

**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:** March 23, 2005

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

**PLACE:** Metro Council Chamber/Annex

NO	AGENDA ITEM	PRESENTER	ACTION	TIME
	CALL TO ORDER	Hoffman		
1	SELF INTRODUCTIONS, ONE MINUTE LOCAL UPDATES & ANNOUNCEMENTS	All		15 min.
2	CITIZEN COMMUNICATIONS FOR NON-AGENDA ITEMS			3 min.
3	CONSENT AGENDA <ul style="list-style-type: none"><li>• March 9, 2005</li></ul>	Hoffman	Decision	5 min.
4	COUNCIL UPDATE	Hosticka		5 min.
5	NATURE IN THE NEIGHBORHOODS	Ketchum	Discussion	60 min.
6	UPDATES <ul style="list-style-type: none"><li>• Affordable Housing Task Force</li><li>• Affordable Housing Status Letters</li><li>• Measure 37 Task Force Report</li><li>• Measure 37</li><li>• Goal 11 Task Force</li><li>• Legislative</li></ul>	Liberty Staff Liberty Cooper Cotugno Hosticka		5 min. 5 min. 5 min. 5 min. 5 min. 5 min.

**UPCOMING MEETINGS:**

April 13 & 27, 2005

For agenda and schedule information, call Kim Bardes at 503-797-1537. e-mail: bardes@metro.dst.or.us

MPAC normally meets the second and fourth Wednesday of the month.

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METRO POLICY ADVISORY COMMITTEE MEETING RECORD

March 9, 2005 – 5:00 p.m.

Metro Regional Center, Council Chambers

**Committee Members Present:** Charles Becker, Nathalie Darcy, Dave Fuller, John Hartsock, Jack Hoffman, Laura Hudson, Richard Kidd, Deanna Mueller-Crispin, Wilda Parks, Ted Wheeler

**Alternates Present:** Larry Cooper, Joe Keizur, Norm King, John Leeper

**Also Present:** Hal Bergsma, City of Beaverton; Bev Bookin, CREEC; Ron Bunch, City of Gresham; Al Burns, City of Portland; Cindy Catto, AGC; Bob Clay, City of Portland; Sarah Cleek, THPRD; Valerie Counts, City of Hillsboro; Brent Curtis, Washington County; Bob Durgan, Anderson Construction; Kay Durtschi, MTAC; Craig Dye, Clean Water Services; Meg Fernekees, DLCD; Stacy Hopkins, DLCD; Jim Jacks, City of Tualatin; Jim Labbe, Audubon Society of Portland; Susie Lahsene, Port of Portland; Stephen Lashbrook, City of Lake Oswego; Irene Marvich, League of Women Voters; Leeanne MacColl, League of Women Voters; Laura Oppenheimer, The Oregonian; Pat Ribellia, City of Hillsboro; Paul Savas, OLUD & OLSD; Amy Scheckla-Cox, City of Cornelius; Jonathan Schlueter, Westside Economic Alliance; Ron Thompson, City of Forest Grove; Andrea Vannelli, Washington County; David Zagel, TriMet;

**Metro Elected Officials Present:** Liaisons – Carl Hosticka, Council District 3; Susan McLain, District 4; Robert Liberty, Council District 6 others: David Bragdon, Council President

**Metro Staff Present:** Kim Bardes, Dan Cooper, Chris Deffebach, Paul Garrahan

**1. SELF-INTRODUCTIONS, ONE MINUTE LOCAL UPDATES & ANNOUNCEMENTS**

Chair Jack Hoffman, MPAC Chair, called the meeting to order 5:06 p.m.

Chair Hoffman asked those present to introduce themselves, to give a one-minute local update, and for any announcements.

**2. CITIZEN COMMUNICATIONS FOR NON-AGENDA ITEMS**

There were none.

**3. CONSENT AGENDA**

Meeting Summary February 23, 2005.

Motion:	Joe Keizur, City of Hillsboro, with a second from Wilda Parks, Clackamas County Citizen Representative, moved to adopt the consent agenda without revision.
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Vote:	The motion passed unanimously.
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**4. COUNCIL UPDATE**

Chair Hoffman said that the Metro Council was spending a good deal of time on the Nature in the Neighborhoods program. He said that they were also getting ready to go into the budget cycle. He

reviewed some of the work plan items that the Council had been considering. He explained the new process for the work plan. He said that they would be scheduling a series of meetings with cities outside the urban growth boundary (UGB) and Metro's jurisdiction. These meetings would be to talk about issues of mutual concern. These meetings would be related to the discussion about hard edges, urban reserve, rural reserves, and green belts. He said that a measure 37 task force had been developed and finalized. The Metro Council was also looking at a ballot measure to fund open spaces. The Council had targeted November 2006 for that ballot measure. He said that there were a number of solid waste issues under discussion at Council, and they were still trying to figure out how to fund the convention center. He said that while they had been looking at the compliance reports, in terms of compliance with the functional plan, it had become clear that the Title 11 planning for new urban areas that were brought in between 2002 and 2004 was potentially a major issue. Some jurisdictions were completing their report while others may not complete it in the near future. He said that raised several issues about what would happen to those areas and the implications of that or future consideration of expansion.

Councilor Susan McLain said that it was an issue of concern and that many groups were working on it.

John Leeper, Washington County, said that they had a problem area called north Bethany. He said that there had been some lawsuits that did not seem to be getting resolved. He said that they did not see the benefits of planning for 800+ acres when the courts could chop them at the knees.

Councilor Robert Liberty said that funding and other concerns were a common problem across the region, and he thought it would be nice if people could agree on seeking solutions for some of those things.

John Leeper said that Washington County would like to see the court cases settled.

Chair Hoffman said that if the jurisdictions were thinking about having their own ballot measure for bonds for 2006 then they should remember to factor in that Metro would be going out for a bond measure as well.

## **5. NATURE IN THE NEIGHBORHOODS**

Chair Hoffman informed the members that Metro would be going out to the jurisdictions to talk about Nature in the Neighborhoods. He introduced Chris Deffebach, Councilor Hosticka, and Brent Curtis.

Councilor Hosticka reviewed the packet material for the Nature in the Neighborhoods program, which is attached and forms part of the record.

Chair Hoffman gave a brief history of the full time line for the Nature in the Neighborhoods/Wildlife Habitat program starting with the adoption of Title 3 in 1998. He reviewed the "big" events on the horizon for the program for the members. He informed the members that David Bragdon would be sending out the notice about a week before the mass mailing so that they would be prepared when they started getting phone calls from home owners. He told the members to expect that notification about March 24<sup>th</sup>.

Council President David Bragdon said that calls would be coming in to Metro as well and Metro would be staffing up for the mailing, and that Metro had a professional staff that would handle those calls.

Chris Deffebach, Metro Long Range Planning Manager, explained the notice process in a little more detail.

Chair Hoffman continued his review of the “big” events on the timeline. He asked Chris Deffebach to review the timeline again at the next MPAC meeting in order to keep important dates fresh for the members.

Chris Deffebach gave a brief overview of the Proposed Functional Plan Update material, which was included in the meeting packet and forms part of the record. Chair Hoffman occasionally clarified a point and pulled out some maps to emphasize the importance of the inventory and the correctness of the maps. There was general discussion about tree ordinances, clear cutting, and forest protection.

Chair Hoffman said that at the next meeting the members would go through the plan in more detail.

Chris Deffebach said it was still in the development phase and that comments would continue to be integrated into the plan.

Brent Curtis, Washington County, and Craig Dye, Clean Water Services, gave an overview of the Nature in the Neighborhoods: Tualatin Basin approach.

## **6. AFFORDABLE HOUSING STATUS**

Councilor Liberty gave a brief history on affordable housing. He said that the general impression was that we were not making progress and that houses were not becoming more affordable. He referenced the two letters received to-date regarding this issue from the City of Sherwood and the City of Happy Valley. Those letters are attached and form part of the record. He said that Councilor Burkholder would assist him in chairing this task force. He said that the task force was scheduled to sunset in about one year. He distributed a copy of the draft resolution to the members and that resolution is attached and forms part of the record.

Chair Hoffman said that they would have another discussion in May on affordable housing. He said that the incoming letters on this topic would be distributed as they came in to Metro. He said it might be good to have a global discussion about what jurisdictions do regarding affordable housing.

## **7. UPDATES**

Councilor Liberty said that in December 2004 the Metro Council approved the creation of a task force to look at the issues related to its responsibilities and the implementation of Measure 37. A membership had been finalized and the focus of the task force had been identified. The big issue was Measure 37 law and how to implement that while achieving fairness for property owners and still achieve the 2040 Growth Concept. He said that they had a daunting task ahead of them. He said that Judie Hammerstad would chair the task force, while he and Councilor Hosticka would be Metro Council Liaisons. He indicated that there was good MPAC representation on the task force. He distributed a draft resolution to the members, which is attached and forms part of the record.

Councilor Hosticka reviewed a list of legislative bills that were tied to Metro. That list is attached for the record and provides details for each of those bills.

There being no further business, Chair Hoffman adjourned the meeting at 6:47 p.m.

Respectfully submitted,

Kim Bardes  
MPAC Coordinator

ATTACHMENTS TO THE RECORD FOR MARCH 9, 2005

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

<b>AGENDA ITEM</b>	<b>DOCUMENT DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>DOCUMENT NO.</b>
<b>#5 Nature in the Neighborhoods</b>	3/8/05	Letter to Metro Council from Coalition for a Livable Future re: Goal 5 Regional Functional Plan	030905-MPAC-01
<b>#5 Nature in the Neighborhoods</b>	3/9/05	Letter to Jack Hoffman, MPAC Chair, MPAC, and the MPAC members from Multnomah County Oregon re: Proposed Fish and Wildlife Program Functional Plan Outline	030905-MPAC-02
<b>#6 Affordable Housing</b>	2/23/05	Letter to Jack Hoffman, MPAC Chair, MPAC, David Bragdon, from the City of Sherwood re: Title 7-Affordable Housing	030905-MPAC-03
<b>#6 Affordable Housing</b>	2/24/05	Letter to Metro, David Bragdon, Jack Hoffman from the City of Happy Valley re: Affordable Housing	030905-MPAC-04
<b>#6 Affordable Housing</b>	March 2005	Draft Resolution No. 05-3536 For the Purpose of Establishing the Regional Housing Choice Task Force and its Duties and Responsibilities, and Confirming the Appointment of its Members	030905-MPAC-05
<b>#7 Updates</b>	March 2005	Draft Resolution For the Purpose of Appointing Members of the Ballot Measure 37 Work Group	030905-MPAC-06
<b>#7 Updates</b>	3/9/05	Legislative Update for MPAC on March 9, 2005	030905-MPAC-07



To: MPAC

From: Andy Cotugno, Planning Department Director

Subject: Nature in Neighborhoods Functional Plan

Date: March 18, 2005

Attached is a March 1, 2005 version of the preliminary draft Fish and Wildlife Program Functional Plan language. MTAC reviewed this version at their March 2, 2005 meeting.

