

A G E N D A

600 NORTHEAST GRAND AVENUE PORTLAND, OREGON 97232-2736



METRO

TEL 503-797-1540 FAX 503-797-1793

MEETING: METRO POLICY ADVISORY COMMITTEE

DATE: September 8, 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 FOR NON-AGENDA ITEMS			3 min.
4	CONSENT AGENDA • Meeting Summary for July 14 & 28, 2004	Becker	Decision	5 min.
5	COUNCIL UPDATE	Newman		5 min.
6	GOAL 5: TUALATIN BASIN APPROACH/REGIONAL PROGRAM ELEMENTS	Deffebach	Discussion	30 min.
7	PERFORMANCE MEASURE REVIEW	Uba	Introduction	30 min.

UPCOMING MEETINGS:

September 22, 2004 & October 13, 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.

To receive assistance per the Americans with Disabilities Act,
call the number above, or Metro teletype 503-797-1804.

To check on closure or cancellations during inclement weather please call 503-797-1700.

METRO POLICY ADVISORY COMMITTEE MEETING RECORD

July 14, 2004 – 5:00 p.m.

Metro Regional Center, Council Chambers

Committee Members Present: Charles Becker, Nathalie Darcy, Rob Drake, Dave Fuller, Gene Grant, John Hartsock, Tom Hughes, Richard Kidd, Lisa Naito, Doug Neeley, Wilda Parks, Larry Smith, Ted Wheeler

Alternates Present: Larry Cooper,

Also Present: Beverly Bookin, CCA/CREEC; Hal Bergsma, City of Beaverton; Cindy Catto, AGC; Danielle Cowan, City of Wilsonville; Brent Curtis, Washington County; Kay Durtchi, MTAC; Meg Fernekees, DLCD; Ed Gallagher, City of Gresham; Laura Hudson, City of Vancouver; Jerry Johnson, Johnson Fardner LLC; Stephen Lashbrook, City of Lake Oswego; Irene Marvich, League of Women Voters; Laura Pryor, Judge – Gilliam County; Jonathan Schlueter, Westside Economic Alliance; Lainie Smith, ODOT; David Zagel, TriMet

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

Metro Staff Present: Kim Bardes, Dan Cooper, Andy Cotugno, Chris Deffebach, Sherry Oeser, Mary Weber

INTRODUCTIONS

Mayor Charles Becker, MPAC Chair, called the meeting to order 5:05 p.m. Those present introduced themselves.

1. ANNOUNCEMENTS

Chair Becker asked the members if, as there weren't a lot of agenda items on the docket, they would be interested in canceling the July 28th and August 28th meetings or would they rather cancel the two meetings in August? The committee agreed that they would hear the GMEL presentation on July 28th and cancel the two August meetings.

3. CITIZEN COMMUNICATIONS

Mayor Dave Fuller gave an overview of a meeting that was held in Wood Village about Goal 5 and a man who clear-cut his property. The meeting was held because citizens were concerned about Goal 5 and what it meant for their community and properties.

Council President Bragdon said that they would have to address rumors head on and let the public know that there were a lot more outreach and public involvement opportunities to come, and that this process was a very long process, and it was a project that had already been on the table for two years.

Richard Kidd said that Forest Grove had a policy that citizens had to get a permit to cut a tree. However, the system was set up so that the permit was free, but a person from the city would go out to look at the tree and try to convince the citizen not to cut it down.

Dave Fuller said that there was wide interest and high attendance at the Wood Village meeting.

Gene Grant said that there were developers in his area trying to buy up land and clear some of it for development. He said that the only way to get people to stop clear cutting was to convince them that their rights were protected and also to address the taking rights issue.

Lisa Naito agreed with Gene Grant. She suggested that they put out some sort of assurance to the public. She admitted that if someone wanted to clear-cut their property then no amount of public outreach or education would necessarily stop them.

Dave Fuller said that when people clear cut lots they actually lessened the value of their property.

Lisa Naito said that sharing that type of information/education with the public might help.

4. CONSENT AGENDA

Meeting Summary for June 9, 2004.

Motion:	Rob Drake, Mayor of Beaverton, with a second from Richard Kidd, Mayor of Forest Grove, moved to adopt the consent agenda without revision.
Vote:	The motion passed unanimously.

5. COUNCIL UPDATE

Council President David Bragdon said that there wasn't much to report as things had quieted since the UGB decision had been made. He introduced Wilda Parks and Ted Wheeler as the new citizen representatives for Clackamas County and Multnomah County respectively. He said they would be hearing about the Beaverton Town Regional Center work shortly, and he told them about a Centers tour of Beaverton and Hillsboro, and he also said that there was another one coming up for Gresham.

