A G E N D A

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1542 | FAX 503 797 1793

METRO

Agenda

MEETING:	METRO COUNCIL REGULAR MEETING
DATE:	July 14, 2005
DAY:	Thursday
TIME:	2:00 PM
PLACE:	Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

- Area 93 Citizens

3. ORGANICS UPDATE — Barrett/Erickson

4. CONSENT AGENDA

4.1 Consideration of Minutes for the July 7, 2005 Metro Council Regular Meeting.

5. ORDINANCES - SECOND READING

5.1 **Ordinance No. 05-1077A,** Amending the Regional Framework Plan and the Urban Growth Management Functional Plan Relating to Nature in Neighborhoods. *(Possible technical amendments, no final action)* — Hosticka

6. RESOLUTIONS

6.1 **Resolution No. 05-3597,** Appointing Roger Vonderharr, Jeannette Hamby and Jill Thorn to the Metro Boundary Appeals Commission. — Park

7. LEGISLATIVE UPDATE

8. CHIEF OPERATING OFFICER COMMUNICATION

9. COUNCILOR COMMUNICATION

ADJOURN

Television schedule for July 14, 2005 Metro Council meeting

Clackamas, Multnomah and Washington counties, and Vancouver, Wash. Channel 11 -- Community Access Network www.yourtvtv.org -- (503) 629-8534 2 p.m. Thursday, July 14 (live)	**Portland** Channel 30 (CityNet 30) -- Portland Community Media www.pcmtv.org -- (503) 288-1515 8:30 p.m. Sunday, July 17 2 p.m. Monday, July 18
Gresham Channel 30 -- MCTV www.mctv.org -- (503) 491-7636 2 p.m. Monday, July 18	**Washington County** Channel 30 -- TVTV www.yourtvtv.org -- (503) 629-8534 11 p.m. Saturday, July 16 11 p.m. Sunday, July 17 6 a.m. Tuesday, July 19 4 p.m. Wednesday, July 20
Oregon City, Gladstone Channel 28 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.	**West Linn** Channel 30 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.

PLEASE NOTE: Show times are tentative and in some cases the entire meeting may not be shown due to length. Call or check your community access station web site to confirm program times.

Agenda items may not be considered in the exact order. For questions about the agenda, call Clerk of the Council, Chris Billington, (503) 797-1542. Public hearings are held on all ordinances second read and on resolutions upon request of the public. Documents for the record must be submitted to the Clerk of the Council to be considered included in the decision record. Documents can be submitted by e-mail, fax or mail or in person to the Clerk of the Council. For additional information about testifying before the Metro Council please go to the Metro website www.metro-region.org and click on public comment opportunities. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

BEFORE THE METRO COUNCIL

AMENDING THE REGIONAL FRAMEWORK PLAN AND THE URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN RELATING TO NATURE IN NEIGHBORHOODS	)))))	ORDINANCE NO. 05-1077A. Introduced by Michael Jordan, Chief Operating Officer, with the concurrence of David Bragdon, Council President

WHEREAS, nature in neighborhoods is critical to maintaining and improving the high quality of life, livability, and standard of living enjoyed by the people of the Metro region; and

WHEREAS, the Metro Council has expressed, as one of four central goals for the region, the aspiration that, "The region's wildlife and people thrive in a healthy urban ecosystem," and identified this goal as a priority for action; and

WHEREAS, the Metro region places a high priority on the protection of its streams, wetlands, and floodplains to maintain access to nature, sustain and enhance native fish and wildlife species and their habitats, mitigate high storm flows and maintain adequate summer flows, provide clean water, and create communities that fully integrate the built and natural environment; and

WHEREAS, the Regional Framework Plan provides that Metro will adopt programs to maintain and improve water quality and to protect fish and wildlife habitat in the region; and

WHEREAS, Metro adopted Title 3 to the Urban Growth Management Functional Plan in 1998 to maintain and improve water quality and protect people and property from flood hazards; and

WHEREAS, Title 3 also provides for Metro to study and develop a program for the protection and conservation of fish and wildlife habitat; and

WHEREAS, the Metro Policy Advisory Committee, comprised of elected officials and other citizens representing the region's cities and counties, adopted a "Vision Statement" in 2000 ("MPAC Vision Statement") to guide, inform, and be the philosophical underpinnings for the study, identification, and development of a fish and wildlife habitat protection program; and

WHEREAS, the MPAC Vision Statement established an overall goal to 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 the surrounding urban landscape; and

WHEREAS, the MPAC Vision Statement recognized that this vision would have to be achieved through conservation, protection, and appropriate restoration of streamside corridors through time; and

WHEREAS, the Nature in Neighborhoods initiative has been proposed in Resolution No. 05-3574, which provides for Metro to implement a coordinated regional program to ensure that the region's natural areas and greenspaces are restored and protected; and

WHEREAS, Metro has undertaken the development of a fish and wildlife habitat protection program as one element of the Nature in Neighborhoods initiative consistent with Statewide Planning Goal 5, which is intended "to protect natural resources and conserve scenic and historic areas and open spaces," and with Oregon Administrative Rules chapter 660, Division 23, adopted by the Land Conservation and Development Commission to implement Goal 5 (the "Goal 5 Rule"); and

WHEREAS, Metro analyzed city and county habitat protection programs and concluded that habitat protection standards varied widely from city to city, and that the most regionally consistent standards were those adopted by cities and counties to comply with Metro's Title 3 water quality standards; and

WHEREAS, Metro has completed a region-wide inventory of regionally significant fish and wildlife habitat comprising 80,000 acres that has been located and classified for its ecological value and mapped to provide an information base for the region; and

WHEREAS, Metro has conducted an analysis of the economic, social, environmental, and energy (ESEE) consequences of protecting or not protecting the inventoried habitat in two phases and has developed this fish and wildlife habitat protection program based on that analysis; and

WHEREAS, through the study and development of the fish and wildlife habitat protection program, Metro identified new scientific information relating to water quality, and is therefore also adopting much of this element of the Nature in Neighborhoods initiative pursuant to Statewide Planning Goal 6, which is intended, in relevant part, "to maintain and improve the quality of the . . . water . . . resources of the state;" and

WHEREAS, fish and wildlife depend on clean, clear water in order to thrive, and all actions that protect water from becoming polluted by increased sedimentation, increased temperature, excessive nitrogen and nutrient levels, toxic chemicals, and other such pollutants is necessarily and inseparably linked with providing healthy, ecologically viable and stable fish and wildlife habitat; and

WHEREAS, as stated in Exhibit C, this ordinance is in furtherance of a comprehensive program in the Metro region for water pollution control, as a matter of protecting the public health and safety;