Also attached is a March 18, 2005 memo from Chris Deffebach, Planning Manager, to Metro Council identifying a series of policy questions that have emerged from MTAC and other committee reviews of the draft functional plan. MTAC reviewed a prior version of this memo at its March 16, 2005 meeting and gave feedback on the first nine questions.

Staff will present MTAC's feedback on the first nine policy questions to help guide MPAC's discussion of these questions.

Thank you.

**FISH AND WILDLIFE PROGRAM  
FUNCTIONAL PLAN OUTLINE**

**Section 1. Intent**

The purposes of this program are to (1) conserve, protect, and restore a continuous ecologically viable streamside corridor system, from the streams' headwaters to their confluence with other streams and rivers, and with their floodplains in a manner that is integrated with upland wildlife habitat and with the surrounding urban landscape; and (2) to maintain and improve water quality throughout the region. Under Oregon law, upon acknowledgment of this program by the Oregon Land Conservation and Development Commission (LCDC), cities and counties within the Metro region shall apply the requirements of this title, and shall not be required to comply with division 23 of chapter 660 of the Oregon Administrative Rules, promulgated by LCDC. This program:

- A. Will achieve its purpose through conservation, protection, and appropriate restoration of riparian and upland fish and wildlife habitat through time, using a comprehensive approach that includes voluntary, incentive-based, educational, and regulatory elements;
- B. Balances and integrates goals of protecting and enhancing fish and wildlife habitat, building livable Region 2040 communities, supporting a strong economy, and complying with federal laws including the Clean Water Act and the Endangered Species Act;
- C. Includes provisions to monitor and evaluate program performance over time to determine whether the program is achieving the program's objectives and targets, to determine whether cities and counties are in substantial compliance with this title, and to provide sufficient information to determine whether to amend or adjust the program in the future;
- D. Is intended to maintain or increase the fair market value of each individual property that it affects, and, to achieve that goal, may require in some instances that property owners be allowed to use more flexible development patterns and practices than are currently allowed under applicable city and county comprehensive plans and implementing ordinances; and
- E. Establishes minimum requirements and is not intended to repeal or replace existing requirements of city and county comprehensive plans and implementing ordinances to the extent those requirements already meet the minimum requirements of this title, nor is it intended to prohibit cities and counties from adopting and enforcing fish and wildlife habitat protection and restoration programs that exceed the requirements of this title.

**Section 2. Inventory and Habitat Conservation Areas**

The purpose of this section is to describe the baseline maps that form the basis of Metro's fish and wildlife habitat protection and restoration program. These maps are referenced in various ways in this title, but may or may not be relevant within in a city or county depending upon which compliance alternative the city or county chooses pursuant to Section 4 of this title.

- A. The Regionally Significant Fish and Wildlife Habitat Inventory Map (hereinafter the "Inventory Map"), attached hereto<sup>1</sup>, identifies the areas that have been determined to

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<sup>1</sup> On file in the Metro Council office.

contain regionally significant fish and wildlife habitat. The Inventory Map divides habitat into two general categories, riparian and upland wildlife, and further differentiates each habitat category into low, medium, and high value habitats.

- B. The Habitat Conservation Areas Map, attached hereto<sup>2</sup>, identifies the areas that are subject to the performance standards and best management practices described in Section 5 of this title, to the extent that a city or county chooses to comply with Section 4 of this title by using the Habitat Conservation Areas map, or map that substantially complies with the Habitat Conservation Areas map. For such cities and counties, the Habitat Conservation Areas Map further identifies, subject to the map verification process described in subsections 4(F) and 5(I) of this title, which areas will be subject to high, moderate, and low levels of habitat conservation based on Metro Council's decision to balance conflicting uses in habitat areas.
1. Performance standards and best management practices described in Section 5 apply to Class I and II riparian/wildlife areas located within Metro's urban growth boundary at the effective date of this title. Table YY1 designates high, moderate, and low Habitat Conservation Areas for areas located within Metro's urban growth boundary as of the effective date of this title, based on Metro Council consideration of the results of the Economic, Social, Environmental, and Energy (ESEE) analysis, public input, and technical review.
  2. Performance standards and best management practices described in Section 5 apply to Class I, II, and III riparian/wildlife areas, and Class A and B upland wildlife areas for properties brought within the urban growth boundary after the effective date of this title. Table YY2 designates high, moderate, and low Habitat Conservation Areas for properties brought within the urban growth boundary after the effective date of this title, based on Metro Council consideration of the results of the Economic, Social, Environmental, and Energy (ESEE) analysis, public input, and technical review. Section 7 describes the procedures for how Table YY2 and Section 5 shall be applied in such areas.

### **Section 3. Program Objectives and Targets**

- A. Objectives and Targets
1. Preserve and improve streamside, wetland, and floodplain habitat and connectivity.
  2. Preserve large areas of contiguous habitat and avoid fragmentation.
  3. Preserve and improve connectivity for wildlife between riparian corridors and upland habitat.
  4. Preserve and improve special habitats of concern.
  5. Design development and public infrastructure to minimize impact on habitat and to encourage the use of habitat-friendly development practices.

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<sup>2</sup> On file in the Metro Council office.

6. Restore and enhance habitat to compensate for adverse effects of existing development and public infrastructure on ecological function, and mitigate for adverse effects of new development and public infrastructure on ecological function.

**Section 4. Implementation Alternatives for Cities and Counties**

- A. Each city and county in the region shall comply with this title in one of the following ways:
  1. Amend its comprehensive plan and implementing ordinances to adopt the Title 13 Model Ordinance and the Metro Habitat Conservation Areas Map.
  2. Demonstrate that its existing or amended comprehensive plan and existing, amended, or new implementing ordinances substantially comply with the performance standards and best management practices described in Section 5, and that maps that it has adopted and uses substantially comply with the Metro Habitat Conservation Areas Map.
  3. Amend its comprehensive plan and implementing ordinances to comply with the maps and provisions of the Tualatin Basin Fish and Wildlife Habitat Protection Program, attached hereto<sup>3</sup> and incorporated herein by reference, adopted by the Tualatin Basin Natural Resources Coordinating Committee (TBNRCC) on [insert date], subject to the intergovernmental agreement entered into between Metro and the TBNRCC.
  4. Demonstrate that it has implemented a program that will achieve the program objective and targets described in Section 3(A)(1) of this title. A city or county developing such a program:
    - a. Shall demonstrate that its program provides a certainty of habitat protection and enhancement to achieve the objective and targets described in Section 3(A)(1) of this title, such as by using proven programs and demonstrating stable and continuing funding sources for elements of the program that require funding;
    - b. Shall include program provisions to monitor and measure whether the program achieves the objective and targets described in Section 3(A)(1) of this title, and, if those objectives and targets are not being achieved in the future, a process to adapt the program to ensure that they are achieved;
    - c. Is encouraged to develop its program using the performance standards and best management practices described in Section 5 of this title; and
    - d. May assert substantial compliance with this provision by relying on either or both the city's or county's comprehensive plan and

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<sup>3</sup> On file in the Metro Council office.

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implementing ordinances and on the use of incentive based, voluntary, education, acquisition, and restoration programs, such as:

- i. Allowing Voluntary Use of Habitat Friendly Development Practices. To reduce the impacts of development on fish and wildlife habitat and water quality, cities and counties are encouraged to repeal rules that prevent the use of the habitat-friendly development practices described in Table XX throughout their jurisdictions, but especially in regionally significant fish and wildlife habitat;
- ii. Encouraging Property Owners to Care For Trees. Cities and counties are encouraged to develop programs to encourage property owners to protect and care for trees located in regionally significant habitat areas by adopting programs that:
  - (A) Prioritize tree canopy protection by protecting groups of trees and large trees that provide the greatest environmental benefits;
  - (B) Encourage reforestation when trees are removed;
  - (C) Encourage the retention of the largest possible patches of upland wildlife habitat;
  - (D) Encourage the maintenance and enhancement of forest canopy connectivity between upland wildlife habitat and riparian corridors; and
  - (E) Encourage the maintenance and enhancement of understory and herbaceous layers within forest canopy habitat, including the planting of native plants and removal of noxious plants;
- iii. Using Incentive Programs. Cities and counties are encouraged to utilize incentive programs to protect and restore regionally significant fish and wildlife habitat, such as by:
  - (A) Implementing the Wildlife Habitat Special Tax Assessment Program (ORS 308A.400 through 308A.430) and the Riparian Habitat Tax Exemption Program (ORS 308A.350 through 308A.383) within their jurisdictions; and
  - (B) Providing financial incentives such as fee reductions or streamlined review processes to promote use of habitat-friendly development practices;

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- iv. Restoring Habitat. Cities and counties are encouraged to participate in watershed-based restoration efforts, in cooperation with other governmental and non-governmental entities; and
  - v. Maintaining and Enhancing Publicly-Owned Habitat Areas. Cities and counties are encouraged to maintain and enhance publicly-owned fish and wildlife habitat and to support acquisition and restoration of riparian corridor and upland wildlife habitats by:
    - (A) Using habitat-friendly best management practices, such as integrated pest management programs, in all regionally significant habitat areas within publicly-owned parks and open spaces;
    - (B) Ensuring that publicly-owned parks and open spaces that have been designated as natural areas are managed to maintain and enhance the quality of fish and wildlife habitat that they provide;
    - (C) Pursue funding to support local park, open space, and habitat acquisition and restoration, such as with local bond measures, System Development Charge (SDC) programs, Federal Emergency Management Act (FEMA) grants, or other funding mechanisms.
5. Adopt a district plan that applies over a portion of the city or county, and demonstrate that, for the remainder of its jurisdiction, the city or county has a program that complies with one of subsections (1) through (3) of this section 4(A) of this title. If a city or county adopts a district plan pursuant to this paragraph, it shall demonstrate that, within the district plan area, the district plan complies with subsection 4(A)(4) of this title. District plans shall be permitted under this subsection only for areas within a common watershed, or which are within areas in adjoining watersheds that share an interrelated economic infrastructure and development pattern. Cities and counties that choose to develop district plans are encouraged to coordinate such district plans with other entities whose activities impact the same watershed to which the district plan applies, including other cities and counties, special districts, state and federal agencies, watershed councils, and other governmental and non-governmental agencies.
- B. A city or county that adopts or amends its comprehensive plan and implementing ordinances to comply with this title shall include provisions intended to maintain and increase the value of properties that include Habitat Conservation Areas and to avoid any reduction in the fair market value of such properties as a result of the city's or county's amendments to its comprehensive plan and implementing ordinances to comply with this title. Table XX of this title provides some examples of programs that could be implemented to comply with this section 4(B) of this title, such as clustering, on-site or off-site transfers of development rights, or other similar programs that allow for more intensive development in areas outside of Habitat Conservation Areas in return for protecting the Habitat Conservation Areas.