6. BEAVERTON REGIONAL CENTER

Jerry Johnson gave a presentation on the Beaverton Regional Center project. Those slides are attached and form part of the record.

Tom Hughes said that the presentation touched on issues that Hillsboro had experienced. If they were to find funding, it would need to go into parking structures. They would also need to project how that would affect the rents of the area. He suggested that maybe as a group they could brainstorm on the parking structure hurdle and find ways to work with that and still achieve their goals.

Jerry Johnson said that parking was the biggest issue they had as a region when planning for center growth. It was especially difficult for the smaller communities. Once the parking issue was addressed then most of the problems for center growth would have been addressed. It was a large funding issue, and it was difficult for smaller cities to pick up the tab.

John Hartsock asked if the cost per square foot on structure parking was less than or greater than the adjacent dirt cost?

Jerry Johnson said that price ran about \$15,000 or \$20,000 per space. The current rule of thumb was \$35 or more for structured parking. Development looked at the residual. Rents were covering construction costs and what was left over was what they could afford to pay for parking. That was your land value, so if you changed your rent structure or sale price, your residual would turn around quickly and the land value would go from \$10 to \$35 very quickly. At the \$35 point, it would then make sense for them to build the structured parking.

Gene Grant said that parking for offices was not the be all or end all – he said that you could not put up parking structures and expect to fill commercial office space. The high-rise office buildings were located on the freeway interchanges.

Jerry Johnson said that there were areas that were stronger as a location for a structure for office buildings. He said that primary locations would have a lot of capacity, but secondary locations may take some time to build up. He said that Beaverton was centrally located but those businesses on the periphery would have a harder time developing the rent curve enough to get the funding to build a parking structure.

Gene Grant said that if they had money in Damascus or Happy Valley and tried to attract high-rise developers out there, they would not see any real action. He said that Mr. Johnson had indicated that low-income housing, senior housing, and condominium housing worked well for development of parking structures. He said that in most cases those catered to senior or young adult. The ones that you wouldn't attract to that type of housing were families with children. He said that was a segment that they would not be able to budge.

Jerry Johnson said that he was right, and that there was a large part of the market that would settle outside the regional centers. That was the nature of the housing appeal for the different groups/markets.

Rob Drake thanked Metro for the grant to help their downtown. The process confirmed some things for them and they also learned some things by participating. He said that one consistent thing he had heard from constituents since light rail had been brought to Beaverton was frustration over the lack of vertical parking along light rail. The study gave them the opportunity to pull properties together. Some assistance for parking might give investors or developers more incentive to invest in those areas. The process reminded Beaverton Council of some of the opportunities that were available, and the tools that might be utilized to achieve healthier centers.

7. TUALATIN BASIN FISH & WILDLIFE PROGRAM

Brent Curtis gave a PowerPoint presentation on the Tualatin Basin Fish & Wildlife Program. Those slides are attached and form part of the record.

Doug Neeley asked if every jurisdiction was required to do the job.

Brent Curtis said that eventually everyone in the region would participate. If Metro made it part of their functional plan then each one of the local governments that was a member of the coordinating committee had said that they would take it to their local elected officials as ordinances to implement the program.

Each one of those governments would then make a decision about whether they would implement the program in whole or substantial part.

Doug Neeley said that during the presentation Mr. Curtis had said something about not utilizing the System Development Charge (SDC) for Goal 5 resources, and he wanted to know if that would include park SDC or would they look at it in a different way by each jurisdiction.

Brent Curtis said a park was a park and not a Goal 5 natural resource. If a park had a Goal 5 resource but was chiefly a park they could then charge SDC.

Doug Neeley said that SDC could be used for purchasing new land for parks. Therefore, could an SDC for parks, or the procurement of open spaces, be included in the program?

Brent Curtis said it would have secondary or ancillary benefits as Goal 5 resources, and that was probably legal, but if the chief reason he wanted to use a park SDC was to buy and reserve natural resources that weren't for parks, that was a dubious legal proposition.

Larry Cooper expressed concern about adding fees/taxes to the burden of taxpayers.

Brent Curtis said that they all had to continue to meet federal law. A big part of the SWM fees was to respond to clean water act requirements for the sewer system. He said it would be a good thing to take the existing fee structure and use it for Goal 5 benefits. The question, at heart, was do the constituencies, as represented by their elected officials, want to improve the environmental health of each site. He said that they had two fundamental choices: 1) try to do that on the back of developers, or 2) ask more broadly if that was a public good/benefit.

