program development should include adequate staff support for the development of riparian district plans.
- **Definition of strictly limit.** Change the word access to infrastructure to reflect the need to place public and private utilities in these areas.

ESEE Analysis

- **Baseline.** The environmental baseline for purposes of analysis should include local Goal 5 habitat protection.
- **Residential land.** One member expressed concern that residential land is undervalued in the ESEE analysis.
- **Good job.**

This report is 60 pages long. Please contact Kim Bardes, 503-797-1537, if you would like a copy sent to you.



MARCH 2004

Public Comment Report

Executive Summary

**Metro Fish and Wildlife Habitat
Protection Program**

**Economic, Social, Environment
and Energy Analysis Phase II**



METRO

PEOPLE PLACES
OPEN SPACES

For all exhibits and materials pertaining to this ordinance, please contact Kim Bardes at 503-797-1537.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE) ORDINANCE NO. 04-1040
METRO URBAN GROWTH BOUNDARY,)
THE REGIONAL FRAMEWORK PLAN AND)
THE METRO CODE TO INCREASE THE)
CAPACITY OF THE BOUNDARY TO)
ACCOMMODATE GROWTH IN) Introduced by the Metro Council
INDUSTRIAL EMPLOYMENT)

WHEREAS, by Ordinance No. 02-969B (For The Purpose Of Amending The Urban Growth Boundary, The Regional Framework Plan And The Metro Code In Order To Increase The Capacity Of The Boundary To Accommodate Population Growth To The Year 2022), the Council amended Title 4 (Industrial and Other Employment Areas) of the Urban Growth Management Functional Plan to increase the capacity of industrial land to accommodate industrial jobs; and

WHEREAS, by Ordinance No. 02-969B, the Council added capacity to the UGB but did not add sufficient capacity to accommodate the full need for land for industrial use; and

WHEREAS, the Metro Council submitted Ordinance No. 969B, in combination with other ordinances that increased the capacity of the UGB, to the Land Conservation and Development Commission (LCDC) as part of Metro’s periodic review of the capacity of its UGB; and

WHEREAS, on July 7, 2003, LCDC issued its ‘Partial Approval and Remand Order 03-WKTASK-001524’ that approved most of the Council’s decisions, but returned the matter to the Council for completion or revision of three tasks: (1) provide complete data on the number, density and mix of housing types and determine the need for housing types over the next 20 years; (2) add capacity to the UGB for the unmet portion of the need for land for industrial use; and (3) either remove tax lots 1300, 1400 and 1500 in Study Area 62 from the UGB or justify their inclusion; and

WHEREAS, the Council completed its analysis of the number, density and mix of housing types and the need for housing over the planning period 2002-2022 and incorporated its conclusions in a revision to its Housing Needs Analysis; and

WHEREAS, the Council increased the capacity of the UGB both by adding land to the UGB and by revising the Regional Framework Plan and Title 4 of the UGMFP to meet the previously unmet portion of the need for land for industrial use; and

WHEREAS, the Council decided to remove tax lots 1300, 1400 and 1500 in Study Area 62 from the UGB; and

WHEREAS, the Council consulted its Metropolitan Policy Advisory Committee and the 24 cities and three counties of the metropolitan region and considered comments and suggestions prior to making this decision; and

WHEREAS, prior to making this decision, the Council sent individual mailed notification to more than 100,000 households in the region and held public hearings on Title 4 and the efficient use of industrial land on December 4 and 11, 2003, public workshops at six locations around the region in March, 2004, on possible amendments to the UGB, and public hearings on the entire matter on April 22 and 29, May 6, and June 10 and 24, 2004; now, therefore