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- C. Provisions of the comprehensive plan and implementing ordinances relied upon by a city or county to comply with this title shall contain clear and objective standards. A standard shall be considered clear and objective if it meets any one of the following criteria:
1. It is a fixed numerical standard, such as fixed distance (e.g. “50 feet”) or land area (e.g. “1 acre”);
  2. It is a nondiscretionary requirement, such as a requirement that grading not occur beneath the dripline of a protected tree; or
  3. It is a performance standard that describes the outcome to be achieved, specifies the objective criteria to be used in evaluating outcome or performance, and provides a process for application of the performance standard, such as a conditional use or design review process.
- D. In addition to complying with subsection 4(C) of this section, the comprehensive plan and implementing ordinances that a city or county relies upon to satisfy the requirements of this title may include an alternative, discretionary approval process that is not clear and objective provided that the comprehensive plan and implementing ordinance provisions of such a process:
1. Specify that property owners have the choice of proceeding under either the clear and objective approval process, which each city or county must have pursuant to subsection 4(C) of this section, or under the alternative, discretionary approval process; and
  2. Require a level of protection for, or enhancement of, the fish and wildlife habitat that meets or exceeds the level of protection or enhancement that would be achieved by following the clear and objective standards described in section 4(C) of this title.
- E. Cities and counties shall hold at least one public hearing prior to adopting comprehensive plan amendments, implementing ordinances, and maps implementing this title or demonstrating that existing city or county comprehensive plans, implementing ordinances, and maps substantially comply with this title. The proposed comprehensive plan amendments, implementing ordinances, and maps shall be available for public review at least 45 days prior to the public hearing. *[NOTE: This language is based on Title 3 language. It does require a public hearing even if a city or county intends to rely on its existing programs to demonstrate compliance.]*
- F. The comprehensive plan provisions and implementing ordinances that each city or county amends, adopts or relies on to comply with this title shall provide property owners with a reasonable, timely, and equitable process to verify the specific location of habitat areas subject to the provisions of the city’s or county’s comprehensive plan or implementing ordinances. It is the intent of this requirement that, in the majority of cases, the process be as simple and straightforward as possible and not result in a change that would require an amendment to the city’s or county’s comprehensive plan. Such process shall:

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1. Allow a property owner, or another person with the property owner's consent, to confirm the location of habitat on a lot or parcel at any time, whether or not the property owner has submitted a specific request for a development permit;
  2. As often as reasonably possible, provide a simple, default approach that allows a property owner to verify the location of habitat on a lot or parcel without having to hire an environmental consultant and without having to pay a significant processing or application fee;
  3. Allow a property owner to present detailed documentation to verify the location of habitat on a lot or parcel, such as information collected and analyzed by an environmental consultant;
  4. Be generally consistent with the approach described in Table ZZ to identify Class I and II riparian habitat areas, and, for areas brought within the UGB after *[insert appropriate date]*, be generally consistent with the approach described in Table ZZ2 to identify Class III riparian habitat areas and Class A and B upland wildlife habitat areas;
  5. Provide for confirmation that habitat that existed on the site as of *[insert date, sometime after Metro's adoption of program]* has not been altered in a way that changed its inventory habitat class characterization; and
  6. Ensure that the process provides adequate opportunities for appeals and a fair and equitable dispute resolution process.
- G. Relaxation of Regional Density and Capacity Requirements to Allow Habitat Protection.
1. Notwithstanding the provisions of Metro Code section 3.07.140(A)(2) [Section 4(A)(2) of Title 1 of the UGMFP], cities and counties may approve a subdivision or development application that will result in a density below the minimum density for the zoning district if:
    - a. An area of the property to be developed has been identified as significant habitat on the Metro Inventory Map or local Goal 5 fish and wildlife habitat inventory maps that had been acknowledged by the Oregon Land Conservation and Development Commission prior to *[insert appropriate date]*;
    - b. Such a decision is necessary to protect the significant habitat located on the property that will not be disturbed by development on the property;
    - c. Such a decision does not allow the removal of more of the regionally significant habitat located on the property than is necessary to reasonably accommodate the number and type of units that will be built on the property; and
    - d. Such a decision will directly result in the permanent protection of the remaining undeveloped regionally significant habitat located on the property.

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2. If a city or county approves a subdivision or development application that will result in a density below the minimum density for the zoning district pursuant to subsection 4(G)(1) of this title, then such city or county shall:
  - a. Be permitted an offset against the capacity specified in Table 3.07-1 of the Metro Code [Title 1, Table 1 of the UGMFP]. The amount of such offset shall be calculated by subtracting the difference between the number of dwelling units that the city or county approved pursuant to subsection 4(G)(1) of this title and the minimum number of dwelling units required by the minimum density for the zoning district; and
  - b. Report to Metro by April 15 of every year the number of approvals made pursuant to this subsection 4(G) of this title and the capacity offsets that the city or county shall be afforded as a result of such approvals.
  
- H. Transportation Improvements and Planning. Cities and counties are encouraged to adopt code provisions and update local transportation plans to:
  1. Avoid construction of transportation facilities in regionally significant habitat; and
  2. Where unavoidable, minimize the impacts of transportation facilities in regionally significant habitat by adopting and using the transportation facility best management practices identified in Table TT. *[To be attached.]*
  
- I. Compliance Timeline. *[Establish a reasonable, timely, and uniform compliance schedule—the following language is included as a starting point for this section.]*

As provided in Title 8 of this functional plan:

  1. Not later than one year after acknowledgment of this title by the Oregon Land Conservation and Development Commission, each city and county within the Metro region shall make land use decisions consistent with this title; and
  2. Not later than two years after acknowledgment of this title by the Oregon Land Conservation and Development Commission, each city and county within the Metro region shall amend their comprehensive plans and land use regulations to comply with this title.

**Section 5. Performance Standards and Best Management Practices for Habitat Conservation Areas**

The following performance standards and best management practices apply to all cities and counties that choose to comply with section 4 of this title by adopting or relying upon their comprehensive plans and implementing ordinances to comply, in whole or in part, with subsection 4(B)(2), 4(B)(3) or 4(B)(4):

- A. A city or county that adopts or amends its comprehensive plan and implementing ordinances to comply with these performance standards and best management practices shall include provisions intended to maintain and increase the value of properties that

include Habitat Conservation Areas and to avoid any reduction in the fair market value of such properties as a result of the city's or county's amendments to its comprehensive plan and implementing ordinances to comply with these performance standards and best management practices. Table XX of this title provides some examples of programs that could be implemented to comply with this section 5(A) of this title, such as clustering, on-site or off-site transfers of development rights, or other similar programs that allow for more intensive development in areas outside of Habitat Conservation Areas in return for protecting the Habitat Conservation Areas.

- B. Performance standards and best management practices applicable to all Habitat Conservation Areas. City and county comprehensive plans and implementing ordinances shall conform to the following performance standards and best management practices:
1. Subject to section 5(A) of this title, Habitat Conservation Areas shall be protected, maintained, enhanced or restored as specified in this Section 5 of this title.
  2. The requirements of Title 3 shall continue to apply to all development in Water Quality Resource Areas and Flood Management Areas located within Habitat Conservation Areas, in addition to requirements imposed by this title. [*Consider specifying the new requirements that may apply.*]
  3. Habitat-Friendly Development Practices. Subject to section 5(A) of this title and where practicable, city and county comprehensive plans and implementing ordinances shall require the use of the habitat-friendly development practices described in Table XX to reduce impacts of development on Habitat Conservation Areas and water quality.
  4. Cities and counties shall ensure that Habitat Conservation Areas within publicly-owned parks and open spaces that have been designated as natural areas are protected and managed to maintain and enhance the quality of fish and wildlife habitat that they provide, and that habitat-friendly best management practices, such as integrated pest management programs, are used in such areas.
  5. Subject to section 5(A) of this title, cities and counties shall protect trees in Habitat Conservation Areas, such as by:
    - a. Prioritizing tree canopy protection to protect natural stands or groups of trees over individual trees and tree canopy that provides connectivity between Habitat Conservation Areas and with other regionally significant habitat;
    - b. Retaining large individual trees that provide the greatest environmental benefits;
    - c. Establishing minimum standards of tree canopy retention and reforestation, such as specifying the desired number of trees over 6 inches DBH per acre of habitat, the desired percentage (such as 50%) of tree canopy retained in habitat areas, or a goal for replacement of removed trees based on the total DBH of the removed trees;

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- d. Maintaining and enhancing the understory and herbaceous layers within forest canopy habitat; and
  - e. Including local code provisions for enforcement of tree protection standards.
6. Invasive non-native vegetation shall not be planted in any Habitat Conservation Area. Invasive non-native vegetation may be removed from Habitat Conservation Areas. The planting of native vegetation shall be encouraged in Habitat Conservation Areas.
7. Subject to section 5(A) of this title, cities and counties may allow:
- a. Routine repair, maintenance, alteration, rehabilitation, or replacement of existing structures, roadways, driveways, utilities, accessory uses, or other development, provided that:
    - i. The project is consistent with all other applicable local, state, and federal regulations;
    - ii. The project does not encroach closer to the Water Feature (for riparian habitat), or to the interior of an upland habitat patch (for upland habitat in areas brought within the UGB after *[Insert date]*), than the existing development; and
    - iii. Vegetation native to the Metro Area is maintained, enhanced and restored, if disturbed; other vegetation is replaced, if disturbed, with non-invasive vegetation; and the planting of native vegetation and the removal of invasive non- native vegetation is encouraged.
  - b. Within a Multnomah County Drainage District, routine operations, repair, maintenance, alteration, rehabilitation, or replacement of existing flood control and related facilities, including any structures, culverts, irrigation systems, roadways, utilities, accessory uses, erosion control projects, soil and bank stabilization projects, dredging and ditch clearing within the hydraulic cross-section in existing storm water conveyance drainageways, habitat restoration and enhancement projects, or other water quality and flood storage projects, provided that:
    - i. The project is consistent with all other applicable local, state, and federal regulations;
    - ii. Where practicable, the project does not encroach closer to the Water Feature than existing operations and development; and
    - iii. Where practicable, vegetation native to the Metro Area is maintained, enhanced and restored, if disturbed; other vegetation is replaced, if disturbed, with non-invasive vegetation; and the planting of native vegetation and the removal of invasive non- native vegetation is encouraged.