John Hartsock said the problem with that was that they were not asking the community.

Brent Curtis said that he was talking about a fee that was in place and adjusting it to apply to the exact same purpose that the people in the region had collected it for. He said that the opposite approach would be a tax.

Several people said that no matter what you called it, that was still a tax.

Brent Curtis said that the program was currently only a proposal. It still had to be evaluated by the coordinating committee. They had notified 40,000 property owners and they would be engaging in outreach, and there would be another notice to those same property owners before they were done.

Rob Drake said they had a good point but the clean water act would ultimately dictate on that issue. The constituents would eventually decide to either protect it or not. He said that he would personally rather implement something like that through a local decision. He said he was willing to support clean water. He suggested they offer a payment structure that was fair and applied some compensation.

Tom Hughes said that the other side of that was that the local jurisdictions could collect the fee throughout the region. The fee would be to improve the health of resources. The federal government would tell them that they had to do that. As they looked around for funding resources to accomplish those goals, they would know that they could not improve the quality of the resource unless there was additional money to put into it. He said that he thought the most politically saleable thing to happen

would be to raise the money to put towards the resource to restore and improve the resource. That would take care of federal mandates and any other mandates that they had to meet.

Dave Fuller said that the real issue was property rights. He said that people were feeling that there were levels of government above the local government that was forcing them to do things to their property that they would do anyway, but perhaps in a different manner. He said that his impression was that people would mitigate their own problem by getting rid of it before it happened.

Susan McLain said that they all strongly wanted to figure out how to protect property rights. Metro and the Tualatin Basin had given the public options. The people might object to the fees and how they added up, but they always seemed to want to protect the environment in the long run.

Richard Kidd said that he was on the committee that worked on the program. He said that constituents had told them that they liked the environment, and they live where they live because it was a great place to live, work, and play. He suggested that constituents would want to know what they were getting for the fee they were paying, and therefore the project lists should be supplied to the public so that people could see what their money was buying them.

Dave Fuller said that each individual property owner would want to know what he or she would get for the fee and how their property would be affected.

Richard Kidd said that each person that went to the open house would be able to see how his or her property fit into the program.

There being no further business, Chair Becker adjourned the meeting at 7:09 p.m.

Respectfully submitted,

Kim Bardes
MPAC Coordinator

ATTACHMENTS TO THE RECORD FOR JULY 14, 2004

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

AGENDA ITEM	DOCUMENT DATE	DOCUMENT DESCRIPTION	DOCUMENT NO.
#7 Tualatin Basin Fish & Wildlife Program	July 2004	PowerPoint slides of the Beaverton Regional Center Development Strategy presentation by Jerry Johnson	071404-MPAC-01

METRO POLICY ADVISORY COMMITTEE MEETING RECORD

July 28, 2004 – 5:00 p.m.

Metro Regional Center, Council Chambers

Committee Members Present: Charles Becker, Rob Drake, Andy Duyck, John Hartsock, Tom Hughes, Kent Hutchinson, Richard Kidd, Margaret Kirkpatrick, Wilda Parks, Ted Wheeler

Alternates Present: Larry Cooper, Karen McKinney

Also Present: Beverly Bookin, CCA/CREEC; Ron Bunch, City of Gresham, Bob Clay, City of Portland, Danielle Cowan, City of Wilsonville; Meg Fernekees, DLCD; Stephen Lashbrook, City of Lake Oswego; Leeanne MacColl, League of Women Voters; Irene Marvich, League of Women Voters; Amy Scheckla-Cox, City of Cornelius

Metro Elected Officials Present: Liaisons –David Bragdon, Council President

Metro Staff Present: Kim Bardes, Dan Cooper

INTRODUCTIONS

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

1. ANNOUNCEMENTS

Chair Becker announced that the meetings for August had been cancelled.

3. CITIZEN COMMUNICATIONS

There were none.

4. CONSENT AGENDA

Meeting Summary for July 14, 2004.

Due to a lack of quorum this was deferred to the next meeting.

5. COUNCIL UPDATE

Council President David Bragdon said that Metro would be appointing a technical implementation team consisting of city managers for Goal 5. They would give advice on program development. Metro would be considering a resolution in the middle of August to clarify that what Metro was proposing for Goal 5 would not effect residential property owners with regard to activities that did not relate to land use permits. When that was complete it would be sent out by mail to MPAC members.