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

1. Policy 1.12 of the Regional Framework Plan is hereby amended, as indicated in Exhibit A, attached and incorporated into this ordinance, to guide the choice of farmland for addition to the UGB when no higher priority land is available or suitable.
2. Title 4 (Industrial and Other Employment Areas) of the Urban Growth Management Functional Plan is hereby amended, as indicated in Exhibit B, attached and incorporated into this ordinance, to improve implementation of Title 4 by cities and counties in the region.
3. The Employment and Industrial Areas Map is hereby amended, as shown in Exhibit C, attached and incorporated into this ordinance, to depict the boundaries of Regionally Significant Industrial Areas pursuant to Policy 1.4.1 of the Regional Framework Plan in order to ensure more efficient use of the areas for industries reliant upon the movement of freight and to protect the function and capacity of freight routes and connectors in the region.
4. The Revised Housing Needs Analysis, January 24, 2003, is hereby further revised, as indicated in Exhibit D, Addendum to Housing Needs Analysis, April 5, 2004, attached and incorporated into this ordinance, to comply with the first item in LCDC's "Partial Approval and Remand Order 03-WKTASK-001524."
5. The Metro UGB is hereby amended to include all or portions of the Study Areas shown on Exhibit E and more precisely identified in the Industrial Land Alternative Analysis Study, February, 2004, Item (c) in Appendix A, subject to the conditions set forth in Exhibit F, and to exclude tax lots 1300, 1400 and 1500 in Study Area 62 and the southeast portion of Study Area 9

from the UGB, also shown on Exhibit E and more precisely identified in the Staff Report, ‘In Consideration of Ordinance No. 04-1040, For the Purpose of Amending the Metro Urban Growth Boundary, the Regional Framework Plan and the Metro Code to increase the capacity of the Boundary to Accommodate Growth in Industrial Employment’, Item (a) in Appendix A. Exhibits E and F are attached and incorporated into this ordinance to comply with the second and third items in LCDC’s ‘Partial Approval and Remand Order 03-WKTASK-001524.’

6. The Appendix, attached and incorporated into this ordinance, is hereby adopted in support of the amendments to the UGB, the Regional Framework Plan and the Metro Code in sections 1 through 3 of this ordinance. The following documents comprise the Appendix:
 - a. Staff Report, ‘In Consideration of Ordinance No. 04-1040, For the Purpose of Amending the Metro Urban Growth Boundary, the Regional Framework Plan and the Metro Code to increase the capacity of the Boundary to Accommodate Growth in Industrial Employment’, April 5, 2004.
 - b. 2002-2022 Urban Growth Report: An Employment Land Need Analysis, June 24, 2004 Supplement.
 - c. Industrial Land Alternative Analysis Study, February, 2004.
 - d. Measure 26-29 Technical Report: Assessment of the Impacts of the June, 2004, UGB Expansion on Property Owners.
 - e. Industrial Land Expansion Public Comment Report, March, 2004.
 - f. ‘An Assessment of Potential Regionally Significant Industrial Areas’, memorandum from Mary Weber to Dick Benner, October 21, 2003.
 - g. ‘Recommended Factors for Identifying RSIA’s’, memorandum from Mary Weber to MTAC, June 30, 2003.
 - h. ‘Slopes Constraints on Industrial Development’, memorandum from Lydia Neill to David Bragdon, November 25, 2003.
 - i. ‘Limited Choices: The Protection of Agricultural Lands and the Expansion of the Metro Area Urban Growth Boundary for Industrial Use’, prepared by the Metro Agricultural Lands Technical Workgroup, April, 2004.
 - j. ‘Technical Assessment of Reducing Lands within Alternatives Analysis Study Areas’, memorandum from Lydia Neill to David Bragdon, October 30, 2003.
 - k. Agriculture at the Edge: A Symposium, October 31, 2003, Summary by Kimi Iboshi Sloop, December, 2003.
 - m. ‘Industrial Land Aggregation Methodology, Test and Results’, memorandum from Lydia Neill to David Bragdon, September 24, 2003.
 - n. ‘Industrial Areas Requested by Local Jurisdictions’, memorandum from Tim O’Brien to Lydia Neill, July 29, 2003.