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- C. High Habitat Conservation Areas. Subject to section 5(A) of this title, cities and counties:
1. Shall adopt clear and objective development approval standards consistent with subsection 4(C) of this title that allow a limited amount of development within the High Habitat Conservation Area, such as the standards described in Section ## of the Metro Model Ordinance; and
  2. May implement discretionary development approval standards consistent with subsection 4(D) of this title that comply with the following requirements:
    - a. Avoid. Demonstrate that no practicable alternatives to the requested development exist which will not disturb the High Habitat Conservation Area;  
  
[specify examples of tools that should be used to show you tried to avoid—clustering, lot line adjustments, etc.]
    - b. Minimize. If there is no practicable alternative, limit the development to reduce the impact associated with the proposed use *[insert reference to table of examples, including items such as to minimize stream crossings to promote connectivity of riparian corridors and placing crossings perpendicular to stream channels; using bridge crossings rather than culverts whenever possible; etc]*; and  
  
[specify examples of tools that should be used to show you minimized—clustering, lot line adjustments, etc.]
    - c. Mitigate. When development occurs, require mitigation to restore the habitat functions and values that were lost or damaged as a result of the development.  
  
[specify mitigation examples?]
- D. Moderate Habitat Conservation Areas. Subject to section 5(A) of this title, cities and counties:
1. Shall adopt clear and objective development approval standards consistent with subsection 4(C) of this title that allow a limited amount of development within the Moderate Habitat Conservation Area, such as the standards described in Section ## of the Metro Model Ordinance; and
  2. May implement discretionary development approval standards consistent with subsection 4(D) of this title that comply with the following requirements:
    - a. Minimize. Limit the development to reduce the impact associated with the proposed use *[insert reference to table of examples, including items such as to minimize stream crossings to promote connectivity of riparian*

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*corridors and placing crossings perpendicular to stream channels; using bridge crossings rather than culverts whenever possible; etc]; and*

[specify examples of tools that should be used to show you minimized—clustering, lot line adjustments, etc.]

- b. Mitigate. When development occurs, require mitigation to restore the habitat functions and values that were lost or damaged as a result of the development.

[specify mitigation examples?]

E. Low Habitat Conservation Areas. Subject to section 5(A) of this title, cities and counties:

- 1. Shall adopt clear and objective development approval standards consistent with subsection 4(C) of this title that allow a limited amount of development within the Low Habitat Conservation Area, such as the standards described in Section ## of the Metro Model Ordinance; and
- 2. May implement discretionary development approval standards consistent with subsection 4(D) of this title that comply with the following requirements:
  - a. Mitigate. When development occurs, require mitigation to restore the habitat functions and values that were lost or damaged as a result of the development.

[specify mitigation examples?]

F. Full Exemptions. The performance standards and best management practices of this section 5 of this title do not apply to:

- 1. Areas within the Airport wildlife hazard Zone 1 management areas; and *[Need to determine appropriate terminology—the exemption should apply only to the highest-priority wildlife hazards areas, those closest to the runways.]*
- 2. Any use of residential properties if, prior to *[insert appropriate date]*,:
  - a. A residential occupancy permit had been issued or the residence had been occupied as a residence for the preceding ten years; and
  - b. Such uses would not have required the property owner to obtain a land use approval or a building, grading, or tree removal permit from their city or county.

G. Partial Exemption of Areas Exempt Under Title 3. Areas that were not designated as Protected Water Features, Water Quality Resource Areas, or Flood Management Areas pursuant to Section 3(D) of Title 3 of this functional plan, Metro Code Section 3.07.330(D), (“Metro Title 3 Exempt Areas”) are exempt from the requirements of this Title except for the requirements of Section 5(B)(3), Habitat Friendly Development

Practices. In addition, when cities and counties adopted their local programs to comply with Title 3, some cities and counties exempted additional areas that Metro had designated as Protected Water Features, Water Quality Resource Areas, or Flood Management Areas, and Metro deemed the cities' and counties' programs to be in substantial compliance with the requirements of Title 3 ("Local Title 3 Exempt Areas"). To the extent that Metro Title 3 Exempt Areas and Local Title 3 Exempt Areas have been identified as Habitat Conservation Areas, such areas are exempt from the performance standards and best management practices of this section 5 of this title except for the requirements of Section 5(B)(3), Habitat Friendly Development Practices. In addition, Habitat Conservation Areas that were identified as regionally significant habitat based, in relevant part, on their proximity to portions of Water Features that are within Metro Title 3 Exempt Areas or Local Title 3 Exempt Areas shall also be exempt from the performance standards and best management practices of this section 5 of this title except for the requirements of Section 5(B)(3), Habitat Friendly Development Practices.

H. Variances for Loss in Fair Market Value of Property

1. Cities and counties shall adopt a variance procedure consistent with this subsection 5(G) of this title to address property owners' claims that comprehensive plan amendments and implementing ordinances adopted or relied upon to comply with this title result in decreases in the fair market value of particular real property lots or parcels. Under such variance procedures, if a city or county concludes that a plan or ordinance requirement results in a decrease in the fair market value of a particular real property lot or parcel, then the city or county may grant a variance from such requirement, provided that such variance:
  - a. Is the minimum variance from the provisions and intent of this title necessary to avoid a loss in the fair market value of the property;
  - b. Complies with all other requirements imposed by city and county comprehensive plans and implementing ordinances;
  - c. Does not allow a use of the property that was commonly and historically recognized as a public nuisance under common law;
  - d. Does not impair public health or safety, such as by varying the requirements of fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, or pollution control regulations; and
  - e. Is consistent with requirements enacted to comply with federal law.
2. A variance granted pursuant to a city or county procedure adopted to comply with this subsection 5(G) of this title shall continue in effect regardless of changes in ownership of the property to which it applies, but subject to all terms and conditions of the grant thereof.
3. The variance procedure adopted by cities and counties pursuant to this subsection 5(G) of this title shall include a requirement that all current owners of the real property lot or parcel sign a statement providing that, if the variance is granted and the property owners accept the variance, the owners waive all current and

future claims for compensation under 2004 Statewide Ballot Measure 37 that are based on the effects of the requirements of this title or the effects of city and county comprehensive plan provisions and implementing ordinances adopted or relied upon to comply with this title.

- I. Administering the Habitat Conservation Areas Map and Site-Level Verification of Habitat Location
  1. Each city and county shall be responsible for administering the Habitat Conservation Areas Map, or the city's or county's map that has been deemed by Metro to be in substantial compliance with the Habitat Conservation Areas Map, within its jurisdiction, as provided in this subsection 5(I) of this title.
  2. The comprehensive plan and implementing ordinances amended, adopted or relied upon to comply with this subsection 5(I) of this title shall comply with subsection 4(F) of this title.
  3. Verification of the Location of Habitat Conservation Areas. Each city and county shall establish a verification process consistent with this subsection 5(I)(3) of this title. The site-level verification of Habitat Conservation Areas is a three-step process. The first step is determining the boundaries of the habitat areas on the property. The second step is determining the urban development value of the property. The third step is cross-referencing the habitat classes with the urban development value of the property to determine whether the property contains High, Moderate, or Low Habitat Conservation Areas, or none at all.
    - a. Habitat Boundaries.
      - i. Locating habitat and determining its riparian habitat class is a five-step process.
        - (A) Locate the Water Feature that is the basis of identifying riparian habitat (stream, wetland, other open water, or flood area; note that areas that were mapped as flood areas but were filled prior to *[insert appropriate date after adoption]* consistent with all applicable local, state, and federal laws shall no longer be considered habitat based on their status as flood areas);
        - (B) Identify the development and vegetated cover status of areas within up to 300 feet of the Water Feature (from top of bank or edge of wetland or flood area) at the time of the verification (developed with no vegetative cover, low structure vegetation or open soils, woody vegetation with shrubs and scattered forest canopy, or forest canopy);
        - (C) Determine whether the degree that the land slopes upward from the Water Feature is greater than or less than 25% (using the methodology as described in Title 3 of the UGMFP);

- (D) Identify the habitat class (Class I, Class II, or none) of the areas within up to 200 feet of the Water Feature, consistent with Table ZZ, and, for areas brought within the UGB after *[insert appropriate date]*, identify the Class III riparian habitat consistent with Table ZZ2; and
  - (E) Confirm that the development and vegetated cover status of areas within up to 200 feet of the Water Feature has not been altered without the required approval of the city or county since *[insert appropriate date]*, and, if it has, then verify the original habitat location using the best available evidence of its former location; or, for areas brought within the UGB after *[insert appropriate date]*, confirm that the development and vegetated cover status of the area within up to 200 feet of the Water Feature has not been altered without required approval of the city or county since the date the property was brought within the UGB.
- ii. For areas brought within the UGB after *[insert appropriate date]*, the location of upland wildlife habitat and its habitat class shall be as identified in Metro's habitat inventory of such areas performed pursuant to Section 7 of this title.
- b. Urban Development Value of the Property. The urban development value of property designated as regionally significant habitat is depicted on the Metro Habitat Urban Development Value Map, attached hereto<sup>4</sup> and incorporated herein by reference. The Metro Habitat Urban Development Value Map is based on an assessment of three variables, the land value of property, the employment value of property, and the Metro 2040 Design Type designation of property. Cities and counties may make an upward adjustment of a property's urban development value designation (i.e. from low to medium or high, or from medium to high) if:
    - i. The Metro 2040 Design Type designation has changed from a category designated as a lower urban development value category to one designated as a higher urban development value category. Properties in areas designated as the Central City, Regional Centers, Town Centers, and Regionally Significant Industrial Areas are considered to be of high urban development value; properties in areas designated as Main Streets, Station Communities, Other Industrial Areas, and Employment Centers are of medium urban development value; and properties in areas designated as Inner and Outer Neighborhoods and Corridors are of low urban development value; or

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<sup>4</sup> On file in the Metro Council office.

- ii. The property, or adjacent lots or parcels owned by the owner of the property, is being used as a major medical or educational facility and, for that reason, should be designated as of high urban development value because of the economic contributions the facility provides to the citizens of the region. To determine whether a property shall be considered a high urban development value property pursuant to this paragraph, cities and counties shall consider whether the use of the property:
  - (A) Supports the 2040 Growth Concept by providing a mixed-use environment that may include employment, housing, retail, cultural and recreational activities, and a mix of transportation options such as bus, bicycling, walking, and auto;
  - (B) Provides, as a primary objective, a service that satisfies a public need rather than just the consumer economy (i.e., producing, distributing, selling or servicing goods);
  - (C) Draws service recipients (e.g., students, patients) from all reaches of the region and beyond;
  - (D) Relies on capital infrastructure that is so large or specialized as to render its relocation infeasible; and
  - (E) Has a long-term campus master plan that has been approved by the city or county.
- c. Cross-Referencing Habitat Class With Urban Development Value. City and county verification of the locations of High, Moderate, and Low Habitat Conservation Areas shall be consistent with Tables YY1 and YY2.