WHEREAS, the Federal Water Pollution and Control Act Amendments of 1972, 33 U.S.C. §1251 et seq. (the "Clean Water Act"), directs the administrator of the United States Environmental Protection Agency "in cooperation with other Federal agencies, State water pollution control agencies, interstate agencies, and municipalities and industries involved, prepare or develop comprehensive programs for preventing, reducing, or eliminating the pollution of the navigable waters and ground waters and improving the sanitary condition of surface and underground waters. In the development of such comprehensive programs due regard shall be given to the improvements which are necessary to conserve such waters for the protection and propagation of fish and aquatic life and wildlife, recreational purposes, and the withdrawal of such waters for public water supply, agricultural, industrial, and other purposes." 33 U.S.C. §1252; and

WHEREAS, as stated in Exhibit C, this ordinance is in furtherance of a comprehensive program in the Metro region to conserve the region's waters for the protection and propagation of

fish and wildlife, recreation purposes, and the withdrawal of such waters for public water supply, agricultural, industrial, and other purposes, as required by the Clean Water Act; and

WHEREAS, the Endangered Species Act, 16 U.S.C. §1531 et seq., was enacted "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species . . . ." 16 U.S.C. §1531(b); and

WHEREAS, Metro has catalogued the endangered and threatened species within the Metro region and this ordinance is in furtherance of a comprehensive program to conserve the ecosystem upon which endangered and threatened species depend; and

WHEREAS, in adopting new functional plan requirements as part of the comprehensive Nature in Neighborhoods initiative, Metro is committed to protecting the interests of property owners by implementing Statewide Ballot Measure 37 through a fair, efficient, and open claims process to be adopted on or before the effective date of this Ordinance; and

WHEREAS, Metro recognizes that local governments' implementation of the new functional plan requirements of the Nature in Neighborhoods initiative may give rise to Measure 37 claims by property owners against local governments and Metro is willing to assume responsibility for addressing those claims; now therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. The Regionally Significant Fish and Wildlife Habitat Inventory Map (the "Inventory Map"), attached hereto as Exhibit A and hereby incorporated by reference into this ordinance, is hereby adopted.

SECTION 2. Metro has analyzed the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit uses that conflict with the resource sites identified on the Inventory Map, consistent with Statewide Planning Goal 5 and OAR 660, Division 23. Based on Metro's ESEE analysis, Metro has determined to allow some conflicting uses and to limit some conflicting uses, but not to prohibit any conflicting uses. Metro's determination is reflected in tables 3.07-13b and 3.07-13c in Exhibit C to this ordinance. Sections 4 through 9 of this ordinance are hereby adopted to implement Metro's determination to allow some conflicting uses and to limit some conflicting uses pursuant to Statewide Planning Goal 5.

SECTION 3. All parts of Sections 4 through 9 of this ordinance that require the region's cities and counties to substantially comply with new requirements applicable to areas within the Metro Urban Growth Boundary on the date this ordinance is adopted are hereby also adopted to maintain and improve water quality pursuant to Statewide Planning Goal 6. In addition, all parts of Sections 4 through 9 of this ordinance that will require the region's cities and counties to substantially comply with new requirements applicable to areas that will be identified as regionally significant riparian habitat that is brought within the Metro Urban Growth Boundary after the date this ordinance is adopted are hereby also adopted to maintain and improve water quality pursuant to Statewide Planning Goal 6.

SECTION 4. The Regional Framework Plan is amended as provided in Exhibit B, which is attached and hereby incorporated by reference into this ordinance.

SECTION 5. The Urban Growth Management Functional Plan, Metro Code chapter 3.07, is amended to add Title 13, entitled "Nature in Neighborhoods," as provided in Exhibit C, which is attached and hereby incorporated by reference into this ordinance.

SECTION 6. The Urban Growth Management Functional Plan, Metro Code chapter 3.07, is further amended as provided in Exhibit D, which is attached and hereby incorporated by reference into this ordinance.

SECTION 7. The Title 13 Nature in Neighborhoods Model Ordinance, attached as Exhibit E, is hereby adopted and incorporated by reference into this ordinance.

SECTION 8. The Findings of Fact and Conclusions of Law in Exhibit F (the "Findings") are hereby adopted and incorporated by reference into this ordinance. The Findings explain how this ordinance complies with state law, the Regional Framework Plan, and the Metro Code. All attachments to the Findings are part of the Findings and are also hereby incorporated by reference into this ordinance.

SECTION 9. The provisions of this ordinance are separate and severable. In the event that any one or more clause, sentence, paragraph, section, subsection, or portion of this ordinance or the application thereof to any city, county, person, or circumstance is held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions of this ordinance or its application to other cities, counties, persons, or circumstances shall not be affected.

SECTION 10. This ordinance shall take effect 90 days after it is adopted.

ADOPTED by the Metro Council this _____ day of _____, 2005.

_____
David Bragdon, Council President

Attest:

Approved as to Form:

_____
Christina Billington, Recording Secretary

_____
Daniel B. Cooper, Metro Attorney

M:\attorney\confidential\07 Land Use\04 2040 Growth Concept\03 UGMFP\02 Stream Protection (Title 3)\02 Goal 5\02 Program\Ord 05-1077A 051205.doc

EXHIBIT A—ORDINANCE NO. 05-1077A

REGIONALLY SIGNIFICANT FISH AND WILDLIFE HABITAT INVENTORY MAP
(the "Inventory Map")

[Note: This map was not amended by the Metro Council on May 12, 2005, when the Council approved other amendments to Ordinance No. 05-1077. Persons interested in reviewing this map should refer to the map submitted with Ordinance No. 05-1077.]

EXHIBIT B—ORDINANCE NO. 05-1077A

REGIONAL FRAMEWORK PLAN AMENDMENTS

Amendment 1. In the chapter entitled, "Summary of Growth Concept," the section entitled, "Open Spaces and Trail Corridors" shall be amended as follows:

Open Spaces and Trail Corridors

Recognition and protection of open spaces both inside the UGB and in rural reserves are reflected in the Growth Concept. The areas designated open space on the Concept map are parks, stream and trail corridors, wetlands and floodplains, largely undeveloped upland areas and areas of compatible very low-density residential development. Many of these natural features already have significant land set aside as open space. The Tualatin Mountains, for example, contain major parks such as Forest Park and Tryon Creek State Park and numerous smaller parks such as Gabriel Park in Portland and Wilderness Park in West Linn. Other areas are oriented toward wetlands and streams.

Designating these areas as open spaces has several effects. First, it removes these lands from the category of urban land that is available for development. The capacity of the UGB then has to be calculated without these areas, and plans to accommodate housing and employment have to be made without them. Second, these natural areas, along with key rural reserve areas, receive a high priority for purchase as parks and open space, through programs such as Metro's Open Spaces Acquisition program. Finally, ~~regulations should be~~ functional plan requirements have been developed~~,~~ to protect critical ~~natural areas that would not~~fish and wildlife habitat areas without conflicting with housing and economic goals. This will provide protection of environmentally critical ~~creek~~ areas, compatible low-density development of sensitive areas and transfer of development rights from protected natural areas to other lands better suited for development.