- o. 'Industrial Land Locational and Siting Factors', memorandum from Lydia Neill to David Bragdon, June 9, 2003.
 - p. 'A Review of Information Pertaining to Regional Industrial Lands', memorandum from Dick Benner to David Bragdon, January 26, 2004.
 - q. Map of Freight Network and Freight Facilities, Metro, November, 2003.
 - r. 'Evaluating the Industrial Land Supply with Projected Demand', memorandum from Lydia Neill to David Bragdon, May 14, 2003.
 - s. 'Identifying 2003 Industrial Land Alternatives Analysis Study Areas', memorandum from Tim O'Brien to Lydia Neill, July 9, 2003.
 - t. 'For the Purpose of Reducing the Land Under Consideration in the 2002 and 2003 Alternatives Analysis for Meet the Remaining Need for Industrial Land through Urban Growth Boundary Expansion', Staff Report, November 18, 2003.
 - u. 'Formation of Industrial Neighborhoods', memorandum from Lydia Neill to David Bragdon, October 24, 2003.
 - v. 'Developed Lots 5 Acres and Smaller Outside the UGB', memorandum from Amy Rose to Lydia Neill, November 18, 2003.
 - w. 'Employment Land Included in the 2002 Urban Growth Boundary Expansion', memorandum from Andy Cotugno to David Bragdon, March 10, 2003.
 - x. 'Identifying Additional Land for Industrial Purposes', memorandum from Tim O'Brien to Lydia Neill, March 7, 2003.
7. The Findings of Fact and Conclusions of Law in Exhibit G, attached and incorporated into this ordinance, explain how this ordinance complies with state law, the Regional Framework Plan and the Metro Code.

ADOPTED by the Metro Council this 24th day of June, 2004.

David Bragdon, Council President

ATTEST:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

Exhibit A to Ordinance No. 04-1040

[1.12] Protection of Agriculture and Forest Resource Land

1.12.1 Agricultural and forest land outside the UGB shall be protected from urbanization, and accounted for in regional economic and development plans, consistent with this Plan. However, Metro recognizes that all the statewide goals, including Statewide Goal 10, and Goal 14, Urbanization, are of equal importance to Goals 3 and 4, which protect agriculture and forest resource lands. These goals represent competing and, some times, conflicting policy interests which need to be balanced.

[1.12.1] **1.12.2** [Rural Resource Lands

Rural resource lands outside] When the Council must choose among agricultural lands of the same soil capability classification for addition to the UGB [that have significant resource value should actively be protected from urbanization. However, not all land zoned for exclusive farm use is of equal agricultural value], the Council shall choose agricultural land deemed less important to the continuation of commercial agriculture in the region.

[1.12.2] **1.12.3** [Urban Expansion

Expansion of the UGB shall occur in urban reserves, established consistent with the urban rural transition objective. All urban reserves should be planned for future urbanization even if they contain resource lands.] Metro shall enter into agreements with neighboring cities and counties to carry out Council policy on protection of agricultural and forest resource policy through the designation of Rural Reserves and other measures.

[1.12.3] **1.12.4** Farm and Forest Practices

[Protect and support the ability for farm and forest practices to continue. The designation and management of rural reserves by the Metro Council may help establish this support, consistent with the Growth Concept. Agriculture and forestry require long term certainty of protection from adverse impacts of urbanization in order to promote needed investments] Metro shall work with neighboring counties to provide a high degree of certainty for investment in agriculture in agriculture and forestry and to reduce conflicts between urbanization and agricultural and forest practices.

Exhibit A to Ordinance No. 04-1040

Protection of Agriculture and Forest Resource Land

1.12.1 Agricultural and forest land outside the UGB shall be protected from urbanization, and accounted for in regional economic and development plans, consistent with this Plan. However, Metro recognizes that all the statewide goals, including Statewide Goal 10, and Goal 14, Urbanization, are of equal importance to Goals 3 and 4, which protect agriculture and forest resource lands. These goals represent competing and, some times, conflicting policy interests which need to be balanced.

1.12.2 When the Council must choose among agricultural lands of the same soil classification for addition to the UGB, the Council shall choose agricultural land deemed less important to the continuation of commercial agriculture in the region.

1.12.3 Metro shall enter into agreements with neighboring cities and counties to carry out Council policy on protection of agricultural and forest resource policy through the designation of Rural Reserves and other measures.