**Section 6. Program Monitoring and Reporting**

- A. *[Responsibilities of cities and counties to provide updated map information to Metro to update the Metro Inventory Map, and for monitoring purposes. For example, cities and counties would provide Metro with updated data in a form compatible with its Geographic Information System program including:*
  - 1. *Adopted and revised Local Wetland Inventories approved by the Division of State Lands including approved mitigation sites;*
  - 2. *Additions or modification of wetland boundaries and mitigation sites for jurisdictions which have not carried out the Local Wetland Inventory delineation process;*
  - 3. *Revised or updated stream inventories; and*
  - 4. *Revised or updated 100-year FEMA flood maps or 1996 area of inundation maps to reflect map revisions or local permits for approved floodplain fills.]*

- B. *[City and county reports on voluntary and incentive habitat protection programs.]*
- C. *[Provisions regarding Metro annual reports?]*
- D. *[Etc.]*

**Section 7. Future Urban Growth Boundary Expansion Areas**

After inclusion of an area within the UGB, consistent with Title 11 of this functional plan, and in cooperation with any city or county with jurisdiction over an area brought into the UGB, Metro shall inventory and identify regionally significant fish and wildlife habitat in such an area using the same methodology used by Metro to establish the Metro Inventory Map adopted in subsection 2(A) of this title. After completing such inventory, Metro shall prepare a Habitat Conservation Areas Map for such a new area within the UGB, as described in subsection 2(B) of this title, using the 2040 Design Types that are assigned to such area to determine the area's urban development value. Metro recognizes that the assigned 2040 Design Types may change as planning for such new areas progresses, and that the relevant Habitat Conservation Area designations for such areas may likewise change during such planning.

**Table xx. Habitat friendly development practices.**

<b>Reduce effective impervious surfaces</b>	<b>Storm water management</b>
<ul style="list-style-type: none"> <li>a. Relax residential lot sizes, setbacks and shape standard to minimize extent of impervious surfaces.</li> <li>b. Encourage smaller building footprint through building design.</li> <li>c. Encourage use of alternative foundations, such as pier, post or piling foundation.</li> <li>d. Use pervious paving materials in place of traditional impervious materials where appropriate.</li> <li>e. Reduce impervious impacts of residential driveways by narrowing widths, moving access to the rear of the site, using more pervious paving materials and promoting the use of shared driveways.</li> <li>f. Reduce width of residential streets, depending on traffic and parking needs.</li> <li>g. Reduce street length, primarily in residential areas, by encouraging clustering and using curvilinear designs.</li> <li>h. Reduce cul-de-sac radii and use pervious vegetated islands in center to minimize impervious effects.</li> <li>i. Reduce sidewalks width, place on one side of the street, and graded such that they drain to the front yard of a residential lot or retention area.</li> <li>j. Reduce impervious surfaces in parking lots by minimizing car spaces and stall dimensions, using shared parking facilities and structured parking, and using pervious paving materials where appropriate.</li> <li>k. Reduce parking ratios to limit excess parking space construction.</li> <li>l. Minimize grading and lot disturbance; minimize disturbance of native soils and reduce the removal of native soils.</li> <li>m. Use erosion and sediment control practices to protect soil surface and to retain sediment on site.</li> <li>n. Amend retained topsoil to original or higher level of porosity and water retention capacity.</li> </ul>	<ul style="list-style-type: none"> <li>a. Amend retained topsoil to regain some of the absorption, infiltration, retention and pollutant removal capabilities of the soil.</li> <li>b. Landscape with rain gardens to provide on-lot detention, filtering of rainwater, and groundwater recharge.</li> <li>c. Disconnect downspouts from roofs and direct the flow to vegetated infiltration/filtration areas such as rain gardens.</li> <li>d. Retain rooftop runoff in a rain barrel for later on-lot use in lawn and garden watering.</li> <li>e. Combine the rain gardens with grassed swales to replace a curb-and-gutter system.</li> <li>f. Use permeable pavers for walkways and parking areas.</li> <li>g. Design roads to incorporate storm water management in right-of-ways where appropriate.</li> <li>h. Use multi-functional open drainage systems in lieu of more conventional curb-and-gutter systems.</li> <li>i. Use bioretention cells as rain gardens in landscaped parking lot islands to reduce runoff volume and filter pollutants.</li> <li>j. Use green roofs for runoff reduction, energy savings, improved air quality, and enhanced aesthetics.</li> <li>k. Apply a treatment train approach to provide multiple opportunities for storm water treatment and reduce the possibility of system failure.</li> </ul>

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Table YY1: Method for Identifying Habitat Conservation Areas (“HCA”)

<i><b>Fish &amp; wildlife habitat classification</b></i>	<i><b>High Urban development value<sup>1</sup></b></i>	<i><b>Medium Urban development value<sup>2</sup></b></i>	<i><b>Low Urban development value<sup>3</sup></b></i>	<i><b>Other areas: Parks and Open Spaces, no design types outside UGB</b></i>
Class I Riparian	Moderate HCA	High HCA	High HCA	High HCA / High HCA+ <sup>4</sup>
Class II Riparian	Low HCA	Low HCA	Moderate HCA	Moderate HCA / High HCA+ <sup>4</sup>

NOTE: The default urban development value of property is as depicted on the Metro Habitat Urban Development Value Map. The Metro 2040 Design Type designations provided in the following footnotes are only for use when a city or county is determining whether to make an adjustment pursuant to Section 5(H)(3)(b).

<sup>1</sup>Primary 2040 components: Regional Centers, Central City, Town Centers, and Regionally Significant Industrial Areas

<sup>2</sup>Secondary 2040 components: Main Streets, Station Communities, Other Industrial areas, and Employment Centers

<sup>3</sup>Tertiary 2040 components: Inner and outer neighborhoods, Corridors

<sup>4</sup>Cities and counties shall give parks designated as natural areas in Class I and II riparian habitat even greater protection than that afforded to High Habitat Conservation Areas, as provided in Section 5(B)(4).

Table YY2: Method for Identifying Habitat Conservation Areas (“HCA”) in Future Urban Growth Boundary Expansion Areas

<i><b>Fish &amp; wildlife habitat classification</b></i>	<i><b>High Urban development value<sup>1</sup></b></i>	<i><b>Medium Urban development value<sup>2</sup></b></i>	<i><b>Low Urban development value<sup>3</sup></b></i>	<i><b>Other areas: Parks and Open Spaces, no design types outside UGB</b></i>
Class I Riparian	Moderate HCA	High HCA	High HCA	High HCA / High HCA+ <sup>4</sup>
Class II Riparian	Low HCA	Low HCA	Moderate HCA	Moderate HCA / High HCA+ <sup>4</sup>
Class III Riparian	Low HCA	Low HCA	Low HCA	Moderate HCA / High HCA+ <sup>4</sup>
Class A Upland Wildlife	Low HCA	Moderate HCA	Moderate HCA	High HCA / High HCA+ <sup>4</sup>
Class B Upland Wildlife	Low HCA	Low HCA	Moderate HCA	Moderate HCA / High HCA+ <sup>4</sup>

NOTE: The default urban development value of property is as depicted on the Metro Habitat Urban Development Value Map. The Metro 2040 Design Type designations provided in the following footnotes are only for use when a city or county is determining whether to make an adjustment pursuant to Section 5(H)(3)(b).

<sup>1</sup>Primary 2040 components: Regional Centers, Central City, Town Centers, and Regionally Significant Industrial Areas

<sup>2</sup>Secondary 2040 components: Main Streets, Station Communities, Other Industrial areas, and Employment Centers

<sup>3</sup>Tertiary 2040 components: Inner and outer neighborhoods, Corridors

<sup>4</sup>Cities and counties shall give parks designated as natural areas in Class I and II riparian habitat even greater protection than that afforded to High Habitat Conservation Areas, as provided in Section 5(B)(4).

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Table ZZ: Method for Locating Boundaries of Class I and II Riparian Areas

Distance in feet from Water Feature	Development/Vegetation Status			
	Developed areas not providing vegetative cover	Low structure vegetation or open soils	Woody vegetation (shrub and scattered forest canopy)	Forest Canopy (closed to open forest canopy)
<b>Surface Streams</b>				
0-50	Class II	Class I	Class I	Class I
50-100		Class II	Class I	Class I
100-150		Class II if slope>25%	Class II if slope>25%	Class II
150-200		Class II if slope>25%	Class II if slope>25%	Class II if slope>25%
<b>Wetlands (Wetland feature itself is a Class I Riparian Area)</b>				
0-100		Class II	Class I	Class I
100-150				Class II
<b>Flood Areas (Undeveloped portion of flood area is a Class I Riparian Area)</b>				
0-100			Class II	Class II

*[The following terms must be added to the definitions section of the UGMFP:*

- *Water Feature*
- *Developed lands--those that lack sufficient vegetative cover to meet the one-acre minimum mapping units of vegetative cover.*
- *Forest canopy--a contiguous grove of trees one acre or larger in area with approximately 60% or greater crown closure, irrespective of whether the entire grove is within 200 feet of the relevant Water Feature.*
- *Shrub vegetation--a contiguous area one acre or larger of shrub or open or scattered forest canopy (less than 60% crown closure) located within 300 feet of a surface stream.*
- *Low structure vegetation--a contiguous area one acre or larger of grass, meadow, crop-lands, or areas of open soils located within 300 feet of a surface stream (low structure vegetation areas may include areas of shrub vegetation less than one acre in size if they are contiguous with areas of grass, meadow, crop-lands, or areas of open soils located within 300 feet of a surface stream and together form an area of one acre in size or larger).]*

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M E M O R A N D U M

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To : Metro Council

From: Chris Deffebach

RE: Nature in Neighborhoods

Date: March 18, 2005

In December, Council approved a Resolution, supported by MPAC, which directed staff to develop a Fish and Wildlife Habitat Program to reflect the following basic principles:

- Focus the regulatory element of the program on Class I and II Riparian Habitat;
  - 41,240 acres or 50% of the total habitat inventory
  - 40% of this is covered by Title 3 Water Quality Resource Area standards, and another 22% is covered by Flood Management Area cut and fill requirements
  - 38% is in parks
  - 4,615 vacant buildable acres within the urban growth boundary
- Develop a strong voluntary, incentive based approach to protect and restore Class III Riparian, and Class A, B and C upland habitat;
- Apply a regulatory element that limits development on all Class I, II III Riparian and Class A and B Upland Habitat, in future additions to the Urban Growth Boundary; and

The Council directed staff to develop a program that relies on the use of voluntary actions to protect and restore habitat areas and specifically stated the Council's intention to seek voter approval of a bond measure to support fish and wildlife habitat acquisition and restoration. Other key elements of the program include expanding education and awareness of the value of habitat areas and increasing the capacity for restoration projects in the region.