Amendment 2. Chapter 1 entitled, "Land Use," shall be amended by adding section 1.9.4, "Protection of Regionally Significant Fish and Wildlife Habitat," which shall provide as follows:

1.9.4 Regionally Significant Fish and Wildlife Habitat

1.9.4.1 Upon demonstrating a need for additional urban land, Metro shall conduct an inventory of regionally significant fish and wildlife habitat for all lands being considered for inclusion in the UGB and shall consider whether urbanization can occur consistent with policies that call for protection of such habitat resources.

1.9.4.2 When the Council has discretion to choose among lands for addition to the UGB, the Council shall consider the impact that its decision will have on the ecological quality and integrity of regionally significant fish and wildlife habitat, and shall seek to limit future conflicts between urbanization and the protection of regionally significant fish and wildlife habitat.

Amendment 3. Section 1.10, entitled "Urban Design," shall be amended as follows:

1.10 Urban Design

The identity and functioning of communities in the region shall be supported through:

1. The recognition and protection of critical open space features in the region.

2. Public policies that encourage diversity and excellence in the design and development of settlement patterns, landscapes and structures.

3. Ensuring that incentives and regulations guiding the development and redevelopment of the urban area promote a settlement pattern that:

    1. Link any public incentives to a commensurate public benefit received or expected and evidence of private needs;

    2. Is pedestrian "friendly," encourages transit use and reduces auto dependence;

    3. Provides access to neighborhood and community parks, trails and walkways, and other recreation and cultural areas and public facilities;

    4. Reinforces nodal, mixed-use, neighborhood-oriented design;

    5. Includes concentrated, high-density, mixed-use urban centers developed in relation to the region's transit system;

    6. Is responsive to needs for privacy, community, sense of place and personal safety in an urban setting; ~~and~~

    7. Facilitates the development and preservation of affordable mixed-income neighborhoods~~.~~; and

    8. Avoids and minimizes conflicts between urbanization and the protection of regionally significant fish and wildlife habitat.

Pedestrian- and transit-supportive building patterns will be encouraged in order to minimize the need for auto trips and to create a development pattern conducive to face-to-face community interaction.

Amendment 4. Chapter 3 entitled, "Parks, Natural Areas, Open Spaces And Recreational Facilities," shall be renamed, "Nature in Neighborhoods," and the policies therein shall be amended as follows:

3.1 Inventory of Park Facilities and Identification and Inventory of Regionally Significant Parks, Natural Areas, Open Spaces, Fish and Wildlife Habitat, Trails and Greenways

3.1.1 Metro will inventory and identify regionally significant parks, natural areas, open spaces, fish and wildlife habitat, vacant lands, trails and greenways at the watershed level using

topographical, geologic and biologic functions and features, i.e., "landscape ecology," to ensure coordinated protection and enhancement of natural functions such as water quality and wildlife habitat across jurisdictional boundaries.

3.1.2 Metro will identify natural corridors that connect regionally significant parks, natural areas, open spaces, fish and wildlife habitat, trails and greenways. River and stream corridors, ridgelines, butte-tops, utility corridors, abandoned roads, and railroad rights-of-way will provide primary linkages.

3.1.3 Metro will inventory lands outside the Urban Growth Boundary and Metro's jurisdictional boundary and identify them as prospective components of the Regional System when protection of these lands are determined to be of direct benefit to the region.

3.1.4 Metro shall identify urban areas which are deficient in natural areas and identify opportunities for acquisition and restoration.

3.1.5 Metro, with the assistance of local governments shall update the parks inventory which was completed in 1988. The inventory shall include acreage, facilities, environmental education programs, cultural resources, existing school sites and other information as determined by Metro and the Greenspaces ~~Technical~~ Policy Advisory Committee. This inventory should be updated at five (5) year intervals.

3.1.6 Using appropriate landscape level techniques, such as remote sensing or aerial photo interpretation, Metro will inventory the urban forestry canopy on a periodic basis and will provide inventory information to local jurisdictions.

3.2 Protection of Regionally Significant Parks, Natural Areas, Open Spaces, Trails and Greenways

3.2.1 Metro will continue to develop a Regional System of Parks, Natural Areas, Open Spaces, Fish and Wildlife Habitat, Trails, and Greenways (the Regional System) to achieve the following objectives:

a) Protect the region's biodiversity;
b) Provide citizens opportunities for, primarily, natural resource dependent recreation and education;
c) Contribute to the protection of air and water quality and watershed health; and
d) Provide natural buffers and connections between communities.

3.2.2 Metro's program to protect Fish and Wildlife Habitat shall be developed to achieve the following objectives:

3.2.2.1 Performance Objectives:

a) Preserve and improve streamside, wetland, and floodplain habitat and connectivity;
b) Preserve large areas of contiguous habitat and avoid habitat fragmentation;
c) Preserve and improve connectivity for wildlife between riparian corridors and upland wildlife habitat; and

d) Preserve and improve special habitat of concern, including native oak habitats, native grasslands, wetlands, bottomland hardwood forests, and riverine islands.

3.2.2.2 Implementation Objectives:

a) Increase the use of habitat-friendly development throughout the region; and

b) Increase restoration and mitigation actions to compensate for adverse effects of new and existing development on ecological function.

~~3.2.2~~3.2.3 Metro, upon the advice of citizens, and in coordination with local governments and state and federal resource agencies and appropriate non-profit organizations, will finance and coordinate protection and management of the Regional System across jurisdictional boundaries.

~~3.2.3~~3.2.4 Strategies to protect and manage the Regional System and regionally significant fish and wildlife habitat ~~Goal 5 resources~~ will include, but not be limited to, acquisition, education, incentives, land use and environmental regulations. Metro will work to implement these strategies regionally and to coordinate and encourage these strategies to be implemented by local governments, special districts, businesses, non-profit organizations, and individuals.

~~3.2.4~~3.2.5 Lands inside and outside the Urban Growth Boundary and Metro's jurisdiction will be included in the Regional System when protection of these lands are determined to be of direct benefit to the region.

~~3.2.5~~3.2.6 Metro shall collect and evaluate baseline data related to natural resource values of the regional system to identify trends and to guide management decisions.

~~3.2.6~~3.2.7 New transportation and utility projects shall seek to avoid fragmentation and degradation of components of the Regional System. If avoidance is infeasible, impacts shall be minimized and mitigated.

~~3.2.7~~3.2.8 Metro, in conjunction with affected local governments will work with the State to update, reinvigorate and implement a Willamette River Greenway Plan for the metropolitan region.

3.3 Management of the Publicly-Owned Portion of the Regional System of Parks, Natural Areas, Open Spaces, Trails and Greenways

3.3.1 Metro will assume management responsibility for elements of the publicly owned portion of the Regional System, as outlined in a functional plan to be developed.

3.3.2 Metro will assume financial responsibility related to those portions of the publicly owned system which are managed by Metro.

3.3.3 Local governments shall be given an opportunity to transfer existing publicly owned components of the Regional System to Metro and to acquire components of the Regional System with local resources.