Dan Cooper said that Metro was on a two-track appeal process regarding the UGB industrial land supply decision. Metro had received four notices of intent to file appeals at LUBA. The LUBA process required petitioners to file the appeal, then Metro was required to file the record, and then LUBA would write their briefs. A party could raise any issue at LUBA that was in the appeal – they would not be restricted to the issue that they had personally raised. The City of Hillsboro, Clackamas County, the City of Sandy, and 1000 Friends of Oregon had raised issues on the Urban Growth Boundary decision. The time for initiating

additional appeals to LUBA had passed, and the current time frame was for anyone who was interested in those appeals to petition to intervene. That deadline was in early August. At the commission level, where the deadline to file objections had passed and there was no opportunity for anybody to intervene, Metro received 11 sets of objections. The objectors had to declare what they were objecting to and that gave them standing to appear in front of the commission, and to go to the court of appeals. Dan Cooper read to the committee the list of objectors and their stated objections.

Meg Fernekees said that LCDC would be scheduling a hearing on this either at Metro or in Salem. She would make sure that MPAC was informed when details had been ironed out.

6. GREATER METROPOLITAN EMPLOYMENT LANDS STUDY (GMELS)

Bev Bookin reviewed the contents of the packet for GMELS and then gave a PowerPoint presentation on GMELS. The slides from this presentation are attached and form part of the record.

Rob Drake asked if by “sanctuary” Ms. Bookin meant letting land sit empty and wait for the market to respond. He wanted to know if a community needed a hospital in the short term would it go into the middle section of the Exploratory Model, mixed-use zoning, or would the jurisdiction have to wait until planning and funding was acquired to fit into the “sanctuary zoning” section.

Bev Bookin said that they were not sure. She said that they would want the option to work with local and regional government to find the proper sites for hospitals and medical facilities. They needed to pay attention to the supply and demand in order to properly prepare for the demand in the right places.

Ted Wheeler asked if, when she said that outer neighborhoods and inner neighborhoods were designed specifically to preserve low-to-mediate income housing, did she mean income or density?

Bev Bookin said she meant density.

Ted Wheeler asked how it would work for OHSU or an OHSU type campus?

Bev Bookin said that OHSU was established. They wanted to expand and because of where they were they could not be accommodated in another way.

Ted Wheeler asked how this new Euclidian process would have helped them 10 years ago.

Bev Bookin said that the new process would generally work better for new sites.

John Hartsock asked how hospitals fed into the needs analysis for the state.

Bev Bookin said they didn't know yet. The state was looking at Goal 14 and Goal 9 and the DCLD was one of the funders and have indicated that they would like to start planning for institutions.

Bev Bookin continued her presentation.

John Hartsock asked when GMELS would be ready to apply to Damascus? He suggested that Damascus would be a good testing bed for GMELS.

David Bragdon said that the GMELS committee had just received the same presentation two weeks ago and there had been several questions for the technical group to research and hone. He said that they would meet again in September. No one had suggested that they were ready to implement it or test it yet.

John Hartsock said that the concept planning work for Damascus would start in October. He felt it would be good to utilize the GMELS process for Damascus right from the outset.

Bev Bookin suggested that it might help to create a model ordinance to show a typical zone from the middle category (see "A New Definitional Framework An Exploratory Model" slide). Where to go and find an existing zone that had good design performance standards, and write it up as an ordinance to show people how it could work. She said she had heard from Oregon City that they had created new zones and they think that work is comparable to the Euclidian model. She said the questions to ask with applying the model were: is it theoretically and technically sound, and is it politically sound?

John Hartsock said that the concept made sense. The concern was with redevelopment of existing buildings when the use runs out and the model looked like it might solve some of those problems.

Stephan Lashbrook said that there was a lot of merit in moving towards performance and design focus. He urged them to keep in mind that the potential problem for small jurisdictions was that they were not geared for enforcement.

John Hartsock wondered how they would handle the situation where ABC company left a site after some years and then XYZ company moved in, but didn't know the new model. How would they get the new company to comply with the new process?

Bev Bookin said that the committee had not yet taken it that far. They were trying to find a different way to look at land use demand and supply, and the old model of silos didn't work anymore.

Andy Cotugno said that it was a good piece of work and collaboration between the public and private sectors. He said the luxury that they had with the GMELS work was that it was not currently on a critical path and there were no deadlines as yet to be met. He said this was beneficial because it laid out good research work for the next round of land use planning. It also raised questions about how to make decisions down the line. The interesting thing about the research mode of this was that they were able to arrive at an early decision that the commercial employment land needs were satisfied and the shortfall was in the industrial land supply. That was only 20% of the land need. They sort of backed into the discussion about whether office use should be allowed on the 20% piece without examining if the other 80% really was sufficient to accommodate office and other uses that demand that land. Going into phase 2 would hopefully provide an opportunity to analyze these issues in more depth.