In response to Council's direction from this and other resolutions, staff has developed a proposal for a Nature in the Neighborhoods Program that describes the implementation actions that Metro and others can take to support habitat conservation and restoration. Part of this proposal includes an amendment to the Urban Growth Management

Functional Plan that would require cities and counties to ensure that their comprehensive plans substantially comply with the functional plan, which is based on Metro's habitat area maps and includes new development standards for Class I and II riparian habitat areas.

The proposed language for the Functional Plan calls for:

- Requiring cities and counties to use habitat friendly development practices in Class I and II areas, and
- Requiring cities and counties to avoid, minimize and mitigate for development in the Class I and II riparian habitat, based on the priorities established by Council for habitat areas.

Since January, staff have been soliciting comments on draft versions of this proposal from the Program Working Group, MTAC, MPAC, Goal 5/WRPAC, private business representatives and non-profit groups who have been participating in this process as well as individuals and other elected officials not represented on MPAC. These discussions have raised both technical and policy issues. The intent of this memo is to identify the areas of highest priority for your consideration. Below are the top thirteen policy issues. This memo adds issues identified by Councilors at the March 2 2005 work session discussion. Discussion on a few of the issues will be updated prior to the next work session review.

1. **Appropriate level of regional requirements:** Do the proposed standards impose the appropriate regional requirements?
2. **Habitat-friendly development practices:** Should habitat-friendly development practices be required, where practicable, or should cities and counties simply be required to *allow* the practices?
3. **New UGB expansion areas:** What level of protection, or "floor" should be applied to new UGB expansion areas, and should the rules that apply there be spelled out explicitly at this time, or left to be developed at the time a new expansion is approved?
4. **Residential densities:** Is the Council willing to accept lower residential densities than established in Title 1 and agree to a more "automatic" and less rigorous review process than offered in Title 8 for the reduction?
5. **Measure 37 claims:** Is it realistic to consider new regulations in a post-Measure 37 era and how much can Functional Plan language be used to help avoid claims?
6. **Compliance timeline:** What is a reasonable, timely and consistent compliance timeline?

7. **Map verification process:** Map verification process, including verification for urban development values (and the policy issues of the major institutions)
8. **Exemptions from the program:** What sites are similarly situated to the International Terminal Site and how do these relate to Title 3 Exempted areas?
9. **Compliance alternatives:** How best to motivate creativity in city and county compliance yet assure certainty and consistency?
10. **Performance Objectives and targets:** Role of performance standards in setting vision/goals for the region and in linking to responsible actions and implications for ongoing monitoring?
11. **Tree protection standards:** Value of tree protection standards outside of development review process to protect trees in Class I and II areas, with exceptions for developed SFR?
12. **Encourage language:** How best to motivate and inspire voluntary activity among the region's governments, agencies, non-profits, business and individuals?
13. **Other Federal/State requirements:** Should the program be submitted for meeting Goal 6 Water Quality and Goal 7 Hazards in addition to Goal 5?

## **Policy Issues on the Functional Plan Title for Fish and Wildlife Habitat Areas**

### **1. Application of Avoid, Minimize and Mitigate Standards to Class I and II Riparian**

**Key Policy Issue:** Do the proposed standards impose the appropriate regional requirements?

This section sets the standards of regional consistency for conserving habitat in Class I and II Riparian areas. It is a key policy decision as it sets the floor or minimum for protection in the streamside areas. The comments on this section range from concerns about placing any new requirements in a post Measure 37 era, to concerns that the level of protection isn't enough to make it worth the effort to change comprehensive plans and that it may, in fact, undermine existing programs in some jurisdictions, to comments that it is about right.

The new requirements build off of the Avoid, minimize and mitigate standards in place in the region now under the existing Title 3. The proposal would retain the existing Title 3 standards, which already apply to about 60% of these riparian habitat areas. However, the new standards would place more requirements on undeveloped floodplains, since these areas are currently subject only to cut and fill requirements for water storage but not the avoid, minimize, mitigate standards that apply to the Water Quality Resource Areas.

The proposal ties the requirements to avoid, minimize and mitigate to the habitat resource quality and the urban development values approved by Council in the ESEE (economic, social, environmental and energy) analysis, and creates three types of Habitat Conservation Areas (HCA):

- High HCA: Avoid, Minimize, Mitigate (same standard as Title 3);
- Moderate HCA: Minimize, Mitigate; and
- Low HCA: Mitigate only.

Options to make the “floor” level of protection higher include making the Avoid test apply to all habitat conservation areas, instead of only the high conservation area, as proposed. Options to make the “floor” level of protection lower include eliminating any need for a development to show that practical options to Avoid the habitat areas have been considered as part of the development application. Instead, a minimize or mitigate standard could apply.

Council direction to apply regulatory protection only to Class I and II habitat greatly simplified the types of habitat covered and significantly reduced the area subject to new regulations. A substantial portion of the Class I and II habitat is covered by Title 3 Water Quality Resource Area standards. Opinions have been expressed that the urban development value is not an appropriate tool to vary protection levels from two perspectives: habitat in centers and regionally significant industrial areas is just as valuable as in other areas, and that residential development should not be classified as

“low urban development value” since it is a major driver of the regional economy and the single largest user of land. One way to address these concerns is to treat all of the Class I and II habitat the same and apply a Minimize and Mitigate standard, since the core area closest to streams is already subject to Avoid under existing Title 3 standards.

The approach proposed in the Functional Plan is necessarily a discretionary approach, because it requires a jurisdiction to consider specific facts related to a property and determine, for example, whether or not it is reasonably possible to “avoid” the habitat. Recall that the Goal 5 rule requires that the program provide property owners with a clear and objective approach and, once that approach has been provided, then a discretionary approach may also be provided. The draft functional plan passes this requirement through to the region’s cities and counties, requiring them to have a clear and objective approach that would result in protection at least as protective as the protection that would be provided by the discretionary approach described above. The model ordinance will provide an example of a clear and objective development approval approach, consistent with the Goal 5 rule, and a discretionary approach.

## **2. Require Habitat-Friendly Development Practices, where technically feasible, in Class I and II Riparian areas.**

**Key Policy Issue:** Should these practices be required, where technically feasible, or should cities and counties only be required to *allow* the practices?

Habitat-Friendly Development practices include a variety of tools such as reducing water runoff and reducing the amount of effective impervious surfaces. Some of these are included in some city and county stormwater management plans. The proposal calls for requiring city and county codes to require the use of these practices. Because only some practices are feasible in some instances, the proposal specifies that the requirements would apply only when technically feasible. The proposal calls for requiring these practices in all Class I and II habitat areas, even in existing Title 3 WQRA and floodplain areas and in the streamside areas that were exempted from Title 3 when it was adopted.

Based on comments received, the difficulties in using these habitat friendly practices today range from concerns about capital and maintenance cost, barriers in local codes that make the practices difficult to apply, and lack of up to date familiarity or knowledge on the part of all parties involved on how to apply the quickly evolving technologies. The advantages of using these practices are their benefits to water quality and channel conditions as well as opportunities to retain green infrastructure on the site.

## **3. Applicable Habitat Conservation Area Standards for New Urban Areas**

**Key Policy Issue:** What level of protection, or “floor” should new additions to the UGB have, and should the rules that apply there be spelled out explicitly at this time, or left to be developed at the time a new expansion is approved?

The proposal will identify a process that new urban areas would be required to follow, including establishing a habitat inventory consistent with the methodologies for the existing habitat inventory and establishing the urban development value of the area consistent with the methodology developed in the ESEE. (A new inventory may not be needed for several years because the current inventory extends one mile beyond Metro's jurisdiction, but the inventory would need to be updated at the time of the expansion). The concept level design types would guide the application of the urban development values until final planning was completed and final design types applied.

The proposal anticipates to apply the same Avoid, minimize, mitigate principle to upland areas as in the Class I and II areas. The same choices regarding the use of Avoid apply as described above. However, new urban areas also offer opportunities to avoid the resources in the initial concept planning in ways not possible in the more built-up urban areas. For example, rules could be imposed that prohibited habitat areas from being divided into parcels smaller than a certain size, or from being zoned for dense uses. In addition, other provisions become more relevant, such as a tree protection ordinance, because of the importance of trees in defining the upland habitat functional values. The same disadvantages that the Council weighed in deciding to designate the upland areas "allow" apply in new urban areas, too, since many of the upland areas are also less constrained development areas.

#### **4. Relaxation of Title 1 Density/Capacity Requirements.**

**Key Policy Issue:** Is the Council willing to accept lower residential densities than established in Title 1 and agree to a more "automatic" and less rigorous review process than offered in Title 8 for the reduction?

Metro Council has indicated, in multiple Resolutions, its intent to reduce density targets for residential capacity if necessary to protect natural resources. Title 8 allows a process for a city or county to do that by applying to Metro, in March of each year, for approval of a density requirement reduction to support natural resource areas. To date, no local jurisdiction has made a request under these provisions.

As proposed, the process would not require further approval by Metro. Approval would occur automatically if the decision was necessary to protect the regionally significant habitat from development and offered permanent protection of the habitat. The loss of housing units would be taken into consideration in sizing the next UGB expansion or asking cities and counties to absorb additional capacity in other ways. Transfer of Development Rights are encouraged to minimize the effect on land supply.

This ability to reduce density would apply to only areas on Metro's Inventory Map and to local Goal 5 inventories if they were on a map prior to the adoption of Metro's program. This would apply to all habitat areas, both upland and riparian.

The reduction in density offers the ability to build larger lots at a lower density than currently allowed within the UGB. The provision would apply to residential areas only, not commercial, though residential zoning makes up 40% of the inventoried habitat areas.

## 5. Approach to Measure 37

**Key Policy Issue:** Is it possible to consider new regulations in the post-Measure 37 era, and if so, how much can language in the functional plan help to avoid Measure 37 claims?

Council Direction in Resolution No. 03-3506A called for:

- Program shall not result in reductions in FMV of properties unless program provides source of funds to compensate property owners.
- Not the intent of previous statement to require compensation in any instance where M37 would not require compensation—i.e. all exceptions apply (e.g. rules implemented to protect health and safety or to comply with federal law are exempt under M37).

