

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CREATING AND) RESOLUTION NO. 04-3488
APPOINTING MEMBERS TO THE FISH AND)
WILDLIFE HABITAT PROGRAM) Introduced by Council President Bragdon
IMPLEMENTATION WORK GROUP

WHEREAS, in Resolution No. 04-3440A, 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 and Wildlife Habitat and Directing Staff to Develop a Program to Protect and Restore Regionally Significant Fish and Wildlife Habitat, adopted on May 20, 2004, the Metro Council directed Metro staff to develop a program to protect and restore fish and wildlife habitat consistent with the Council's preliminary allow, limit, and prohibit decision and the economic, social, environmental, and energy consequences analysis; and

WHEREAS, as staff develops such a program it is critically important to review the program with local jurisdiction planners, developers, architects familiar with "green development," and non-profits working to protect habitat to develop a program that is effective in protecting habitat, workable for local jurisdictions to implement, and easy for citizens and developers to understand and use; and

WHEREAS, to ensure that staff has access to the knowledge, expertise, and input from such professionals, the Metro Council is hereby creating a temporary task force pursuant to Metro Code Section 2.19.060, which shall be known as the "Fish and Wildlife Habitat Program Implementation Work Group;" and

WHEREAS, the Fish and Wildlife Habitat Program Implementation Work Group shall have the responsibilities and charge described in Exhibit A to this resolution; and

WHEREAS, the Council President has appointed the members and designated a chair person as set forth in Exhibit A; and

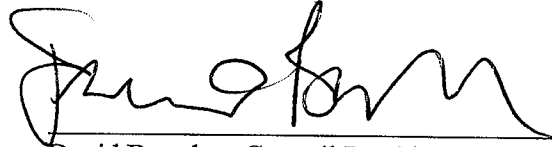
WHEREAS, the Council desires to confirm the appointments; now, therefore,

BE IT RESOLVED,

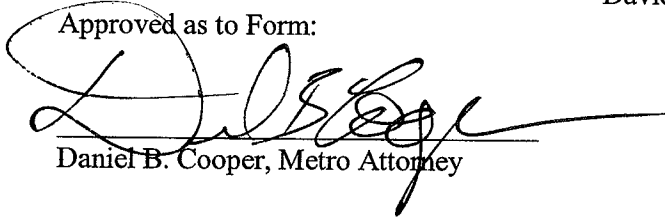
That a Metro task force is hereby created as set forth in Exhibit A attached hereto, which task force shall be called the "Fish and Wildlife Habitat Program Implementation Work Group" and shall consist of the members and designated chair person as set forth in Exhibit A. The Fish and Wildlife

Habitat Program Implementation Work Group shall continue in existence until the earlier date of (a) the day that the Metro Council takes final action on an ordinance to approve a Fish and Wildlife Habitat Program , or (b) one year from the date this resolution is adopted.

ADOPTED by the Metro Council this 19th day of August 2004.


David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper, Metro Attorney



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Resolution No. 04-3488
Exhibit A

CHARTER

of the

**METRO FISH AND WILDLIFE HABITAT
PROGRAM IMPLEMENTATION WORK GROUP**

ESTABLISHMENT AND PURPOSE. Metro has been at work developing a regional fish and wildlife habitat protection program for more than four years. Metro has undertaken this effort pursuant to Statewide Planning Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces and the Goal 5 administrative rule (OAR 660-023, hereinafter the “Goal 5 Rule”) promulgated by the Oregon Land Conservation and Development Commission (“LCDC”). The Goal 5 Rule permits, but does not require, Metro to develop a Goal 5 program. Metro determined that a regional habitat protection program was appropriate after conducting an analysis of Goal 5 programs adopted by local governments within the Metro region and concluding that a regional habitat protection program was needed in order to provide a consistent level of habitat protection across the region. The Goal 5 Rule requires Metro to follow a three-step process to establish a habitat protection program: first, to complete a habitat inventory of significant resources; second, to identify uses that conflict with the protection of the inventoried significant resources, and to determine whether to allow, limit, or prohibit such conflicting uses (the “ALP Decision”) based on an analysis of the economic, social, environmental, and energy consequences of allowing, limiting, or prohibiting them (the “ESEE Analysis”); and third, to develop a program consistent with the ALP Decision. Metro completed a draft habitat inventory in August 2003 and a draft ESEE Analysis and preliminary ALP Decision in May 2004.

