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METRO

Agenda

MEETING: METRO COUNCIL WORK SESSION MEETING
DATE: March 31, 2005
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. NATURE IN NEIGHBORHOODS FUNCTIONAL PLAN ELEMENTS

ADJOURN

M E M O R A N D U M

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METRO

To : Metro Council
From: Chris Deffebach
RE: Nature in Neighborhoods
Date: March 15, 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.

7. Map Verification Process

Key Policy Issue: How should the Functional Plan address the map verification process for Habitat Conservation areas, should there be a process for adjusting urban development values, and should a special process be defined for adjustments for regionally significant educational and medical facilities?

The Functional Plan currently proposes that city and counties provide property owners with a reasonable, timely, and equitable process to verify the specific location of habitat areas and that the process be handled administratively in most cases. It also identifies a process for local administration of the Habitat Conservation Areas Map that involves determining the boundaries of habitat areas and urban development values on a property specific basis.

One policy issue is whether there should be a special process in the Functional Plan to adjust the urban development value as well as the habitat value, and should the process specifically allow cities and counties to increase the urban development value of regionally significant educational and medical facilities. This adjustment would result in lower protection of Class I and II riparian habitats located within the boundaries of these facilities. The rationale for this adjustment is that Metro's economic model used in the ESEE analysis can undervalue the economic importance of these facilities.

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.

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 Functional Plan currently provides a process to allow local jurisdictions to designate major medical and educational institutions as high urban development value because of the economic contributions these facilities provide to the region. The Functional Plan would set the criteria to encourage regional consistency, but allow the local jurisdiction to make the decision administratively or through a quasi judicial process as they would other verifications to the resource location.

Several alternative approaches are possible:

- Identify the regionally significant facilities verification criteria and allow local jurisdictions to determine their urban development value.
- Identify the regionally significant facilities and map them as high or medium development value as part of the Habitat Conservation Areas and not rely on local considerations of 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"> • 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 • The 150 foot distance includes the outer distance of all primary ecological functions for riparian areas (with the exception of large undeveloped floodplains) • Mitigation, enhancement and restoration projects typically occur in this area • As redevelopment occurs, habitat within 150 of streams and wetlands can be restored • A higher target for increasing vegetation cover within 50 feet of streams and wetlands is justified based on the high level of existing protection • 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
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"> • 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 • 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 • Reforestation programs can help restore upland wildlife habitat
3. Preserve and improve connectivity for wildlife between riparian corridors and upland wildlife habitat.	3a. Preserve 70% of habitat acres within corridors with a vegetative width of 200 feet in each subwatershed over the next 10 years (2015).	<ul style="list-style-type: none"> • 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 • Acquisition and habitat friendly development practices (cluster development, on and off site density transfers) can help slow the loss of habitat connectivity
4. Preserve and improve special habitats of concern.	4a. Preserve 80% of habitats of concern acres in each subwatershed over the next 10 years (2015).	<ul style="list-style-type: none"> • Habitats of concern are located in both Class I riparian areas and Class A upland wildlife habitat. • 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

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.

11. 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.

M E M O R A N D U M

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METRO

To: Metro Council
From: Andy Cotugno
RE: Nature in Neighborhoods materials for policy discussions
Date: March 24, 2005

Please see attached information to further inform your policy discussions regarding the Nature in Neighborhoods draft Functional Plan. Two documents are included:

1. **Policy Issue #14: Application of the program to developed habitat areas and redevelopment.** This discussion describes the issues related to restoration requirements when currently developed areas near streams and rivers are redeveloped.
2. **Staff proposed targets for performance objectives, including data on existing conditions and how much would have to be achieved to meet the proposed targets.**

Nature in Neighborhoods Functional Plan--Policy Issue #14

Application of Program to Developed Habitat Areas and Redevelopment

On several occasions, Councilor Liberty has raised an important policy issue regarding how the program will help restore habitat areas associated with developed properties that are being redeveloped. For example, the intensive redevelopment that is underway in the South Waterfront area of Portland presents opportunities for significant habitat restoration and improvement, especially given that the redevelopment will likely result in significantly increased property values in that area.