The approach in current draft:

- Explicitly states goal of program is to increase fair market value of each property affected (by using more flexible development approaches such as allowing more intensive, but clustered, development; allowing less intensive development of properties than would otherwise be required under density rules; etc.).
- Requires cities and counties to include provisions intended to increase the fair market value of individual properties; and makes all other rules subject to that provision (this ostensibly means that, if the other rules would decrease the FMV of a property, then the rule would not apply).
- Variances—provides a procedure to allow a property owner to obtain a variance if the rules resulted in a loss in FMV of a property; process is a land use decision (i.e. appeals to LUBA—bringing these claims “within” the land use system, unlike M37 claims); only minimum variance necessary may be granted; includes waiver of future M37 claims based on functional plan; one incentive for property owners to use the variance procedure is that the variance could be transferred to future property owner (unlike M37 waiver).
- Incorporates concept that rules should not decrease property values without including any exceptions, and provides variance procedure to waive rules to the extent that they do reduce FMV of property; if a property owner chose not to apply for a variance, or rejected an offered variance because the owner believed it was insufficient, and instead filed a M37 claim, then a city or county (or Metro) could still assert that the entire program was exempt under the “comply with federal rules” exception.

Comments on this section from advisory committee representatives, especially representatives of cities and counties (including both staff and elected officials) have included:

- The intent to increase fair market value goes beyond Measure 37's requirements to compensate for losses in fair market values;
- Forcing jurisdictions to establish a separate variance procedure parallel to the Measure 37 procedure and separate from the jurisdictions other variance procedures is unnecessarily duplicative, and having the variance process "within" the land use decision arena (i.e. decisions can be appealed to LUBA, unlike Measure 37 decisions) could result in confusing and inequitable results for property owners;
- The draft functional plan institutionalizes Measure 37 and does not take into account the possibility that the measure could be amended in the future; and
- The approach does not seek to take advantage of any of the exceptions provided in Measure 37, such as an argument that these new rules are necessary to implement the soon to be finalized TMDL rule issued pursuant to the federal Clean Water Act.

Alternative approaches include;

- Be generally silent within the functional plan (but address as part of the overall program description) as to the program's effect on FMV—address M37 claims as they arise under the terms of the measure, either compensating or waiving the rules on a case-by-case basis. This would still allow Metro or a local government to assert M37 exceptions regarding all claims—i.e. argument that program was implemented to protect health/safety or to comply with TMDL Rule.
- Provide cities and counties with the option of considering the effect of the program on the fair market value of properties as part of the discretionary review process. For example, under the current approach in a High HCA, a property owner pursuing the discretionary approval approach must show, under the avoid standard, that there is no practicable alternative to the proposed development that would keep development out of the HCA. The UGMFP defines practicable to mean available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose. (LUBA decisions interpreting the term practicable show that it establishes a demanding standard.) This alternative approach suggests that, if a city or county chose to do so, it could add impact on fair market value to its consideration of whether the avoid standard had been met. In other words, if avoiding the HCA would result in any loss in FMV, then the avoid standard would be met and development within the HCA would be permitted. Similarly, FMV could also be added as a factor to consider when determining whether proposed development had sufficiently minimized its incursion into the HCA. Thus, during the discretionary review process, the city or county would simply apply the required standards right up to the point where they did not result in any loss in FMV of the property. Incorporate

references to not reducing the fair market value of property into the discussion of the discretionary review alternative using the Avoid, minimize, mitigate approach.

## **6. Compliance Timeline**

**Key Policy Issue:** What is a reasonable, timely and consistent compliance timeline?

The issue of a compliance timeline was a point of debate in the December Resolution discussion. The current draft proposes the same language as in Title 8 of the functional plan, a one year deadline for cities and counties to make land use decisions consistent with the new title and with compliance no later than two years after acknowledgement to amend comprehensive plans and land use regulations consistent with the new title.

The uncertainty caused by M37 for initiating new regulations argues for a longer timeline for compliance to give M37 issues time to be better understood. Concerns about clarifying regulatory changes for development practices and for continuing habitat conservation argue for a shorter timeline. Options include:

- Use the current language for compliance
- Double the time for compliance to give cities and counties 2 years for land use action compliance and 4 years for compliance in comprehensive plans.
- Stage the compliance requirements focusing on the habitat friendly development code revisions in the first year and the land use action/comprehensive plan actions in years 2 and 3.

## **7a. Map Verification Process**

**Key Policy Issue:** How should the Functional Plan address the map verification process for Habitat Conservation Areas?

The Functional Plan delegates the responsibility of administering Metro's Habitat Conservation Areas Map, or the local maps deemed to be in substantial compliance with Metro's maps, to city and county governments. It sets forth a 3-step verification process to locate boundaries of Habitat Conservation Areas which may be located on a given property: first, locate the boundaries of habitat areas; second, determine urban development value; and third, determine the boundaries of High, Moderate, or Low Habitat Conservation Areas.

The Functional Plan currently proposes requiring that city and counties provide property owners with a reasonable, timely, and equitable process to verify the specific location of habitat areas subject to the provisions of local plans. This process would allow a property owner, or another person with the property owner's consent, to confirm the location of habitat on a lot or parcel outside the development permit process. The intent is to make the process as simple as possible and that proposed adjustments to habitat boundaries not result in a change requiring an amendment to the city's or county's comprehensive plan.

As currently drafted, this process also allows adjustments of urban development value designations based on changes in Metro 2040 Design Type designations or boundary changes that are expected to occur over time.

## **7b. Regionally significant educational and medical facilities**

**Key Policy Issue:** How should the Functional Plan address Regionally significant educational and medical facilities?

Last May, during the adoption of the ESEE, Council directed staff to bring back a proposal to consider the urban development value of regionally significant major institutions. The Council heard testimony expressing concerns that Metro's economic model used in the ESEE analysis undervalued the economic importance of these facilities. Staff believes that, originally, one of the major drivers for this adjustment process was the inclusion of upland habitats in the proposed regulatory treatments under Council Resolutions 03-3376B and 04-3440. Medical and educational facilities may have Class A and B upland habitat areas on their campuses that are also identified as future facility expansion areas. Since the Council is applying a regulatory approach for Class I and II riparian areas only, and not upland habitat areas, this lowers the degree of conflict between habitat protection and facility expansion plans.

There are two aspects to this policy issue. First, should such institutions be given special consideration, either by considering all of them as high urban development value areas (and therefore the applicable HCA level would be adjusted)? Second, if the answer to the first question is "yes," then how should such special consideration be incorporated into the Functional Plan?

Several alternative approaches are possible:

- Identify a list of regionally significant medical and educational facilities and map them as high development value as part of the Habitat Conservation Areas and include verification criteria to allow additional designation of such facilities upon a review by Metro Council.
- Identify regionally significant medical and educational facilities as high development value, include verification criteria in the functional plan and delegate to local jurisdictions the responsibility to determine which medical and educational facilities meet the criteria.
- Do nothing additional for the regionally significant institutions because the area subject to regulation is much less (only Class I and II) than was considered last May when the issue was raised and would be subject to the avoid, minimize, and mitigate standard in discretionary review.

## **8. Exemptions from the program**

**Key Policy Issue:** What sites are “similarly situated” to the International Terminal site and should be at least partially exempted from the requirements of Habitat Conservation Areas?

Last May, Council determined that economic importance of the International Terminal Site outweighed habitat values and directed staff to identify any other “similarly situated” sites that would be subject to an “allow” decision for conflicting uses.

Under Title 3, certain geographic areas were exempted from the requirements to establish Water Quality Resource Areas and Flood Management Areas. These areas include portions of lower Willamette River (Portland Harbor), portions of the Rivergate industrial area in the Columbia Corridor, downtown Beaverton and Tualatin, and other areas determined to support water-dependent industrial uses or otherwise to be of high economic importance. The Title 3 maps adopted by Council depict these exempted areas. Additional exempt areas were proposed by local governments and deemed by Metro to be in substantial compliance with Title 3.

The current amendment to the Functional Plan recommends that these Title 3 exempt areas be incorporated into the Functional Plan as “similarly situated” sites to the International Terminal site. They would be partially, not fully, exempt from the requirements of Functional Plan because the requirements for Habitat Friendly Development Practices would continue to apply in these areas.

Options include:

- Use Title 3 Water Quality Resource Areas and/or Flood Management Area exemptions to identify “similarly situated sites” for purposes of exempting additional sites from the program.
- Encourage these “similarly situated sites” to participate in a District Plan approach to take special economic and environmental conditions into consideration.

## **9. Compliance Alternatives**

**Key Policy Issue:** How best to motivate creativity in city and county compliance yet assure certainty and consistency?

The current draft of the Functional Plan Amendment defines five different ways that a city or county could comply with the regional requirements.

1. Amend its comprehensive plan and implementing ordinances to adopt the Title 13 Model Ordinance and the Metro Habitat Conservation Areas Map.
2. Demonstrate that its existing or amended comprehensive plan and existing, amended or new implementing ordinances substantially comply with Metro’s Habitat Conservation Map and the performance standards and best management practices.

3. Amend its comprehensive plan and implementing ordinances to comply with the Tualatin Basin Approach.
4. Demonstrate that it has a program that will achieve the program objective and targets described in the Functional Plan and include provisions to monitor and measure whether the objectives and targets have been met and adapt program to ensure that they are achieved. May assert substantial compliance by relying on combination of comprehensive plan, implementing ordinances and incentive based, voluntary programs.
5. Adopt a district plan that applies over a portion of the city or county... and demonstrate that the district plan area complies with program objectives and targets. A district plan is for areas within a common watershed, or which are within areas in adjoining watersheds that share an interrelated economic infrastructure and development pattern.

The major issue that arises over compliance options 4 and 5 are the standards against which the proposals should be judged. Options include:

- Performance objectives and targets for all of the habitat. This would encourage a city or county to protect more of the uplands in exchange for less or different approach in the riparian areas.
- Performance objectives and targets for Class I and II habitat only. This is what is included in the current draft of the functional plan, or
- For comparable performance as established in the performance standards and best management practices in the functional plan and model ordinance.

Alternatives to adopting a model ordinance or the performance standards/ best management practices that a city or county could use to achieve comparable results with an appropriate level of certainty include:

- Existing tree protection ordinance
- Funded program for voluntary tree protection and/or replanting and restoration
- Institutionalized habitat preservation incentive programs, through fee structures or other mechanisms
- A local acquisition program
- Aggressive stormwater or habitat friendly development standards
- Maintaining and enhancing publicly-owned habitat

## **10. Performance objectives and targets.**

**Key policy issue:** What role should performance objectives play in setting vision/goals for the region and in linking to responsible actions and implications for ongoing monitoring?