Bev Bookin said if they could focus use of land to inside the boundary then they could minimize the need to expand the boundary to capture that land.

Ted Wheeler said that once they were done with the theoretical and started focusing on the political, they should go back and decide on the staples. He said it looked like the new system would allow for more flexibility. He asked if any other jurisdiction was currently doing this?

David Bragdon said that during discussions by the committee there were different attitudes towards flexibility. He said that he got the sense that there was positive support for flexibility moving from industrial towards residential. There was less support for migration from residential and middle of the

road mixed use towards the industrial sanctuary zone. It related to the need to preserve some land for formats of business that needed to be protected or that weren't compatible with other things. He said that they did not want to drive out that specialized business or have them bid out by the market place.

Bev Bookin said that there were some areas that had a different model for industrial development and therefore the whole campus issue remained controversial.

David Bragdon said that the complication for the GMELS model was the open question of how zoning and other government control type factors related to market place factors, infrastructure, and so on to actually change the format of particular uses. The format of a steel mill would not likely change and was relatively horizontal, however office type use could densify and redevelop into a variety of formats depending on market and government factors.

Bev Bookin said the key issue was the cost of structured parking.

7. BALLOT MEASURE 36

Dan Cooper said that the initiative was referred to as Ballot Measure #36, but it would be something else. He made it clear that he could only relate factual information pertaining to the initiative. The MPAC members, however, were free to discuss and consult their jurisdictional attorneys on this initiative. He proceeded to give a factual summary of the proposed measure for a statute.

Rob Drake said that he had served on the steering committee for "no on Initiative 36." He said that the initiative was sinister towards the work that MPAC had been doing. He urged the committee members to defend the work they had done and oppose the initiative.

Bev Bookin asked if anything like this been passed in any other states.

Dan Cooper said that Florida and Texas actually had statutory provisions that their legislature adopted. They provided for some form of compensation in certain cases where property values were diminished by land use regulations by a certain percentage. That applied only to unincorporated areas in Texas and not in the cities. He said that initiative 36 would be very different from either the Florida or Texas statutes.

Tom Hughes asked if the initiative stated that the decision to compensate was not a land use decision.

Dan Cooper said that any decision under the act was not a land use decision.

Tom Hughes asked if outside parties not directly affected by the decision could be parties to the process.

Dan Cooper said it would be a different process and different task for somebody to challenge the question. They would not be required by land use law to get notices to property owners, and it would not be part of the land use system.

Gene Grant said he had concern with initiative 36 regarding the Goal 5 program. The initiative was surfacing at a particularly bad time. The initiative had a lot of sympathy with the rural folks that wanted to build more houses on their farms and in the forested areas. If Metro adopted a Goal 5 natural resource program that effected a significant resource taking of development rights, then property owners would be inclined to vote for this initiative along with the rural folks who wanted to build on farm and forest land. Metro might, therefore, contribute to creating a whole constituency that would vote for 36 to pass.

Tom Hughes said that the point at which the ballot measure would win was that it was deceptively simplistic in language and concept. It would be hard to vote against the idea that governments pay owners or forgo enforcement when certain land use restrictions reduce property value. People do not understand that it could adversely affect the good work of natural resource protection and positive land use planning.

There being no further business, Chair Becker adjourned the meeting at 6:43 p.m.

Respectfully submitted,

Kim Bardes
MPAC Coordinator

ATTACHMENTS TO THE RECORD FOR JULY 28, 2004

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

<u>Agenda Item</u>	<u>DOCUMENT DATE</u>	<u>DOCUMENT DESCRIPTION</u>	<u>DOCUMENT NO.</u>
#6 GMELS	July 2004	Slides for the Greater Metropolitan Employment Land Study (GMELS) presentation by Bev Bookin	072804-MPAC-01