How Were Developed Areas Treated in the Habitat Inventory?

The developed areas in which restoration opportunities may exist include both areas that have been mapped as Class I and II riparian habitat, as well as some areas identified as Class III riparian habitat and riparian impact areas. This includes:

1. Developed areas that have been mapped as Class I and II resources, such as:
 - Fully developed areas that are near streams and underneath tree canopy, such as residential neighborhoods; and
 - All areas that are within 50 feet of streams, which are considered Class I riparian areas whether or not they are developed (and these areas generally coincides with the existing Title 3 Water Quality Resource Areas);
2. Developed floodplains, which are included within Class III riparian areas; and
3. Riparian impact areas—recall that riparian impact areas were those areas within 150 ft. of the stream that would have qualified as riparian habitat but for the fact that they are developed.

How Does the Current Draft of the Program Treat Redevelopment Activity in These Areas?

1. Backyard exemption. All current residential property owners may engage in any activity that is currently permitted without having to obtain a building permit, grading permit, tree removal permit, or land use decision.
2. Replacement, Alteration, Repair and Maintenance. This includes minor repairs and maintenance, replacement of entire structures in case of accidental destruction such as a fire, and complete redevelopment of a property. The current draft functional plan allows any of these activities provided that the activity does not result in encroachment closer to the water feature that is the basis for identifying the area as habitat. Removed vegetation must be replaced (native for native, other for other). However, there is no mitigation

requirement provided that the replacement, alteration, repair or maintenance does not encroach farther into the habitat.

Policy Options

I. Program Approach in Mapped Class I and II Habitat—Options:

- A. **Current Approach.** All redevelopment would be allowed provided that it does not encroach further into undeveloped habitat areas or closer to the relevant water feature. If it would encroach into such areas, then the program's general development rules would apply (e.g. avoid-minimize-mitigate standard).
- B. **Additional Mitigation Requirements.** Require mitigation for redevelopment that would significantly increase the intensity of the development on a site. For example, if a site had a one story commercial building that was going to be replaced by a ten-story office building, require mitigation to reflect the new, additional impacts that the new development will have on the habitat areas.
- C. **Apply All Elements of Program to Redevelopment Proposals.** Apply an avoid-minimize-mitigate standard to all redevelopment projects. Thus, notwithstanding that a site is already developed, require redevelopment proposals to show that there is no practicable redevelopment alternative that would not involve redevelopment of the entire area that is currently developed. (Note: Title 3 already applies the avoid-minimize-mitigate test to redevelopment in all Water Quality Resource Areas.)

II. Opportunities in Developed Floodplains and Riparian Impact Areas

- A. **Current Approach.** The Council has made a preliminary "allow" decision for these areas. If any new approach is selected, it will require an adjustment to that decision.
- B. **Designate These As Low HCAs (or a variation of them).** There are two kinds of requirements that could be applied to these areas to achieve some level of future habitat restoration upon redevelopment:
 - 1. **Apply the same approach to redevelopment in these areas as is applied to redevelopment in mapped habitat, i.e., whichever approach selected under section I, above; and**
 - 2. **Condition Upzoning With Restoration Requirements.** Develop a rule that requires local governments to include restoration conditions whenever they approve any zoning change that would allow more intensive development in these areas.