1.12.4 Metro shall work with neighboring counties to provide a high degree of certainty for investment in agriculture in agriculture and forestry and to reduce conflicts between urbanization and agricultural and forest practices.

Exhibit B to Ordinance No. 04-1040

TITLE 4: INDUSTRIAL AND OTHER EMPLOYMENT AREAS

3.07.410 Purpose and Intent

A. The Regional Framework Plan calls for a strong economic climate. To improve the region's economic climate, **[the plan] Title 4** seeks to **provide and** protect **[the] a** supply of sites for employment by limiting **[incompatible uses within] the types and scale of non-industrial uses in Regionally Significant Industrial Areas (RSIAs)**, Industrial Areas and Employment Areas. **Title 4 also seeks to provide the benefits of "clustering" to those industries that operate more productively and efficiently in proximity to one another than in dispersed locations. Title 4 further seeks [T]to** protect the capacity and efficiency of the region's transportation system for **the** movement of goods and services, and to **[promote the creation of jobs within designated Centers and discourages certain kinds of commercial retail development outside Centers] encourage the location of other types of employment in Centers, Employment Areas, Corridors, Main Streets and Station Communities.** **[It is the purpose of Title 4 to achieve these policies.] The Metro Council will [consider amendments to this title in order to make the title consistent with new policies on economic development adopted] evaluate the effectiveness of Title 4 in achieving these purposes** as part of **its** periodic **[review] analysis of the capacity of the urban growth boundary.**

3.07.420 Protection of Regionally Significant Industrial Areas

A. Regionally Significant Industrial Areas (RSIA) are those areas **[that offer the best opportunities for family-wage industrial jobs] near the region's most significant transportation facilities for the movement of freight and other areas most suitable for movement and storage of goods.** Each city and county with land use planning authority over **[areas] RSIAs** shown on the **[Generalized Map of Regionally Significant Industrial Areas adopted in Ordinance No. 02-969] Employment and Industrial Areas Map** shall derive specific plan designation and zoning district boundaries of **[the areas] RSIAs within its jurisdiction** from the Map, taking into account the location of existing uses that would not conform to the limitations on non-industrial uses in **[subsection C, D and E] this section**, and **[its] the need [of individual cities and counties] to achieve a mix of [types of] employment uses.**

B. **[Each city and county with land use planning authority over an area designated by Metro on the 2040 Growth Concept Map, as amended by Ordinance No. 02-969, as a Regionally Significant Industrial Area shall, as part of compliance with section 3.07.1120 of the Urban Growth Management Functional Plan, derive plan designation and zoning district boundaries of the areas from the Growth Concept Map] Cities and counties shall review their land use regulations and revise them, if necessary, to include measures to limit the size and location of new buildings for retail commercial uses - such as stores and restaurants - and retail and professional services that cater to daily customers - such as financial, insurance, real estate, legal, medical and dental offices - to ensure that they serve primarily the needs of workers in the area. One such measure shall be that new buildings for stores, branches, agencies or other outlets for these retail uses and services shall not occupy more than 3,000 square feet of sales or service area in a single outlet, or multiple outlets that occupy more than 20,000 square feet of sales or service area in a single building or in multiple buildings that are part of the same development project, with the following exceptions:**

1. Within the boundaries of a public use airport subject to a facilities master plan, customary airport uses, uses that are accessory to the travel-related and freight movement activities of airports, hospitality uses, and retail uses appropriate to serve the needs of the traveling public; and

2. Training facilities whose primary purpose is to provide training to meet industrial needs.

C. [After determining boundaries of Regionally Significant Industrial Areas pursuant to subsections A and B, the city or county] **Cities and counties** shall [adopt implementing ordinances that limit development in the areas to industrial uses, uses accessory to industrial uses, offices for industrial research and development and large corporate headquarters in compliance with subsection E of this section, utilities, and those non-industrial uses necessary to serve the needs of businesses and employees of the areas] **review their land use regulations and revise them, if necessary, to include measures to limit the siting and location of new buildings for the uses described in subsection B and for non-industrial uses that do not cater to daily customers - such as bank or insurance processing centers - to ensure that such uses do not reduce off-peak performance on Main Roadway Routes and Roadway Connectors shown on Metro's Freight Network Map, November, 2003, below standards set in the 2004 Regional Transportation Plan or require added road capacity to prevent falling below the standards.**