3.3.4 The publicly owned portion of the Regional System shall be managed to protect fish, wildlife, and botanic values and to provide, primarily, natural resource dependent recreational and educational opportunities.

3.3.5 Metro will acquire portions of the Regional System as financial resources allow. Metro will negotiate acquisition agreements primarily with willing sellers. Power of eminent domain will be used only in extraordinary circumstances.

3.3.6 Master/Management plans shall be developed for each component of the Regional System to insure public use is compatible with natural and cultural resource protection. Master/Management plans shall be completed prior to formal public use.

3.3.7 Metro and local government cooperators in the Regional System shall be responsive to recreation demands and trends identified in the State Comprehensive Outdoor Recreation Plan (SCORP).

3.3.8 Metro shall develop master planning guidelines to assure consistency in the management of the Regional System.

3.3.9 From time to time, or in conjunction with the periodic up-date of the region wide parks inventory, Metro shall convene local government park providers to share information, review and analyze issues, and if appropriate develop recommendations related to:

1. Roles and responsibilities
2. Funding
3. Levels of service
4. Information needs
5. User trends and preferences
6. Technical assistance
7. Interagency coordination
8. Public involvement
9. Other topics as determined by Metro and local park providers

3.3.10 Metro, in cooperation with local governments, shall pursue the identification and implementation of a long term, stable funding source to support the planning, acquisition, development, management and maintenance of the Regional System.

3.4 Protection, Establishment and Management of a Regional Trails System

3.4.1 Metro will identify a Regional Trails System which shall be included in the Regional Transportation Plan.

3.4.2 The Regional Trail System shall provide access to publicly owned parks, natural areas, open spaces, and greenways, where appropriate.

3.4.3 Metro will coordinate planning for the Regional Trail System with local governments, federal and state agencies, utility providers, and appropriate non-profit organizations

3.4.4 Metro will cooperate with citizens and other trail providers to identify and secure funding for development and operation of the Regional Trails System.

3.4.5 Metro shall encourage local governments to integrate local and neighborhood trail systems with the Regional Trail System.

3.5 Provision of Community and Neighborhood Parks, Open Spaces, Natural Areas, Trails and Recreation Programs

3.5.1 Metro shall recognize that local governments shall remain responsible for the planning and provision of community and neighborhood parks, local open spaces, natural areas, sports fields, recreational centers, trails, and associated programs within their jurisdictions.

3.5.2 Pending adoption and implementation of the functional plan referenced in section 3.5.8, Metro shall encourage local governments to (I) adopt level of service standards for provision of parks, natural areas, trails, and recreational facilities in their local comprehensive plans and (II) locate and orient such parks, open spaces, natural areas, trails, etc., to the extent practical, in a manner which promotes non-vehicular access. "Level of service standards" means: a formally adopted, measurable goal or set of goals related to the provision of parks and recreation services, based on community need that could include but not be limited to: 1) park acreage per 1,000 population; 2) park facility type per 1,000 population; 3) percentage of total land base, dedicated to parks, trails and open spaces; 4) spatial distribution of park facilities.

3.5.3 Metro shall encourage local governments to be responsive to recreation demand trends identified in the State Comprehensive Outdoor Recreation Plan (SCORP).

3.5.4 Metro shall encourage local governments to develop, adopt and implement Master Plans for local parks and trail systems, natural areas, and recreational programs.

3.5.5 Metro, in cooperation with local governments, state government, and private industry shall work to establish a supplemental funding source for parks and open space acquisition, operations and maintenance.

3.5.6 Metro shall encourage local governments to identify opportunities for cooperation and cost efficiencies with non-profit organizations, other governmental entities, and local school districts.

3.5.7 Urban Reserve master plans shall demonstrate that planning requirements for the acquisition and protection of regionally significant fish and wildlife habitat and adequate land to meet or exceed locally adopted levels of service standards for the provision of public parks, natural areas, trails, and recreational facilities, will be adopted in the local comprehensive plans. Lands which are undevelopable due to natural hazards or environmental protection purposes (i.e., steep slopes, floodways, riparian corridors, wetlands, etc.) shall not be considered to meet the natural area level of service standards unless the land will be preserved in perpetuity for public benefit. Proposed public parks, open spaces, natural areas, trails, etc. shall be located in a manner which promotes non-vehicular traffic. No urban reserve area shall be brought within the Urban Growth Boundary unless the requirements set out in this subsection 3.5.7 are met.

3.5.8 Metro, in cooperation with local governments shall develop a functional plan which establishes the criteria which local governments shall address in adopting a locally determined "level of service standard." The functional plan shall also establish region-

wide goals for the provision of parks and open space in various urban design types identified in the 2040 regional growth concept. The functional plan shall apply to the portion of the region within the Urban Growth Boundary and the urban reserves within Metro's jurisdiction when urban reserve conceptual plans are approved.

3.5.9 Metro will work with local governments to promote a broader understanding of the importance of open space to the success of the 2040 Growth Concept and to develop tools to assess open space on a parity with jobs, housing, and transportation targets in the Regional Framework Plan.

3.6 Participation of Citizens in Environmental Education, Planning, Stewardship Activities, and Recreational Services.

3.6.1 Metro will encourage public participation in natural, cultural and recreation resource management decisions related to the Regional System.

3.6.2 Metro will provide educational opportunities to enhance understanding, enjoyment and informed use of natural, cultural, and recreational resources.

3.6.3 Metro will provide and promote opportunities for the public to engage in stewardship activities on publicly owned natural resource lands. Cooperative efforts between Metro and private non-profit groups, community groups, schools and other public agencies should be encouraged.

3.6.4 Metro should provide opportunities for technical assistance to private owners for stewardship of components of the Regional System.

3.6.5 Metro and local governments should work with state, federal, non-profit and private partners to facilitate stewardship and educational opportunities on publicly owned natural resource lands.

3.6.6 Metro shall encourage local governments to provide opportunities for public involvement in the planning and delivery of recreational facilities and services.

3.6.7 Metro will follow and promote the citizen participation values inherent in RUGGO Goal 1, Objective 1 and the Metro Citizen Involvement Principles.

Requirements

This Regional Framework Plan requires Metro in conjunction with local governments to develop ~~a~~ functional plans that will address land use planning requirements that:

- Identify and delineate an interconnected regional system of parks, natural areas, open spaces, trails and greenways (the Regional System);
- Identify implementation measures to protect and manage the Regional System; and
- Establish local government land use planning criteria and goals for parks consistent with Policy 3.5.8.

Amendment 5. Chapter 4 entitled, "Water Management," shall be renamed, "Watershed Health and Water Quality."