M E M O R A N D U M

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1540 | FAX 503 797 1793



METRO

To: MPAC

From: Chris Deffebach, Long Range Planning Manager

Subject: Fish and Wildlife Habitat Program

Date: September 2, 2004

In August, Metro Council approved two Resolutions relating to the Regional Fish and Wildlife Habitat Program. One resolution states that the regional Goal 5 program “will not restrict the owners and residents of existing, developed residential properties from engaging any use of their developed residential properties that they may currently undertake without having to obtain a land use decision from their local jurisdiction.” The second resolution establishes and appoints members to a fish and wildlife habitat program implementation work group. Copies of these resolutions are included in your packet. At your September 8th meeting, I will provide a brief update on these and other activities relating the regional Fish and Wildlife Habitat program.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CREATING AND
APPOINTING MEMBERS TO THE FISH AND
WILDLIFE HABITAT PROGRAM
IMPLEMENTATION WORK GROUP

) RESOLUTION NO. 04-3488
)
) Introduced by Council President Bragdon

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 _____ day of _____ 2004.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

I:\gm\long_range_planning\projects\Goal 5\Council Resolutions\R04-3488 WkGrp 080504.doc

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.

I:\gm\long_range_planning\projects\Goal 5\Council Resolutions\Program Work Group staff report 8.6.04.doc

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

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CLARIFYING THAT METRO'S)
GOAL 5 FISH AND WILDLIFE HABITAT PROTECTION) RESOLUTION NO. 04-3489A
PROGRAM SHALL NOT RESTRICT CURRENTLY) Introduced by David Bragdon, Metro
ALLOWED USES OF DEVELOPED RESIDENTIAL) Council President
PROPERTY AND SHALL FOCUS HOMEOWNER-)
RELATED EFFORTS ON EDUCATION AND)
STEWARDSHIP INCENTIVE PROGRAMS)

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, on October 30, 2003, and May 20, 2004, respectively, the Metro Council adopted Resolutions 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 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; and

WHEREAS, in Resolution No. 03-3376B the Metro Council concluded that the Goal 5 program “shall not require property owners to discontinue uses or remove structures on their properties, but may affect the expansion of existing structures into regionally significant resource sites,” and in Resolution No. 04-3440A the Metro Council directed that the program was to “apply only to activities that require a land use permit and not to other activities (such as existing gardens, lawn care, routine property maintenance, and actions necessary to prevent natural hazards),” but that “[v]egetation clearing over a set threshold [could] be defined as a land use activity and [could] therefore require a permit;” and

WHEREAS, the Metro Council has further considered the ESEE analysis and the extensive input and comments received from the citizens of the region regarding Resolution No. 04-3440A regarding the potential impact of the program on homeowners, as balanced against the need to protect and enhance fish and wildlife habitat; now therefore

BE IT RESOLVED:

1. Program Shall Not Restrict Currently Allowed Uses of Developed Residential Property

That the Program to Achieve Goal 5 that will be adopted by the Metro Council will not restrict the owners and residents of existing, developed residential properties from engaging in any use of their developed residential properties that they may currently undertake without having to obtain a land use decision from their local jurisdiction.

2. Focus of Program As It Applies to Homeowners Shall Be On Education and Stewardship Incentive Programs, Not on Regulatory Approaches

That staff is directed to develop a Program to Achieve Goal 5 that, as it pertains to residents and owners of existing, developed residential properties, shall be focused on education and incentive

programs to help the citizens of the region to become more mindful of the ecological value of fish and wildlife habitat and to become better stewards of that habitat.

3. This Resolution is Not a Final Action

The Metro Council's action in this resolution is not 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

I:\gm\long_range_planning\projects\Goal 5\Council Resolutions\R04-3489A no resid impact.DOC

STAFF REPORT

RESOLUTION NO. 04-3489 FOR THE PURPOSE OF CLARIFYING THAT METRO'S GOAL 5 FISH AND WILDLIFE HABITAT PROTECTION PROGRAM SHALL NOT RESTRICT CURRENTLY ALLOWED USES OF DEVELOPED RESIDENTIAL PROPERTY AND SHALL FOCUS HOMEOWNER-RELATED EFFORTS ON EDUCATION AND STEWARDSHIP INCENTIVE PROGRAMS.

Date: August 12, 2004

Prepared by: Chris Deffebach and Malu Wilkinson

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 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..." 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 draft inventory of regionally significant fish and wildlife habitat lands. The inventory includes about 80,000 acres of habitat land inside Metro's jurisdictional boundary as well as approximately 16,000 acres of impact area. Residential land makes up a significant portion of the habitat inventory and impact areas (31 percent), and 58 percent of that residential land is developed (not including parks). Impact areas include lands on which conflicting uses affect the habitat; 43 percent of the impact areas are on developed residential land.

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 conducted 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 on October 30, 2003 (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). The second phase evaluated the ESEE consequences of possible protection and restoration options that include a mix of

regulatory and non-regulatory components. The Metro Council endorsed the findings and applied a preliminary decision 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 on May 20, 2004 (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).