D. [Notwithstanding subsection C, a city or county shall not approve:

1. A commercial retail use with more that 20,000 square feet of retail sales area in a single building or in multiple buildings that are part of the same development project;
or

2. Commercial retail uses that would occupy more than five percent of the net developable portion of all contiguous Regionally Significant Industrial Areas] **No city or county shall amend its land use regulations that apply to lands shown as RSIA on the Employment and Industrial Areas Map to authorize uses described in subsection B that were not authorized prior to July 1, 2004.**

E. [As provided in subsection C of this section, a city or county may approve an office for industrial research and development or a large corporate headquarters if:

1. The office is served by public or private transit; and

2. If the office is for a corporate headquarters, it will accommodate for the initial occupant at least 1,000 employees]

[F. A city or county] **Cities and counties** may allow division of lots or parcels into smaller lots or parcels as follows:

1. Lots or parcels [less] **smaller** than 50 acres may be divided into any number of smaller lots or parcels[;].

2. Lots or parcels [50 acres or] larger **than 50 acres** may be divided into smaller lots and parcels **pursuant to a master plan approved by the city or county** so long as the resulting division yields [the maximum number of lots or parcels of] at least [50 acres] **one lot or parcel of at least 50 acres in size**[;].

3. **Lots or parcels 50 acres or larger, including those created pursuant to paragraph (2) of this subsection, may be divided into any number of smaller lots or parcels pursuant to a master plan approved by the city or county so long as at least 40 percent of the area of the lot or parcel has**

been developed with industrial uses or uses accessory to industrial use, and no portion has been developed, or is proposed to be developed, with uses described in subsection B of this section.

4. Notwithstanding paragraphs 2[, **and**] 3 [**and**] of this subsection, any lot or parcel may be divided into smaller lots or parcels or made subject to rights-of-way for the following purposes:

- a. To provide public facilities and services;
 - b. To separate a portion of a lot or parcel in order to protect a natural resource, to provide a public amenity, or to implement a remediation plan for a site identified by the Oregon Department of Environmental Quality pursuant to ORS 465.225;
 - c. To separate a portion of a lot or parcel containing a nonconforming use from the remainder of the lot or parcel in order to render the remainder more practical for a permitted use; **or**
 - d. **[To reconfigure the pattern of lots and parcels pursuant to subsection G or this section]**
- [e.] To allow the creation of a lot for financing purposes when the created lot is part of a master planned development.

[G. A city or county may allow reconfiguration of lots or parcels less than 50 acres in area if the reconfiguration would be more conducive to a permitted use and would result in no net increase in the total number of lots and parcels. Lots or parcels 50 acres or greater in area may also be reconfigured so long as the resulting area of any such lot or parcel would not be less than 50 acres.]

[H] F. Notwithstanding subsections [C and D] **B** of this section, a city or county may allow the lawful use of any building, structure or land existing at the time of adoption of its ordinance to implement this section to continue and to expand to add up to 20 percent more floor area and 10 percent more land area. Notwithstanding subsection E of this section, a city or county may allow division of lots or parcels pursuant to a master plan approved by the city or county prior to **[December 31, 2003] July 1, 2004**.