Amendment 6. Section 4.18 entitled, "Fish and Wildlife Habitat Conservation Area," shall be amended as follows:

4.18 Water Quality and Riparian Fish and Wildlife Habitat Corridors~~Conservation Area~~

Clean water is essential to provide healthy riparian fish and wildlife habitat. Forested and vegetated areas along streams and wetlands that provide essential fish and wildlife habitat also contribute to the preservation and enhancement of water quality. Metro shall establish standards to conserve, protect, and enhance fish and wildlife habitat in order to also conserve, protect, and enhance water quality.~~Metro should establish standards to conserve, protect, and enhance fish and wildlife habitat within the fish and wildlife habitat conservation areas to be identified on the fish and wildlife habitat map produced as a result of carrying out Section 5 of Title 3 work by determining performance standards and promoting coordination of regional watershed planning.~~

Amendment 7. The following implementation recommendations and requirements of Chapter 8 entitled, "Implementation," shall be amended as follows:

Regional Framework Policy	**Implementation Recommendation(s) or Requirements**
Land Use	
1.2 Built Environment	Metro Code Chapter 3.07, Urban Growth Management Functional Plan Titles 1 to 8 and 13 ~~Title 1 Requirements for Housing and Employment: Section 1 to 7~~ ~~Title 2 Regional Parking Policy: Section 1 to 2~~ ~~Title 3 Water Quality & Flood Management Conservation: Section 1 to 7~~ ~~Title 4 Retail in Employment and Industrial Areas: Section 1 to 3~~ ~~Title 5 Neighbor Cities and Rural Reserves: Section 1 to 4~~ ~~Title 6 Regional Accessibility: Section 1 to 4~~ ~~Title 7 Affordable Housing: Section 1 to 3~~ ~~Title 8 Compliance Procedures: Section 1 to 7~~
1.~~6~~7 Growth Management	Metro Code Chapter 3.01 3.01.005 UGB Amendment Procedures

	3.01.020 Legislative Amendment Criteria Metro Code Chapter 3.06 3.06.010 Policy & Purpose: Designating Functional Planning Areas Metro Code Chapter 3.07, Urban Growth Management Functional Plan Titles 1 to 7 and 13
1.9~~10~~ Urban Growth Boundary	Metro Code Chapter 3.01 3.01.005 UGB Amendment Procedures 3.01.020 Legislative Amendment Criteria Metro Code Chapter 3.07, Urban Growth Management Functional Plan Title 13
1.1~~01~~ Urban Design	Metro Code Chapter 3.07, Urban Growth Management Functional Plan Titles 1, 6 and 13 ~~Requirements for Housing and Employment: Section 1 to 3~~
	~~Title 6 Regional Accessibility: Section 1 to 3~~

Regional Framework Policy	**Implementation Recommendation(s) or Requirements**
~~Parks and Open Spaces~~Nature in Neighborhoods	
3.1 Inventory of Park Facilities and Inventory of Regionally Significant Parks, Natural Areas, Open Spaces, Trails and Greenways	Metro Code Chapter 3.07, Urban Growth Management Functional Plan Title 13 ***(further plans to be developed; refer to Appendix H)*** Draft of implementation measures to be revised through discussions with Greenspaces Technical Advisory Committee
3.2 Protection of Regionally Significant Parks, Natural Areas, Open Spaces, Trails and Greenways	Metro Code Chapter 3.07, Urban Growth Management Functional Plan Title 13 ***(further plans to be developed; refer to Appendix H)***

3.3 Management of the Publicly – Owned Portion of the Regional System of Parks, Natural Areas, Open Spaces, Trails and Greenways	Metro Code Chapter 3.07, Urban Growth Management Functional Plan Title 13 *(further plans to be developed; refer to Appendix H)*
3.5 Provision of Community and Neighborhood Parks, Open Spaces, Natural Areas, Trails and Recreation Programs	Metro Code Chapter 3.07, Urban Growth Management Functional Plan Title 13 *(further plans to be developed; refer to Appendix H)*
3.6 Participation of Citizens in Environmental Education, Planning, Stewardship Activities and Recreational Services	Metro Code Chapter 3.07, Urban Growth Management Functional Plan Title 13 *(further plans to be developed; refer to Appendix H)*

Regional Framework Policy	**Implementation Recommendation(s) or Requirements**
~~Water Management~~**Watershed Health and Water Quality**	*All implementation methods to be developed; see Appendix I.*
4.6 Water Quality	Metro Code Chapter 3.07, Urban Growth Management Functional Plan Titles 3 and 13 ~~Water Quality & Flood Management Conservation:~~ ~~Section 1 to 4~~ Regional Water Supply Plan Chapter XII Table XII - 1 p. 257, 269-271, and 275
	(to be developed)
4.8 Environmental Stewardship	Regional Water Supply Plan Chapter XII Table XII - 1 p. 257 Metro Code Chapter 3.07, Urban Growth Management Functional Plan Titles 3 and 13
	(to be developed)
4.14 Water Quality Goals	Metro Code Chapter 3.07, Urban Growth Management Functional Plan Titles 3 and 13 ~~Water Quality & Flood Management~~

	~~Conservation:~~ ~~Section 1 to 4~~ Regional Water Supply Plan Chapter XII Table XII - 1 p. 257
	(to be developed)
4.16 Urban Planning and Natural Systems	Metro Code Chapter 3.07, Urban Growth Management Functional Plan _____Titles 3 and 13~~Water Quality & Flood Management~~ ~~Conservation:~~ ~~Section 1 to 4~~
	(to be developed)
4.17 Water Quality Protection	Metro Code Chapter 3.07, Urban Growth Management Functional Plan _____Titles 3 and 13~~Water Quality & Flood Management~~ ~~Conservation:~~ ~~Section 1 to 4~~ Regional Water Supply Plan
	(to be developed)
4.18 Water Quality and Riparian Fish and Wildlife Habitat Corridors~~Conservation Area~~	Metro Code Chapter 3.07, Urban Growth Management Functional Plan _____Title 13~~3 Water Quality & Flood Management~~ ~~Conservation:~~ ~~Section 5~~

M:\attorney\confidential\07 Land Use\04 2040 Growth Concept\03 UGMFP\02 Stream Protection (Title 3)\02 Goal 5\02 Program\Ord 05-1077A Ex B RFP amend 051205.doc

EXHIBIT C—ORDINANCE NO. 05-1077A

METRO CODE CHAPTER 3.07
URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN

TITLE 13: NATURE IN NEIGHBORHOODS

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 control and prevent water pollution for the protection of the public health and safety, and to maintain and improve water quality throughout the region. 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, controlling and preventing water pollution for the protection of the public health and safety, 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; and

D. 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 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 a city or county depending upon which implementation alternative the city or county chooses pursuant to subsection 3(B) of this title.

A. The Regionally Significant Fish and Wildlife Habitat Inventory Map (hereinafter the "Inventory Map"), attached hereto[1], identifies the areas that have been determined to contain regionally significant fish and wildlife habitat. The Inventory Map divides

[1] On file in the Metro Council office.