Resolution 04-3506A, adopted by the Metro Council on December 9, 2004 directed staff to develop regional outcome measures to evaluate the region's progress toward meeting the vision of conserving, protecting, and restoring fish and wildlife habitat in the region. The resolution also calls for an annual assessment of progress including, but not limited

to, an evaluation of the habitat inventory. Metro staff proposed changing the term “outcome measures” to “performance objectives” to further clarify their use to measure the region’s performance in fish and wildlife habitat protection and restoration over time.

The Nature in the Neighborhood Program will coordinate and lead protection and restoration efforts and also evaluate regional progress. Metro’s habitat inventory identifies 80,000 acres of regionally significant fish and wildlife habitat based on the best available science, computer mapping, and fieldwork. To monitor success, staff proposed performance objectives and targets that reflect goals for habitat protection while also accounting for habitat quality and the urban development value of habitat land. Performance objectives can serve to motivate and inspire individual actions and broadly supported cooperative efforts to preserve and restore habitat as well as provide guidance for monitoring and potentially for choosing habitat areas for future acquisition.

One option for compliance in the draft Functional Plan is to allow cities or counties to demonstrate that their comprehensive plans and implementing ordinances will achieve performance objectives through a combination of regulatory and voluntary, incentive-based tools (See Issue #9). Performance objectives that include an identified target provide additional direction for flexible local compliance and greater specificity for the region’s habitat goals.

Staff developed four performance objectives that are derived from the Vision Statement and the ecological function criteria that serve as the basis of the Habitat Inventory. Staff has proposed targets for each of the four performance objectives that set the bar for improvement over baseline conditions in each watershed by focusing on enhancing existing habitat condition over the next ten years. The table below shows the four performance objectives, targets for each, and a description of the conditions considered in setting the target.

## Staff Proposed Performance Objectives and Targets

for use in clarifying regional expectations, identifying monitoring priorities and potentially in evaluating functional plan compliance

Objective	Target	Considerations in Setting Target
1. Preserve and improve streamside, wetland, and floodplain habitat and connectivity.	<p>1a. 10% increase in vegetated acres within 50 feet of streams (on each side) and wetlands in each subwatershed over the next 10 years (2015).</p> <p>1b. 5% increase in vegetated acres within 50 to 150 feet of streams (on each side) and wetlands in each subwatershed over the next 10 years (2015).</p> <p>1c. Preserve 90% of remaining undeveloped floodplains in each subwatershed over the next 10 years (2015).</p>	<ul style="list-style-type: none"> <li>• Most riparian regulatory programs are focused within the first 50 feet of streams and wetlands, and some include land within 150 of streams and wetlands, especially in steep slope areas</li> <li>• The 150 foot distance includes the outer distance of all primary ecological functions for riparian areas (with the exception of large undeveloped floodplains)</li> <li>• Mitigation, enhancement and restoration projects typically occur in this area</li> <li>• As redevelopment occurs, habitat within 150 of streams and wetlands can be restored</li> <li>• A higher target for increasing vegetation cover within 50 feet of streams and wetlands is justified based on the high level of existing protection</li> <li>• Applying the “avoid, minimize, and mitigate” tests to undeveloped floodplains would increase protection levels compared to existing Title 3 “cut and fill” requirements for flood areas</li> </ul>
2. Preserve large areas of contiguous habitat and avoid fragmentation.	<p>2a. Preserve 60% of vacant Class A and B upland wildlife habitat in each subwatershed over the next 10 years (2015).</p> <p>2b. Of the upland habitat preserved, retain 80% in patches 30 acres or larger in each subwatershed over the next 10 years (2015).</p>	<ul style="list-style-type: none"> <li>• Vacant Class A and B upland wildlife habitat within the UGB is most vulnerable to loss over time compared to other upland wildlife habitat located in developed areas or in parks</li> <li>• Acquisition programs and habitat friendly development practices (e.g., cluster development, on and off site density transfers) can help preserve upland wildlife habitat within the UGB</li> <li>• Reforestation programs can help restore upland wildlife habitat</li> </ul>
3. Preserve and improve connectivity for wildlife between riparian corridors and upland wildlife habitat.	<p>3a. Preserve 70% of habitat acres within corridors with a vegetative width of 200 feet in each subwatershed over the next 10 years (2015).</p>	<ul style="list-style-type: none"> <li>• Upland wildlife habitat is vulnerable to loss, and connectivity between riparian corridors and adjacent upland wildlife habitat can be expected to decline, especially within the UGB</li> <li>• Acquisition and habitat friendly development practices (cluster development, on and off site density transfers) can help slow the loss of habitat connectivity</li> </ul>
4. Preserve and improve special habitats of concern.	<p>4a. Preserve 80% of habitats of concern acres in each subwatershed over the next 10 years (2015).</p>	<ul style="list-style-type: none"> <li>• Habitats of concern are located in both Class I riparian areas and Class A upland wildlife habitat.</li> <li>• Bottomland hardwood forests, wetlands, riverine islands are mostly located in Class I riparian areas and are afforded more protection compared to habitats of concern located in Class A upland habitats</li> </ul>

As proposed, the targets described above are achievable based on reasonable circumstances, provide guidance for flexible local compliance with functional plan,

incorporate the Council's ESEE decision, and provide direction for voluntary, incentive-based efforts.

## **12. Tree Protection Requirements prior to a development application**

**Key Policy Issue:** What is the value of requiring tree protection standards outside of development review process to protect trees in Class I and II areas, with exceptions for developed SFR?

Tree canopy located in vacant Class I and II riparian habitat areas is vulnerable to loss outside the development review process. For example, a landowner could remove trees on a vacant parcel unless doing so required a tree removal permit from the city or county. Some cities and counties already have tree protection ordinances in place while others do not. Including language in the Functional Plan to protect trees by establishing minimum standards of forest canopy retention and reforestation would help address this situation. The tree protection could apply to forested land within Class A and B upland habitats coming into the UGB .

Given the central role of tree canopy in providing multiple ecological functions and values to riparian areas, tree protection requirements could also be included in the development review process. Under this approach, specific references to tree protection standards would be included in the Avoid, Minimize, and Mitigate tests.

Tree protection and forest conservation standards can be an effective means for protecting fish and wildlife. Tree protection may have additional benefits such as increase in property values, stormwater reduction, energy savings, and air pollution reduction.

Policy options include:

- Establish mandatory tree protection requirements in the functional plan (as currently proposed) to address tree removal outside the development process;
- Encourage local governments to provide tree protection outside the development review process;
- Rely on regional education efforts to increase awareness of the value of trees and to inform property owners about the new regulations in a way that reduces interest in cutting trees before applying for a development permit.
- Expand existing Title 3 approach to development, which is defined to include "removal of more than 10 percent of the vegetation on the lot," to Class I and II Habitat. Define tree removal over a certain threshold as development subject to the provisions of the Functional Plan.

## **12. Encourage Language**

**Key Policy Issue:** How best to motivate and inspire voluntary habitat protection and restoration activity among the region's governments, agencies, non-profits, businesses and individuals?

The Nature in the Neighborhoods Program supports conservation and restoration of all regionally significant habitat through a variety of regulatory and non-regulatory means, as directed by previous Council Resolutions. The Program supports additional education and awareness efforts, acquisition and restoration funding, incentives technical assistance, and monitoring. Metro has a strong and growing role in all of these areas and staff is working to unite the similarly related activities under the Nature in the Neighborhoods name.

One question is how to best encourage cities and counties to increase their commitment to voluntary, incentive based activities for habitat protection. Three different approaches include:

- Describing what Metro would encourage cities and counties to do in the Functional Plan
- Describing what Metro would encourage cities and counties to do in the Nature in the Neighborhoods Program description
- Include descriptions in both the functional plan and the Nature in the Neighborhoods Program.

The issue is how to best communicate this message and whether the functional plan or the Nature in the Neighborhoods Program descriptions will have the greatest visibility and longevity. The functional plan specifies requirements for cities and counties. If included in the functional plan, the encourage language would be visible to all who focus on the functional plan, but the encourage language does not have any legal value by being in the functional plan.

The Nature in the Neighborhoods Program describes Metro's proposed activities but also defines expectations for others. If included in the Nature in the Neighborhoods Program, it would be compatible with descriptions of other voluntary, incentive based programs. It could be distributed to cities and counties and individuals to be highly visible, but it may not have the shelf life that something listed in Metro's legal documents (functional plan) would have.

Including the language in both documents would be the strongest, if somewhat redundant.

### **13. Other Federal/State requirements**

**Key Policy Issue:** How much should the program be integrated with other state requirements for public health and safety, and federal requirements for clean water and endangered species? Should the program be submitted for meeting Goal 6 Water Quality and Goal 7 Hazards in addition to Goal 5?

In developing the fish and wildlife inventory and conducting the ESEE analysis, staff have engaged in significant additional research regarding water quality, and have learned that the program, as proposed, will add significantly to the region's ability to maintain

and improve water quality in the regions waterways. Staff is therefore confident that a strong scientific basis exists to support an assertion that this program supports and implements Statewide Planning Goal 6. This is consistent with one of the aims of the program from the beginning-to ensure that it contributes toward compliance with the federal Clean Water Act (CWA). Despite the adoption of Title 3 in 1998, the region's waterways are nevertheless still not in compliance with the water quality requirements of the CWA, and are soon to be the subject of a Total Maximum Daily Load rule promulgated by DEQ. More needs to be done to improve the quality of the region's waterways, and this program will take additional steps toward doing so. Making a more explicit statement that the program is being implemented to improve water quality pursuant to Goal 6 would provide support for the assertion that any new land use rules adopted under the program should qualify under the required to comply with federal law exception to M37.

Both the Vision Statement and the Intent Section of the draft Functional Plan Title 13 state that part of the purpose is to comply with federal laws, including the Endangered Species Act. The draft Functional Plan elements to address Class I and II riparian areas will help achieve the purposes of the federal ESA for listed species dependent on riparian areas, and potentially help prevent future listings.

In addition, the Multnomah County Drainage Districts have requested that the Council reconsider one aspect of the Title 3 cut and fill rule that applies to work in floodplains. The MCDDs note that floodplains within their district are completely managed areas that are likely to flood only if the region were to face a truly catastrophic flood. Even a hundred-year flood is highly unlikely to flood such areas. Thus, the MCDDs request that the Council consider repealing the cut and fill requirement as it applies within their districts. If the Council were to adopt such an amendment to Title 3, the action would necessarily be applying Goal 7.