3.07.430 Protection of Industrial Areas

A. **[In Industrial Areas mapped pursuant to Metro Code section 3.07.130 that are not Regionally Significant Industrial Areas, c] Cities and counties shall [limit new and expanded retail commercial uses to those appropriate in type and size to serve the needs of businesses, employees and residents of the Industrial Areas] review their land use regulations and revise them, if necessary, to include measures to limit new buildings for retail commercial uses - such as stores and restaurants - and retail and professional services that cater to daily customers – such as financial, insurance, real estate, legal, medical and dental offices - in order to ensure that they serve primarily the needs of workers in the area. One such measure shall be that new buildings for stores, branches, agencies or other outlets for these retail uses and services shall not occupy more than 5,000 square feet of sales or service area in a single outlet, or multiple outlets that occupy more than 20,000 square feet of sales or service area in a single building or in multiple buildings that are part of the same development project, with the following exceptions:**

1. Within the boundaries of a public use airport subject to a facilities master plan, customary airport uses, uses that are accessory to the travel-related and freight movement activities of airports, hospitality uses, and retail uses appropriate to serve the needs of the traveling public; and

2. Training facilities whose primary purpose is to provide training to meet industrial needs.

B. [In an Industrial Area, a city or county shall not approve:

1. A commercial retail use with more than 20,000 square feet of retail sales area in a single building or in multiple buildings that are part of the same development project; or

2. Commercial retail uses that would occupy more than ten percent of the net developable portion of the area or any adjacent Industrial Area] Cities and counties shall review their land use regulations and revise them, if necessary, to include measures to limit new buildings for the uses described in subsection A to ensure that they do not interfere with the efficient movement of freight along Main Roadway Routes and Roadway Connectors shown on Metro's Freight Network Map, November, 2003. Such measures may include, but are not limited to restrictions on access to freight routes and connectors, siting limitations and traffic thresholds. This subsection does not require cities and counties to include such measures to limit new other buildings or uses.

C. No city or county shall amend its land use regulations that apply to lands shown as Industrial Area on the Employment and Industrial Areas Map to authorize uses described in subsection A of this section that were not authorized prior to July 1, 2004.

D. Cities and counties may allow division of lots or parcels into smaller lots or parcels as follows:

1. Lots or parcels smaller than 50 acres may be divided into any number of smaller lots or parcels.

2. Lots or parcels larger than 50 acres may be divided into smaller lots and parcels pursuant to a master plan approved by the city or county so long as the resulting division yields at least one lot or parcel of at least 50 acres in size.

3. Lots or parcels 50 acres or larger, including those created pursuant to paragraph (2) of this subsection, may be divided into any number of smaller lots or parcels pursuant to a master plan approved by the city or county so long as at least 40 percent of the area of the lot or parcel has been developed with industrial uses or uses accessory to industrial use, and no portion has been developed, or is proposed to be developed with uses described in subsection A of this section.

4. Notwithstanding paragraphs 2 and 3 of this subsection, any lot or parcel may be divided into smaller lots or parcels or made subject to rights-of-way for the following purposes:

a. To provide public facilities and services;

b. To separate a portion of a lot or parcel in order to protect a natural resource, to provide a public amenity, or to implement a remediation plan for a site identified by the Oregon Department of Environmental Quality pursuant to ORS 465.225;

c. To separate a portion of a lot or parcel containing a nonconforming use from the remainder of the lot or parcel in order to render the remainder more practical for a permitted use; or

d. To allow the creation of a lot for financing purposes when the created lot is part of a master planned development.

E. Notwithstanding **[subsection B] subsection A** of this section, a city or county may allow the lawful use of any building, structure or land existing at the time of **[enactment of an] adoption of its ordinance [adopted pursuant to this section] to implement this section** to continue and to expand to add up to 20 percent more **[floorspace] floor area** and 10 percent more land area. **Notwithstanding subsection D of this section, a city or county may allow division of lots or parcels pursuant to a master plan approved by the city or county prior to July 1, 2004.**