Metro is now developing a program to implement the preliminary ALP Decision and the draft ESEE Analysis. Program development is an exceptionally complex task for several reasons. After the Metro Council adopts a program, it will have to be acknowledged by the LCDC, and then implemented by the local governments of the region, all of which have varying local habitat protection programs already in place. Thus, the program must be both consistent with the particular requirements of the Goal 5 Rule and flexible enough to be adapted to many different local jurisdictions. Mindful of these complexities, as part of the Metro Council’s May 2004 decision, the Council directed Metro staff to develop a proposed program consistent with the preliminary ALP Decision and the draft ESEE Analysis, and provided additional direction in specific areas (See Exhibit C to Resolution No. 04-3440A).

As the Metro staff develops a proposed program for the Metro Council’s review, it is in Metro’s interest, and in the interest of the citizens and local governments of the region, to establish a mechanism for obtaining the views and advice of land use professionals with hands-on, practical experience and expertise in implementing and working with habitat protection requirements in order to ensure that Metro’s habitat program is: (1) practical and easy for citizens and developers to understand and use, (2) workable for local jurisdictions to implement, and (3) effective in protecting regionally significant habitat. Accordingly, Metro establishes the Fish and Wildlife Habitat Program Implementation Work Group to provide advice to Metro staff on its development of a proposed habitat protection program.

SCOPE AND CHARGE. The Work Group will review and comment on the implementation issues associated with the regulatory and non-regulatory program elements of the program as drafted by Metro staff. Metro intends to develop a standard approach that is specific enough that a local government could adopt it without additional work, in order to allow smaller localities without substantial resources to comply with the program without additional expense, and an alternative, flexible approach that allows jurisdictions to vary from the standard approach to meet local needs, if they can prove that their alternative approaches will achieve substantially the same results as the standard approach. Issues on which the Work Group members' experience and expertise will be essential to help Metro develop a clear, workable, effective program may include:

Standard Approach

- ***Clear and objective regulations.*** The adopted program must provide a set of clear and objective standards that are easy to understand and follow without having local jurisdictions use any discretion in reviewing development requests.
- ***Discretionary review alternative.*** Provided that the program provides a clear and objective alternative, then it can also provide a more discretionary alternative approach.
- ***Definition and application of "limit" designation.*** The preliminary ALP decision applied three levels of limit (lightly, moderately, and strictly) to habitat based on habitat quality and the urban development value of land. Development will be more restricted in habitat that received a strictly limit designation than a lightly limit designation.
- ***Capacity issues.*** At the site level, protecting fish and wildlife habitat may have an impact on whether a site may be developed to its full, zoned capacity. The Work Group may be asked to review tools such as density transfers and clustered development that could help maintain capacity, especially when used in specific places such as a concept planning area.
- ***Mitigation requirements.*** Development in habitat areas will have an impact on habitat quality, and mitigation may be required at a ratio determined by the limit designation. Specific components to be considered when developing mitigation standards include the effectiveness of mitigation, the location where mitigation must occur, and the level of mitigation required.
- ***Design standards.*** The impacts of development in habitat areas may be minimized by using habitat friendly development techniques such as low impact development (natural stormwater retention) and clustering to preserve open space and habitat areas. Design standards may be required in some areas and encouraged in others.
- ***Tree protection.*** Many jurisdictions in the region have some tree protection standards in place; however, the amount of protection varies. Standards for protecting tree groves and forests could be implemented as part of the habitat protection program.
- ***Vesting.*** Representatives of major institutional facilities and large, multi-phased development projects believe that their right to develop properties should be vested once they have committed significant financial resources to draft and get approval for multi-year master plans for their projects. Approval criteria for making such projects exempt from the habitat protection program could be developed.