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[2], identifies the areas that are subject to the performance standards and best management practices described in Section 4 of this title, to the extent that a city or county chooses to comply with Section 3 of this title by using the Habitat Conservation Areas map, or a 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 3(G) and 4(D) of this title, which areas will be subject to high, moderate, and low levels of habitat conservation based on Metro Council's consideration of the results of the economic, social, environmental, and energy (ESEE) consequences of protecting or not protecting the habitat, public input, and technical review, and the Metro Council's subsequent decision to balance conflicting uses in habitat areas.

1. Table 3.07-13a describes how (1) Class I and II riparian habitat areas, and (2) Class A and B upland wildlife habitat areas within publicly-owned parks and open spaces, except for parks and open spaces where the acquiring agency clearly identified that it was acquiring the property to develop it for active recreational uses, located within the Metro boundary at the effective date of this title were designated as high, moderate, and low Habitat Conservation Areas.

2. Table 3.07-13b describes how Class I and II riparian habitat areas and Class A and B upland wildlife areas brought within the Metro UGB after the effective date of Ordinance No. 05-1077A will be designated as high, moderate, and low Habitat Conservation Areas. Section 6 of this title describes the procedures for how Table 3.07-13b and Section 4 of this title shall be applied in such areas.

C. Exempt International Marine Terminals

1. Marine dependent properties which would otherwise have been mapped as Habitat Conservation Areas do not appear on the Habitat Conservation Areas Map because the Metro Council concluded, based on its analysis of the economic, social, environmental, and energy implications of its decision, that the economic importance of such properties far outweighed the environmental importance of the properties as fish and wildlife habitat. The Metro Council applied the criteria described in subsection 2(C)(2) of this title to conclude that the following properties should not be considered Habitat Conservation Areas:

   a. The International Terminal property, located at 12005 N. Burgard Way, Portland, Oregon, 97203;

   b. Port of Portland Marine Terminal 4;

   c. Port of Portland Marine Terminal 5; and

   d. Port of Portland Marine Terminal 6.

[2] On file in the Metro Council office.

2. The Metro Council may, at its discretion, consider and adopt ordinances to exempt from the provisions of this title any additional properties along the Willamette and Columbia Rivers, or portions of such properties, where it can be demonstrated that:

   a. The property is currently developed for use as an international marine terminal capable of mooring ocean-going tankers or cargo ships; and

   b. The property is substantially without vegetative cover.

Section 3. Implementation Alternatives for Cities and Counties

A. Under Oregon law, upon acknowledgment of this program by the Oregon Land Conservation and Development Commission (LCDC), cities and counties wholly or partly within the Metro boundary shall apply the requirements of this title with respect to regionally significant fish and wildlife habitat, according to the compliance deadlines established in Section 1 of Title 8 of this functional plan (Metro Code Section 3.07.810), rather than applying the requirements of division 23 of chapter 660 of the Oregon Administrative Rules ("OAR"), promulgated by LCDC. However, if a city or county adopted any comprehensive plan amendments or land use regulations in compliance with the provisions of division 23 of OAR chapter 660 prior to the effective date of this title, and if such amendments or regulations are applicable to any regionally significant fish and wildlife habitat, then such city or county shall not repeal such amendments or regulations, nor shall it amend such regulations in a manner that would decrease the level of protection provided to regionally significant fish and wildlife habitat. After a city or county has demonstrated that it is in substantial compliance with the requirements of this title, if the city or county wishes to amend a riparian area protection program or a fish and wildlife habitat protection program to increase the level of protection provided to regionally significant fish and wildlife habitat beyond the requirements of this title, such a city or county shall comply with the provisions of division 23 of OAR chapter 660, and shall seek acknowledgement of such amendments from LCDC or treat such amendments as post-acknowledgement plan amendments under ORS chapter 197.

B. Each city and county in the region shall either:

   1. Amend its comprehensive plan and implementing ordinances to adopt the Title 13 Model Ordinance and the Metro Habitat Conservation Areas Map; or

   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 4, and that maps that it has adopted and uses substantially comply with the Metro Habitat Conservation Areas Map; or

   3. Demonstrate that it has implemented a program based on alternative approaches that will achieve protection and enhancement of Class I and II riparian habitat areas, and of Class A and B upland wildlife habitat areas in territory added to the Metro UGB after the effective date of Ordinance No. 05-1077, substantially comparable with the protection and restoration that would result from the

application of a program that complied with subsections 3(B)(1) or 3(B)(2) of this title. A city or county developing such a program:

a. Shall demonstrate that its alternative program will provide a certainty of habitat protection and enhancement to achieve its intended results, such as by using proven programs and demonstrating stable and continuing funding sources sufficient to support elements of the program that require funding;

b. May assert substantial compliance with this provision by relying on either or both the city's or county's comprehensive plan and implementing ordinances and on the use of incentive based, voluntary, education, acquisition, and restoration programs, such as:

i. An existing tree protection ordinance;

ii. A voluntary program for tree protection, tree replacement, and habitat restoration;

iii. Habitat preservation incentive programs, such as programs that provide reduced development or storm water management fees and property taxes in return for taking measures to protect and restore habitat (including, for example, 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);

iv. Habitat-friendly development standards to reduce the detrimental impact of storm water run-off on riparian habitat;

v. A local habitat acquisition program; and

vi. Maintaining and enhancing publicly-owned habitat areas, such as 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 and are not intended for future urban development are managed to maintain and enhance the quality of fish and wildlife habitat that they provide;

(C) Pursuing 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; or

4. District Plans.

   a. Adopt one or more district plans that apply over portions of the city or county, and demonstrate that, for the remainder of its jurisdiction, the city or county has a program that complies with either subsection 3(B)(1) or 3(B)(2) of this title. If a city or county adopts one or more district plans pursuant to this paragraph, it shall demonstrate that, within each district plan area, the district plan complies with subsection 3(B)(3) 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. The City of Portland shall develop a District Plan that complies with subsection 3(B)(4)(a), in cooperation with the Port of Portland, that applies to West Hayden Island; or

5. For a city or county that is a member of the Tualatin Basin Natural Resources Coordinating Committee (the "TBNRCC," which includes Washington County and the cities of Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, Sherwood, Tigard, and Tualatin), amend its comprehensive plan and implementing ordinances to comply with the maps and provisions of the TBNRCC Goal 5 Program, attached hereto[3] and incorporated herein by reference, adopted by the TBNRCC on April 4, 2005 (the "Tualatin Basin Program"), subject to the intergovernmental agreement entered into between Metro and the TBNRCC. All other provisions of this Section 3 of this title, as well as Section 6 of this title, shall still apply to each city and county that is a member of the TBNRCC. In addition, in order for a city or county that is a member of the TBNRCC to be in compliance with this functional plan, the following conditions must be satisfied:

   a. Within the compliance timeline described in Paragraph 6 of the IGA, the TBNRCC and its members comply with the six steps identified in section B of Chapter 7 of the Tualatin Basin Program;

   b. Clean Water Services approves and begins implementing its Healthy Streams Plan;

   c. The TBNRCC members agree to renew and extend their partnership to implement the projects on the Healthy Streams Project List and target projects that protect and restore Class I and II Riparian Habitat, including habitat that extends beyond the Clean Water Services "vegetated corridors," and the TBNRCC shall continue to coordinate its activities