3.07.440 Employment Areas

- A. Except as provided in subsections C, D and E, in Employment Areas mapped pursuant to Metro Code Section 3.07.130, cities and counties shall limit new and expanded retail commercial uses to those appropriate in type and size to serve the needs of businesses, employees and residents of the Employment Areas.
- B. Except as provided in subsections C, D and E, a city or county shall not approve a commercial retail use in an Employment Areas with more than 60,000 square feet of gross leasable area in a single building, or retail commercial uses with a total of more than 60,000 square feet of retail sales area on a single lot or parcel, or on contiguous lots or parcels, including those separated only by transportation right-of-way.
- C. A city or county whose zoning ordinance applies to an Employment Area and is listed on Table 3.07-4 may continue to authorize retail commercial uses with more than 60,000 square feet of gross leasable area in that zone if the ordinance authorized those uses on January 1, 2003.
- D. A city or county whose zoning ordinance applies to an Employment Area and is not listed on Table 3.07-4 may continue to authorize retail commercial uses with more than 60,000 square feet of gross leasable area in that zone if:
1. The ordinance authorized those uses on January 1, 2003;
 2. Transportation facilities adequate to serve the retail commercial uses will be in place at the time the uses begin operation; and
 3. The comprehensive plan provides for transportation facilities adequate to serve other uses planned for the Employment Area over the planning period.
- E. A city or county may authorize new retail commercial uses with more than 60,000 square feet of gross leasable area in Employment Areas if the uses:
1. Generate no more than a 25 percent increase in site-generated vehicle trips above permitted non-industrial uses; and
 2. Meet the Maximum Permitted Parking – Zone A requirements set forth in Table 3.07-2 of Title 2 of the Urban Growth Management Functional Plan.

Exhibit F to Ordinance No. 04-1040
Conditions on Addition of Land to the UGB

I. GENERAL CONDITIONS APPLICABLE TO ALL LANDS ADDED TO THE UGB

A. The city or county with land use planning responsibility for a study area included in the UGB shall complete the planning required by Metro Code Title 11, Urban Growth Management Functional Plan (“UGMFP”), section 3.07.1120 (“Title 11 planning”) for the area. Unless otherwise stated in specific conditions below, the city or county shall complete Title 11 planning within two years after the effective date of this ordinance. Specific conditions below identify the city or county responsible for each study area.

B. The city or county with land use planning responsibility for a study area included in the UGB, as specified below, shall apply the 2040 Growth Concept design types shown on Exhibit E of this ordinance to the planning required by Title 11 for the study area.

C. The city or county with land use planning responsibility for a study area included in the UGB shall apply interim protection standards in Metro Code Title 11, UGMFP, section 3.07.1110, to the study area until the effective date of the comprehensive plan provisions and land use regulations adopted to implement Title 11.

D. In Title 11 planning, each city or county with land use planning responsibility for a study area included in the UGB shall recommend appropriate long-range boundaries for consideration by the Council in future expansions of the UGB or designation of urban reserves pursuant to 660 Oregon Administrative Rules Division 21.

E. Each city or county with land use planning responsibility for an area included in the UGB by this ordinance shall adopt provisions – such as setbacks, buffers and designated lanes for movement of slow-moving farm machinery – in its land use regulations to enhance compatibility between urban uses in the UGB and agricultural practices on adjacent land outside the UGB zoned for farm or forest use.

F. Each city or county with land use planning responsibility for a study area included in the UGB shall apply Title 4 of the UGMFP to those portions of the study area designated Regionally Significant Industrial Area (“RSIA”), Industrial Area or Employment Area on the 2040 Growth Concept Map (Exhibit C). If the Council places a specific condition on a RSIA below, the city or county shall apply the more restrictive condition.

G. In the application of statewide planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) to Title 11 planning, each city and county with land use responsibility for a study area included in the UGB shall comply with those provisions of Title 3 of the UGMFP acknowledged by the Land Conservation and Development Commission (“LCDC”) to comply with Goal 5. If LCDC has not acknowledged those provisions of Title 3 intended to comply with Goal 5 by the deadline for completion of Title 11 planning, the city or county shall consider, in the city or county’s application of Goal 5 to its Title 11 planning, any inventory of regionally significant Goal 5 resources and any preliminary decisions to allow, limit or prohibit conflicting uses of those resources that is adopted by resolution of the Metro Council.