Alternative Flexible Approach

- ***Performance standards.*** In order to give local jurisdictions the option to vary from Metro's standard approach, the program must include performance standards and evaluation methods to determine whether the alternative approaches will meet the substantial intent of the regional program. The Tualatin Basin program falls within

this category, as would a riparian or wildlife district plan for a specific watershed or stream reach.

Non-Regulatory Program Elements

- ***Incentives for habitat protection.*** Metro has committed to developing non-regulatory methods of habitat protection and restoration that include technical assistance, education, grants, and working with other jurisdictions to provide property tax credits. These incentives will be implemented along with a regulatory program.

METRO LEGAL RESPONSIBILITIES. Metro retains sole responsibility for the final development and approval of a fish and wildlife habitat protection program and for all decisions regarding matters under consideration by the Work Group.

CREATION AND TERM OF WORK GROUP. In accordance with Metro Code sections 2.19.060 and 2.19.070(c), the Work Group shall terminate on the earlier of one year from the date this charter is approved by resolution of the Metro Council, or on the day that the Metro Council takes final action on an ordinance to approve a fish and wildlife habitat protection program. A Work Group member that misses three consecutive meetings shall be considered to have resigned from the Work Group. Such vacancies may be filled by persons nominated by the Chair and with the concurrence of the Planning Director.

MEMBERSHIP. The Work Group shall consist of up to 16 members, including a member designated as Chair, appointed by the Metro Council President and confirmed by the Metro Council. All members of the Work Group shall be persons possessing demonstrated professional or personal qualifications relevant to achieving Metro’s mission to develop a clear, workable, effective fish and wildlife habitat protection program. Metro shall ensure that the membership of the Work Group represents and includes a broad range of experts in the development field. Each member shall serve without compensation and shall not be considered an employee of Metro.

MEETINGS. The Work Group shall meet two to four times per month at the call of its Chair, with the concurrence of the Director of the Metro Planning Department (“Planning Director”). Eight members shall constitute a quorum for the conduct of business, and any recommendation by the Work Group to Metro shall require an affirmative vote of at least a majority of the total Work Group members present at a meeting. Each Work Group member shall be provided the opportunity to include minority or dissenting views to accompany formal recommendations made by the Work Group to Metro staff. The Chair shall appoint a substitute chair in the event that the Chair cannot attend a meeting.

Meetings will be conducted consistent with the requirements of the Oregon Public Meetings Law. ORS 192.610 through 192.710. Notice of each meeting shall be published ahead of time, and each meeting shall be open to the public. The Chair and the Planning Director shall agree on the proposed agenda for each meeting sufficiently in advance of the meeting so that the agenda can be included in the meeting notice. Interested members of the public may attend meetings and file statements with the Work Group and, if permitted by the Chair and in accordance with Work Group procedures, may speak at a meeting. Meetings may be adjourned at the Chair’s discretion.

SUBJECTS TASK FORCE SHALL ADDRESS. The Planning Director, in coordination with the Work Group Chair, will submit current issues, such as the issues described above in this charter, for the Work Group's consideration and comment.

FUNDING AND SUPPORT SERVICES. Metro shall provide the Work Group with sufficient facilities in which to conduct its meetings and to provide a repository for its minutes and other records. Metro will also provide the Work Group with appropriate clerical support as needed. Metro shall provide such additional funding as reasonably necessary to achieve the purposes for which the Work Group was created and shall provide any further guidelines and management controls as may be necessary to further the objectives of the Work Group.