[3] On file in the Metro Council office.

with Metro and cooperate with Metro on the development of regional public information about the Nature in Neighborhoods Initiative;

d. The city or county has adopted provisions to facilitate and encourage the use of habitat-friendly development practices, where technically feasible and appropriate, in all areas identified as Class I and II riparian habitat areas on the Metro Regionally Significant Fish and Wildlife Habitat Inventory Map. Table 3.07-13c in Exhibit C to Ordinance No. 05-1077 provides examples of the types of habitat-friendly development practices that shall be encouraged and considered;

e. The city or county has adopted provisions to allow for the reduction of the density and capacity requirements of Title 1 of the Urban Growth Management Functional Plan, Metro Code sections 3.07.110 to 170, consistent with Section 3(H) of Exhibit C to Ordinance No. 05-1077. Particularly, the provisions shall (1) apply only to properties that were within the Metro urban growth boundary on January 1, 2002; (2) require the protection of regionally significant habitat on the property, such as via a public dedication or restrictive covenant; and (3) allow only for a reduction in the minimum density calculation based on the area protected as provided in part (2) of this paragraph. In addition, cities and counties will be required to report to Metro as provided in Section 3(H)(3) of Exhibit C to Ordinance No. 05-1077;

f. The city or county complies with the provisions of Exhibit C to Ordinance No. 05-1077 as those provisions apply to upland wildlife habitat in territory added to the Metro urban growth boundary after the effective date of that ordinance. Such compliance shall include compliance with one of subsections 3(B)(1) to 3(B)(3) of Exhibit C to Ordinance No. 05-1077. For example, (1) each city and county shall either adopt and apply Metro's Title 13 Model Ordinance to upland wildlife habitat in new urban areas, (2) substantially comply with the requirements of Section 4 of Exhibit C to Ordinance No. 05-1077 as it applies to upland wildlife habitat in new urban areas, or (3) demonstrate that they have implemented an alternative program that will achieve protection and enhancement of upland wildlife habitat in new urban areas comparable with the protection and restoration that would result from one of the two previous approaches described in this sentence; and

g. The TBNRCC and the city or county complies with the monitoring and reporting requirements of Section 5 of Exhibit C to Ordinance No. 05-1077.

C. 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 3(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 3(D) 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 3(D) of this title.

E. Use of Habitat-Friendly Development Practices In Regionally Significant Fish And Wildlife Habitat.

1. Each city and county in the region shall:

a. Identify provisions in the city's or county's comprehensive plan and implementing ordinances that prohibit or limit the use of the habitat-friendly development practices such as those described in Table 3.07-13c; and

b. Adopt amendments to the city's or county's comprehensive plan and implementing ordinances to remove the barriers identified pursuant to subsection 3(E)(1)(a) of this title, and shall remove such barriers so that such practices may be used, where practicable, in all regionally significant fish and wildlife habitat.

2. Metro shall provide technical assistance to cities and counties to comply with the provisions of this Section 3(E) of this title.

F. 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.

G. 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:

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; and

4. Ensure that the process provides adequate opportunities for appeals and a fair and equitable dispute resolution process.

H. Reducing Regional Density and Capacity Requirements to Allow Habitat Protection.

1. Notwithstanding the provisions of Metro Code section 3.07.140(A)(2), 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. The property lot or parcel was within the Metro UGB on January 1, 2002;

   b. An area of the property lot or parcel to be developed has been identified as regionally significant fish and wildlife habitat on the Metro Inventory Map or as a significant resource on a local Goal 5 riparian, wetlands, or wildlife resource inventory map that had been acknowledged by the LCDC prior to the effective date of Metro Ordinance No. 05-1077; and

   c. Such a decision will directly result in the protection of the remaining undeveloped regionally significant fish and wildlife habitat or significant resource located on the property lot or parcel, such as via a public dedication or a restrictive covenant.

2. The amount of reduction in the minimum density requirement that may be approved under this subsection 3(H) of this title shall be calculated by subtracting the number of square feet of regionally significant fish and wildlife habitat or significant resource that is permanently protected under subsection 3(H)(1)(c) of this title from the total number of square feet that the city or county otherwise would use to calculate the minimum density requirement for the property.

3. 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 3(H)(1) of this title, then such city or county shall:

   a. Be permitted an offset against the capacity specified for that city or county in Table 3.07-1 of the Metro Code. The amount of such offset shall be calculated by subtracting the difference between the number of dwelling units that the city or county approved to be built pursuant to subsection 3(H)(1) of this title and the minimum number of dwelling units that would have otherwise been required to be built on the property pursuant to the applicable minimum density requirements for the zoning district where the property is located; and

   b. Report to Metro by April 15 of every year the number of approvals made pursuant to this subsection 3(H) of this title, including documentation that the factors in subsection 3(H)(1) had been satisfied for each such approval, and the capacity offsets that the city or county shall be afforded as a result of such approvals.

Section 4. 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 adopt or rely upon their comprehensive plans and implementing ordinances to comply, in whole or in part, with subsection 3(B)(2) of this title:

A. City and county comprehensive plans and implementing ordinances shall conform to the following performance standards and best management practices:

   1. Habitat Conservation Areas shall be protected, maintained, enhanced, and restored as specified in this Section 4 of this title, and city and county development codes shall include provisions for enforcement of these performance standards and best management practices.

   2. In addition to requirements imposed by this title, the requirements of Title 3 of the Urban Growth Management Functional Plan, Metro Code sections 3.07.310 to 3.07.360, as amended by Exhibit D to Ordinance No. 05-1077, shall continue to apply.

   3. The performance standards and best management practices of this Section 4 of this title shall not apply:

      a. When the application of such standards and practices would restrict or regulate farm structures or farming practices in violation of ORS 215.253 or ORS 561.191; or

      b. In areas outside of the Metro UGB but within the Metro boundary at the effective date of this title:

i. When such standards and practices violate ORS 527.722 by prohibiting, limiting, regulating, subjecting to approval, or in any other way affecting forest practices on forestlands located outside of an acknowledged urban growth boundary, except as provided in ORS 527.722(2), (3) and (4); or

ii. Pursuant to ORS 196.107, in areas within Multnomah County and the Columbia River Gorge National Scenic Area, provided that Multnomah County has adopted and implements ordinances that are approved pursuant to sections 7(b) and 8(h) through 8(k) of the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §§ 544e(b) and 544f(h) through 544f(k).

4. The performance standards and best management practices of this Section 4 of this title shall not apply to any use of residential properties if, as of the local program effective date:

   a. Construction of the residence was completed in compliance with all applicable local and state laws and rules for occupancy as a residence 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.

5. Habitat Conservation Areas within publicly-owned parks and open spaces that have been designated as natural areas and are not intended for future urban development shall be 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.