II. SPECIFIC CONDITIONS FOR PARTICULAR AREAS

A. Damascus Area

1. Clackamas County and Metro shall complete Title 11 planning requirements through the incorporation of this area into the greater Damascus/Boring Concept Plan planning effort currently underway. This planning shall be completed within the same time frame as specified in Ordinance No. 02-969B.
2. In the planning required by Title 11, subsections (A) and (F) of section 3.07.1120, Clackamas County or any future governing body responsible for the area shall provide for annexation of those portions of the area whose planned capacity is sufficient to support transit to the Tri-met District.
3. In the planning required by Title 11, subsections (A) and (F) of section 3.07.1120, Clackamas County or any future governing body responsible for the area shall provide for annexation of those portions of the area whose planned capacity is sufficient to support transit to the Tri-met District.

B. Beavercreek Area

1. Clackamas County or, upon annexation to Oregon City, the city and county, with Metro, shall complete Title 11 planning for the area.
2. This area shall be planned in conjunction with the adjoining tax lot added to the UGB in 2002, under Ordinance No. 02-969B.

C. Borland Area – North of I-205

1. Clackamas County or, upon annexation to the City of Tualatin, the city and county, in coordination with the Cities of Lake Oswego, Tualatin, and West Linn and Metro, shall complete Title 11 planning within four years following the effective date of Ordinance No. 04-1040. The county and city, in conjunction with Lake Oswego and West Linn and Metro shall recommend long-range boundaries in the Stafford Basin and general use designations for consideration by the Council in future expansions of the UGB.
2. Until the effective date of new regulations adopted pursuant to Title 11, the city or county with land use planning responsibility for the area shall not allow the division of a lot or parcel that is 50 acres or larger into lots or parcels smaller than 50 acres.

D. Tualatin Area

1. Washington County or, upon annexation to the Cities of Tualatin or Wilsonville, the cities, in conjunction with Metro, shall complete Title 11 planning within four years of the effective date of Ordinance No. 04-1040.

2. Title 11 planning shall incorporate the general location of the projected right of way location for the I-5/99W connector and the Tonquin Trail as shown on the 2004 Regional Transportation Plan.
3. The governments responsible for Title 11 planning shall consider using the I-5/99W connector as a boundary between the city limits of the City of Tualatin and the City of Wilsonville in this area.

E. Quarry Area

1. Washington County or, upon annexation to the cities of Tualatin or Sherwood, the cities, and Metro shall complete Title 11 planning for the area.
2. Title 11 planning shall, if possible, be coordinated with the adjoining area that was included in the UGB in 2002 under Ordinance No. 02-969B.
3. Until the effective date of new regulations adopted pursuant to Title 11, the city or county with land use planning responsibility for the area shall not allow the division of a lot or parcel that is 50 acres or larger into lots or parcels smaller than 50 acres.

F. Coffee Creek Area

1. Washington and Clackamas Counties or, upon annexation of the area to the City of Wilsonville, the city, and Metro shall complete the Title 11 planning for the area within four years of the effective date of Ordinance No. 04-1040.
2. The concept planning shall incorporate the general location of the projected right of way location for the I-5/99W connector and the Tonquin Trail as shown on the 2004 Regional Transportation Plan.

G. Wilsonville East Area

1. Clackamas County or, upon annexation of the area to the City of Wilsonville, the city, and Metro shall complete the Title 11 planning for the area within two years of the effective date of Ordinance No. 04-1040.
2. In the planning required by Title 11 a buffer shall be incorporated to mitigate any adverse effects of locating industrial uses adjacent to residential uses located southwest of the area.
3. Until the effective date of new regulations adopted pursuant to Title 11, the city or county with land use planning responsibility for the area shall not allow the division of a lot or parcel that is 50 acres or larger into lots or parcels smaller than 50 acres.

H. Cornelius

1. Washington County, or, upon annexation of the area to the City of Cornelius, and Metro shall complete the Title 11 planning for the area.

I. Helvetia

1. Washington County, or upon annexation of the area to the City of Hillsboro, the city, and Metro shall complete the Title 11 planning for the area.
2. Until the effective date of new regulations adopted pursuant to Title 11, the city or county with land use planning responsibility for the area shall not allow the division of a lot or parcel that is 50 acres or larger into lots or parcels smaller than 50 acres.