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 currently receive inconsistent treatment. In addition, one ecological watershed can cross several different political jurisdictions – each with different approaches to habitat protection. The regional habitat protection program will establish a more consistent minimum level of habitat protection across the region.

In addition, 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.

1. PROGRAM SHALL NOT RESTRICT CURRENTLY ALLOWED USES OF DEVELOPED RESIDENTIAL PROPERTY

Metro's ESEE analysis considered the impacts of potential regulations to protect habitat on existing homeowners. An extensive discussion of the impacts of regulations on property owners is included in Phase I of the ESEE analysis. The property owners most affected by a decision to limit or prohibit conflicting uses are single-family residential. Eighteen percent of the land in Metro's habitat inventory and impact areas is on developed residential land, which translates to a substantial number of property owners and residents since many homes are on smaller lots. This percentage is based on Metro's definition of developed land for purposes of determining buildable lands, which excludes from the developed lands inventory portions of properties over half an acre in size that are undeveloped. Therefore, the implication under this resolution is that habitat on these lands that are now considered vacant would not receive regulatory protection until application for a land use permit.¹

Real property is one of the largest economic investments many people make and regulations affecting property are an important and sensitive social issue. For residential land in particular, a regulatory program could impact personal financial security or the expectation to maintain,

¹ However, local jurisdictions may have existing tree protection or vegetation removal regulations that would apply.

develop or redevelop land within the existing regulatory framework. Regulations that result in reductions to property value may affect people's ability to draw on the equity in their homes to fund retirement, education, and other activities. Thus, limiting or prohibiting conflicting uses, if it results in reduced property values, can have a negative social impact. On the other hand, local studies (Lutzenhiser and Netusil 2001, Bolitzer and Netusil 2000) have shown that proximity to some types of natural areas actually increase property values, thus preservation of these habitats could positively impact nearby property owners.

Minimizing the impact on property owners was one of the five social criteria used to evaluate the regulatory program options in Metro's Phase II ESEE Analysis. Property ownership and land use regulations are sensitive issues central to habitat protection. Landowners may be concerned about impacts to property rights, takings issues, and the distribution of the burden of protecting habitat. Other landowners may be supportive of protection programs despite being personally affected for several reasons including an appreciation of habitat and the wish to see it remain in addition to the increased property values that can result from trees and proximity to water.

In response to these factors, after Phase I of the ESEE analysis, the Metro Council resolved, in Resolution No. 3376B adopted on October 30, 2003, to "not require property owners to discontinue uses or remove structures on their properties," but allowed that the program "may affect the expansion of existing structures." Then, upon completion of Phase II of the ESEE analysis, the Council further resolved, in Resolution No. 04-3440A adopted on May 20, 2004, to direct staff to develop a program that applied "only to activities that require a land use permit and not to other activities (such as existing gardens, lawn care, routine property maintenance, and actions necessary to prevent natural hazards)," but allowed that "[v]egetation clearing over a set threshold [could] be defined as a land use activity and [could] therefore require a permit."

Based on the above mentioned points in the ESEE analysis and public comments to date, it has become evident that a clarification is necessary to address citizen concerns regarding the effect the program will have on existing, developed residential properties. If approved, this resolution will mean that the regulatory program would not have an effect on the residents and owners of existing residences unless they seek to engage in an activity for which a land use permit is required by their local jurisdiction. For example, Metro's regional Fish and Wildlife Habitat Protection Program, as implemented by local jurisdictions, would not include any additional restrictions on the rights of such owners or residents to plant and care for existing gardens, prune trees and shrubs, build fences and arbors, install playground equipment for children, take care of their yards and lawns, maintain and repair buildings and structures, or to take any actions necessary to prevent natural hazards, such as the pruning or removal of trees or shrubs that present a hazard to human life or property. However, the program might have an impact when such residents sought to redevelop their property, or if they sought to expand the developed area of their property. For example, a resident could build a deck or install a hot tub without further regulation if such a project would not currently require a land use permit from their local jurisdiction.