APPOINTMENT OF MEMBERS. The members of the Work Group shall be:

**PROGRAM WORKING GROUP
CONFIRMED MEMBERS TO-DATE**

August 19, 2004

<i>INTEREST/AFFILIATION</i>	<i>NAME</i>	<i>CONTACT INFORMATION</i>
Chair	Pam Wiley, Natural Resource Consultant	
Industrial/Commercial Developer (2 positions)	Martin Schott, Schott & Associates Greg Summers, Jones & Stokes	503-829-6318 503-248-9507
Major Institutions	To be nominated	
Residential Developer (suburban development) (1 position)	Craig Brown, Matrix Development	503-620-8080
Residential Developer (experienced in environmental zones) (1 position)	To be nominated	
Natural Resource Planners with experience implementing habitat protection (4 positions)	Kerry Rappold, Wilsonville Denny Egner, Lake Oswego Barbara Fryer, Beaverton To be nominated	503-570-1570 503-697-6576 503-526-3718
Transportation Provider familiar with EIS (2 positions)	Tom Boullion, Port of Portland To be nominated, ODOT	503-944-7615
Practitioner familiar with green development (1 position)	Mike Faha, Greenworks PC	503-222-5612
Water Provider (1 position)	Nora Curtis, Clean Water Services (Alternate: Heidi Berg, CWS)	503-844-8118
Non-profit: Planning for green infrastructure (1 position)	Jim Labbe, Audubon Society of Portland	503-292-9471
Property Owner (1 position)	Kevin Kohnstamm	503-274-2542

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3488 FOR THE PURPOSE OF CREATING AND APPOINTING MEMBERS TO THE FISH AND WILDLIFE HABITAT PROGRAM IMPLEMENTATION WORK GROUP

Date: August 6, 2004

Prepared by: Chris Deffebach and Paul Ketcham

CONTEXT AND BACKGROUND

Metro Council has provided leadership in addressing growth management issues by working with citizens, elected officials and diverse interest groups to craft a vision of how the region will grow. Metro's 2040 Growth Concept and other policies identify the need to balance natural resource protection with urban development while the region grows. In 1998 the Metro Council adopted Title 3 of the Urban Growth Management Functional Plan to protect water quality and manage flood areas. Title 3 also included a commitment to conserve, protect, and enhance fish and wildlife habitat within "fish and wildlife habitat conservation areas."

In 2000, Metro Policy Committee created a Vision Statement to help guide the planning process for fish and wildlife habitat protection. The overall goal of the fish and wildlife habitat protection program is: "...to conserve, protect and restore a continuous ecologically viable streamside corridor... that is integrated with the surrounding urban landscape." 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 and contribute significantly to our region's livability." Metro is currently developing a regional fish and wildlife habitat program, following the 3-step process established by the State Land Use Planning Goal 5 administrative rule (OAR 660-023).

The Goal 5 rule calls for an inventory of regionally significant habitats, an analysis of economic, social, environmental and energy (ESEE) tradeoffs involved in protecting or not protecting habitats, and adoption of a program to carry out the decision of the ESEE tradeoff analysis. Metro completed the first step in August 2002 by conducting an inventory of regionally significant fish and wildlife habitat. Metro conducted the second step in two phases. In October 2003, Metro Council adopted Resolution #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. On May 20, 2004 the Metro Council adopted Resolution #04-3440A, 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 and Wildlife Habitat and Directing Staff to Develop a Program to Protect and Restore Regionally Significant Fish and Wildlife Habitat, which represents a modified regulatory Option 2B. The Council directed staff to develop a program to protect and restore fish and wildlife

habitat consistent with the directives in Resolution 04-3440A, including regulatory and non-regulatory components.

Metro is now in the process of completing the third step of the Goal 5 planning process. This step involves developing a regional program to protect and restore regionally significant fish and wildlife habitat consistent with the Council's preliminary decisions in the ESEE tradeoff analysis. Metro Council will consider the habitat protection program as an amendment of the 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.

As Metro staff develops a proposed program for Metro Council's review, it is in Metro's interest, and the interest of the citizens and local governments of the region, to establish a Fish and Wildlife Program Working Group for the purpose of obtaining the views and advice of land use professionals with hands-on, practical experience and expertise in developing, implementing, and working with habitat protection requirements. It is Metro's intent to ensure that the regional habitat program is:

- Practical and clear for citizens and developers to understand and use;
- Workable for local jurisdictions to implement; and
- Effective in protecting regionally significant habitat.