Staff Proposed Performance Objectives and Targets

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

Objective	Target	Current Status and Targeted Condition	Considerations in Setting Target
1. Preserve and improve streamside, wetland, and floodplain habitat and connectivity.	1a. <u>10% increase in forest and other vegetated acres within 50 feet of streams</u> (on each side) and wetlands in each subwatershed over the next 10 years (2015).	1a. Current condition (regional data): <ul style="list-style-type: none"> 64% vegetated 14,065 vegetated acres 	<ul style="list-style-type: none"> Most riparian regulatory programs are focused within the first 50 feet of streams and wetlands. Mitigation, enhancement and restoration projects typically occur in this area. A higher target for increasing vegetation cover within 50 feet of streams and wetlands will help achieve DEQ established Total Maximum Daily loads for stream temperature.
		10% Increase: <ul style="list-style-type: none"> 70% vegetated 1,406 acre increase in vegetation over 10 years 	
	1b. <u>5% increase in forest and other vegetated acres within 50 to 150 feet of streams</u> (on each side) and wetlands in each subwatershed over the next 10 years (2015).	1b. Current condition (regional data): <ul style="list-style-type: none"> 59% vegetated 15,235 vegetated acres 	
		5% Increase: <ul style="list-style-type: none"> 62% vegetated 762 acre increase in vegetation over 10 years 	<ul style="list-style-type: none"> Some local regulatory programs protect land within 150 of streams and wetlands, especially in steep slope areas. The 150 foot distance includes the outer distance of all primary (most important) ecological functions for riparian areas (with the exception of large undeveloped floodplains). As redevelopment occurs, habitat within 150 of streams and wetlands can be restored.
1c. <u>Preserve 75% of remaining undeveloped floodplains</u> in each subwatershed over the next 10 years (2015).	1c. Current condition (regional data): <ul style="list-style-type: none"> % of undeveloped floodplains total acreage of undeveloped floodplains 	<ul style="list-style-type: none"> 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. 	
	25% loss: <ul style="list-style-type: none"> % of undeveloped floodplains total acreage of undeveloped floodplains 		
2. Preserve large areas of contiguous habitat and avoid fragmentation.	2a. <u>Preserve 60% of vacant Class A and B upland wildlife habitat</u> in each subwatershed over the next 10 years (2015).	2a. Current Condition: <ul style="list-style-type: none"> 15,000 acres of vacant Class A and B upland wildlife habitat 	<ul style="list-style-type: none"> 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. 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. Reforestation programs can help restore upland wildlife habitat. Relaxation of Metro's regional residential capacity requirements can help to preserve upland habitat.
		60% retention: <ul style="list-style-type: none"> 9,000 acres of vacant Class A and B upland wildlife habitat remaining 	
	2b. Of the upland habitat preserved, <u>retain 80% of the number of patches 30 acres or larger</u> in each subwatershed over the next 10 years (2015).	2b. Current Condition: <ul style="list-style-type: none"> 23,428 acres of upland habitat in 133 patches that contain 30 acres or more of upland wildlife habitat 	
		80% retention: <ul style="list-style-type: none"> 106 upland habitat patches that contain 30 acres or more of upland habitat 	
3. Preserve and improve connectivity for wildlife between riparian corridors and upland wildlife habitat.	3a. <u>Preserve 70% of habitat acres within corridors with a vegetative width of 200 feet</u> in each subwatershed over the next 10 years (2015).	3a. Current Condition: <ul style="list-style-type: none"> acres of habitat within corridors exceeding 200 feet in width. 	<ul style="list-style-type: none"> 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 Acquisition and habitat friendly development practices (cluster development, on and off site density transfers) can help slow the loss of habitat connectivity
		70% retention: <ul style="list-style-type: none"> acres of habitat within corridors exceeding 200 feet in width 	
4. Preserve and improve special habitats of concern.	4a. <u>Preserve 80% of habitats of concern acres</u> in each subwatershed over the next 10 years (2015).	4a. Current condition: <ul style="list-style-type: none"> 33% of all habitat designated as HOCs 26,723 total acres of HOCs 	<ul style="list-style-type: none"> Habitats of concern are located in both Class I riparian areas and Class A upland wildlife habitat. 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
		80% retention: <ul style="list-style-type: none"> 21,378 total acres of HOCs 	