2. FOCUS ON PROGRAM AS IT APPLIES TO HOMEOWNERS SHALL BE ON EDUCATION AND STEWARDSHIP INCENTIVE PROGRAMS

Although this resolution clarifies that the program will not affect homeowners' use of their existing developed residential properties unless they decide to redevelop their properties, we know that activities on such properties short of such redevelopment can still have a significant impact on fish and wildlife habitat. For example, gardening and landscape practices can have significant effects on fish and wildlife such as the introduction of non-native plants and runoff from pesticides, herbicides, and fertilizers. Non-regulatory tools are therefore the key component of a strategy to protect fish and wildlife habitat on such properties. Incentives, education, and acquisition strategies are popular among landowners and can be used in conjunction with regulations and where regulations do not apply. Habitat protection and restoration activities on existing, developed residential properties will be focused on education and stewardship incentive programs unless the property owner applies for a local land use permit, at which time the regulatory protection for habitat would apply.

Moreover, many landowners would like to manage their land in a way that benefits fish and wildlife habitat. However, frequently people do not know if certain activities are detrimental (using herbicides and pesticides), if there are alternatives (natural gardening), what to do to improve habitat (plant native plants, remove invasive species like ivy), and how to connect to agencies and organizations that provide grants and/or volunteers to help improve habitat. A program would be developed to focus efforts to increase people's awareness of the connections between their activities and the health of streams and rivers, similar to fish stencil programs on stormwater drains. Landowners in regionally significant habitat areas would be targeted to raise awareness of how individual activities impact fish and wildlife habitat. Education activities are most effective when used in conjunction with a stewardship certification program, grant programs, and regulatory programs and these are also being considered as part of the non-regulatory toolbox.

Stewardship recognition programs publicly acknowledge landowners, businesses and other entities for conserving open space, protecting or restoring habitat areas, making financial contributions or carrying out good stewardship practices in general. Public agencies and nonprofit organizations can administer the programs, and the recognition could take the form of media publicity, awards ceremonies, or plaques and certificates. These programs, while not widely applied in the Metro region, have much potential for encouraging conservation behavior when combined with other programs. Staff is currently working to develop these components of a habitat protection program concurrently with a regulatory program.

ANALYSIS/INFORMATION

1. Known Opposition

No known opposition. Substantial public comment has been received to date expressing concern about the impact of a regional Fish and Wildlife Habitat Protection Program on existing residential development. Conversely, we have also consistently received public comments from

citizens seeking greater fish and wildlife habitat protection, although we have not received, and are not aware of, any specific opposition to this resolution.

2. Legal Antecedents

In Resolution No. 03-3376B the Metro Council concluded that the Goal 5 program “shall not require property owners to discontinue uses or remove structures on their properties, but may affect the expansion of existing structures into regionally significant resource sites,” and in Resolution No. 04-3440A the Metro Council directed that the program was to “apply only to activities that require a land use permit and not to other activities (such as existing gardens, lawn care, routine property maintenance, and actions necessary to prevent natural hazards),” but that “[v]egetation clearing over a set threshold [could] be defined as a land use activity and [could] therefore require a permit.” This resolution would further clarify these previous statements.

3. Anticipated Effects

Existing residential properties that could be subdivided and developed in the future may contain habitat areas. Some jurisdictions do not currently have mechanisms to prevent tree removal through tree protection ordinances or other measures. Metro’s regulatory program may contain mitigation measures or penalties if habitat is removed on existing residential lots in preparation for a change in use (e.g., subdivision, change in use). Such measures would be necessary to prevent the situation where a landowner attempted to avoid fish and wildlife habitat protection requirements by, first, clearing land identified as habitat under the guise of engaging in a use that does not require a land use permit, and then, second, later sought a land use permit but claimed that there was no longer any habitat left to be protected.

This resolution steps up Metro’s commitment to provide non-regulatory tools targeted towards owners and residents in existing residential areas to protect and restore habitat.

4. Budget Impacts

Implementing the policy stated in this resolution could have substantial budgetary impacts depending on the types of non-regulatory programs pursued. Metro’s Phase II ESEE Analysis included a preliminary description of possible non-regulatory programs focused on education and stewardship incentives. These tools were considered to be of low to medium cost depending on the level of commitment and program scope. Metro currently operates similar programs that could be enhanced to save on establishment costs.

RECOMMENDED ACTION

Thirteen percent of Metro’s habitat inventory and over half of the impact areas (58 percent) is land that includes existing residential development. The Metro Council has repeatedly stated that the fish and wildlife habitat protection program will not affect existing uses in residential

areas. This resolution clarifies the intent of the Metro Council that currently allowed uses on existing residential land would not be restricted, and education and incentive programs would support habitat protection and restoration activities in these areas.

I:\gm\long_range_planning\projects\Goal 5\Council Resolutions\Dev residential staff report v.2.doc

Materials on agenda item #7: Performance Measures will be provided at the meeting.