A wide variety of existing local habitat protection programs are already in place, and it is Metro's intent to draw on the experience and knowledge of individuals who can identify what habitat protection approaches work well and those that do not. In addition, it is Metro's intent to develop a regional program that augments local programs already in place and complements them where possible to achieve a greater degree of consistency and effectiveness in habitat protection across the region.

As described in the Charter that is an Exhibit of this Resolution, the Fish and Wildlife Program Work Group, the charge will review and comment on the implementation issues associated with the regulatory and non-regulatory program elements of the program as drafted by Metro staff. The Work Group will provide comments to Metro staff.

The Fish and Wildlife Work Group will be a Metro task force formed under Metro Code sections 2.19.060 and 2.19.070 and will consist of up to 16 members, including a member designated as Chair, appointed by the Metro Council President and confirmed by the Metro Council. The Work Group will advise Metro staff. The Metro Planning Director, in coordination with the Work Group Chair, will identify relevant agenda items for review and comment. All members of the Work Group will be individuals who have professional or personal qualifications relevant to Metro's objective to develop a clear, workable, and effective fish and wildlife habitat protection program. Although not required because the work group will be advising staff only, and not the Council, work group meetings will nevertheless be conducted consistent with the requirements of the Oregon Public Meetings Law (ORS 192.610 through 192.710).

The Work Group Charter lists the membership and provides additional information on the operation of the Work Group. Metro intends the work group to include a broad geographic representation and a diversity of viewpoints and interests, focusing on individuals who have professional or personal qualifications relevant to Metro's objective of developing a clear, workable, and effective fish and wildlife habitat protection program. To this end, the proposed membership includes developers or owners of industrial, commercial, institutional, suburban residential, and infill properties; local jurisdiction planners with experience implementing environmental codes for habitat protection; and individuals with expertise in principles of landscape architecture, green development practices, transportation planning and public facilities planning.

ANALYSIS/INFORMATION

1. Known Opposition:

There is no known opposition to the formation of a program work group.

2. Legal Antecedents:

The work group is being formed pursuant to Metro Code section 2.19.060, the provisions governing the creation of limited duration task forces.

The Metro Council has benefited greatly from the advice of a number of different policy, citizen and technical committees on matters related to development of a regional fish and wildlife habitat protection program, and it is expected that this work group will similarly assist the development of a practical, workable, and effective program. In particular, the Goal 5 Technical Advisory Committee (Goal 5 TAC) has played an essential advisory role on scientific and technical issues since its formation in 1999. The Goal 5 TAC is composed of more than 20 representatives from local jurisdictions, natural resource agencies such as Oregon Department of Fish and Wildlife, U.S. Fish and Wildlife Service, Oregon Department of Environmental Quality, and National Oceanic and Atmospheric Administration Fisheries, consulting firms, non-governmental organizations, and citizens. Other committees that have provided technical guidance to Metro in the fish and wildlife habitat protection planning process have included: the Water Resources Policy Advisory Committee (WRPAC), the Metro Technical Advisory Committee (MTAC), the Economic Technical Advisory Committee (ETAC), the Social Advisory Committee, the Governor's Independent Multidisciplinary Scientific Team (IMST) and the Northwest Power Planning Council's Independent Economic Advisory Board (IEAB). The latter two committees were external to Metro engaged for the purpose of peer review of technical documents and methods related to the inventory and ESEE analysis.

3. Anticipated Effects:

By approving Resolution No. 04-3488, the Metro Council can better serve the public by creating a work group to obtain the views and advice of land use practitioners and other knowledgeable individuals with hands-on experience and expertise in implementing and working with habitat protection programs both within and outside the region. This work group will help Metro

achieve its intent to craft a regional fish and wildlife habitat program that is practical, workable and effective.

4. Budget Impacts:

Budget impacts should be minimal as Work Group members will serve without compensation and will not be considered employees of Metro. Meeting facilities will be provided by Metro as well as clerical support as needed. Metro staff will prepare the draft work program products for review and comment.

5. Outstanding Questions: None.

RECOMMENDED ACTION

Staff recommends adoption of Resolution No.04-3488.

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