6. Invasive non-native or noxious vegetation shall not be planted in any Habitat Conservation Area. The removal of invasive non-native or noxious vegetation from Habitat Conservation Areas shall be allowed. The planting of native vegetation shall be encouraged in Habitat Conservation Areas.

7. Except as provided in subsection 4(A)(7) of this title, routine repair, maintenance, alteration, rehabilitation, or replacement of existing structures, roadways, driveways, utilities, accessory uses, or other development within Habitat Conservation Areas may be allowed provided that:

   a. The project is consistent with all other applicable local, state, and federal laws and regulations;

   b. The project will not permanently or irreparably result in more developed area within a Habitat Conservation Area than the area of the existing development; and

c. Native vegetation is maintained, enhanced and restored, if disturbed; other vegetation is replaced, if disturbed, with vegetation other than invasive non-native or noxious vegetation; and the planting of native vegetation and removal of invasive non- native or noxious vegetation is encouraged.

8. Notwithstanding subsection 4(A)(6) of this title, when a city or county exercises its discretion to approve zoning changes to allow a developed property that contains a Habitat Conservation Area to (1) change from an industrial or heavy commercial zoning designation to a residential or mixed-use/residential designation, or (2) increase the type or density and intensity of development in any area, then the city or county shall apply the provisions of this Section 4 of this title. This provision will help to insure that, when developed areas are redeveloped in new ways to further local and regional urban and economic development goals, property owners should restore regionally significant fish and wildlife habitat as part of such redevelopment.

9. Any activity within Habitat Conservation Areas that is required to implement a Federal Aviation Administration (FAA) - compliant Wildlife Hazard Management Plan (WHMP) on property owned by the Port of Portland within 10,000 feet of an Aircraft Operating Area, as defined by the FAA, shall be allowed provided that mitigation for any such projects is completed in compliance with mitigation requirements adopted pursuant to subsection 4(B) of this title. In addition, habitat mitigation for any development within Habitat Conservation Areas on property owned by the Port of Portland within 10,000 feet of an Aircraft Operating Area, as defined by the FAA, shall be permitted at any property located within the same 6th Field Hydrologic Unit Code subwatershed as delineated by the Unites States Department of Agriculture's Natural Resources Conservation Service (NRCS) without having to demonstrate that on-site mitigation is not practicable, feasible, or appropriate.

10. Within Habitat Conservation Areas located in Multnomah County Drainage District No. 1, Peninsula Drainage District No. 1, Peninsula Drainage District No. 2, and the area managed by the Sandy Drainage Improvement Company, routine operations, repair, maintenance, reconfiguration, rehabilitation, or replacement of existing drainage, flood control, and related facilities, including any structures, pump stations, water control structures, culverts, irrigation systems, roadways, utilities, accessory uses (such as off-load facilities that facilitate water-based maintenance), erosion control projects, levees, soil and bank stabilization projects, dredging and ditch clearing within the hydraulic cross-section in existing storm water conveyance drainageways, or other water quality and flood storage projects required to be undertaken pursuant to ORS chapters 547 or 554 or Titles 33 or 44 of the Code of Federal Regulations, shall be allowed provided that:

a. The project is consistent with all other applicable local, state, and federal laws and regulations;

b. Where practicable, the project does not encroach closer to a surface stream or river, wetland, or other body of open water than existing operations and development; and

c. Where practicable, vegetation native to the Metro Area is maintained, enhanced and restored, if disturbed; other vegetation is replaced, if disturbed, with any vegetation other than invasive non-native or noxious vegetation; and the planting of native vegetation and removal of invasive non- native or noxious vegetation is encouraged.

B. City and county comprehensive plans and implementing ordinances shall contain review standards applicable to development in all Habitat Conservation Areas that include:

1. Clear and objective development approval standards consistent with subsection 3(C) of this title that protect Habitat Conservation Areas but which allow limited development within High Habitat Conservation Areas, slightly more development in Moderate Habitat Conservation Areas, and even more development in Low Habitat Conservation Areas. Such standards shall allow (a) property owners to consider reduced building footprints and the use of minimal excavation foundation systems (e.g., pier, post or piling foundation), and (b) the flexible application of local code requirements that may limit a property owner's ability to avoid development in Habitat Conservation Areas, such as setback and landscaping requirements or limits on clustering and the transfer of development rights on-site. The habitat-friendly development practices described in Table 3.07-13c, which are intended to minimize the magnitude of the impact of development in Habitat Conservation Areas, shall be allowed, encouraged, or required to the extent that cities and counties can develop clear and objective standards for their use. The clear and objective development standards required by this paragraph also shall require that all development in Habitat Conservation Areas be mitigated to restore the ecological functions that are lost or damaged as a result of the development. Standards that meet the requirements of this subsection and subsection 3(C) of this title are provided in Section 7 of the Metro Title 13 Model Ordinance[4]; and

2. Discretionary development approval standards consistent with subsection 3(D) of this title that comply with subsections (a), (b), and (c) of this subsection. Standards that meet the requirements of this subsection and subsection 3(D) of this title are provided in Section 8 of the Metro Title 13 Model Ordinance.

a. Avoid Habitat Conservation Areas.

i. Development may occur within a Habitat Conservation Area only if a property owner demonstrates that no practicable alternatives to the requested development exist which will not disturb the Habitat Conservation Area;

ii. When implementing this requirement to determine whether a practicable alternative exists, cities and counties shall include consideration of the type of Habitat Conservation Area that will be affected by the proposed development. For example, High Habitat Conservation Areas have been so designated because they are areas that have been identified as having lower urban

[4] On file in the Metro Council office.

development value and higher-valued habitat, while Low Habitat Conservation Areas have been so designated because they are areas that have been identified as having higher urban development value and lower-valued habitat; and

iii. Cities and counties shall allow flexibility in the application of local code requirements that may limit a property owner's ability to avoid development in Habitat Conservation Areas, such as setback and landscaping requirements or limits on clustering and the transfer of development rights on-site. Property owners shall also consider reduced building footprints and use of minimal excavation foundation systems (e.g., pier, post or piling foundation). The use of the techniques described in this paragraph shall be part of the alternatives analysis to determine whether any alternative to development within the Habitat Conservation Area is practicable; and

b. Minimize Impacts on Habitat Conservation Areas and Water Quality.

i. If there is no practicable alternative, limit the development to minimize, to the extent practicable, the detrimental impacts on Habitat Conservation Areas associated with the proposed development;

ii. When implementing this requirement to determine whether development has been minimized to the extent practicable, cities and counties shall include consideration of the type of Habitat Conservation Area that will be affected by the proposed development. For example, High Habitat Conservation Areas have been so designated because they are areas that have been identified as having lower urban development value and higher-valued habitat, while Low Habitat Conservation Areas have been so designated because they are areas that have been identified as having higher urban development value and lower-valued habitat; and

iii. The techniques described in subsection 4(B)(2)(a)(iii) shall be used to demonstrate that development within a Habitat Conservation Area has been minimized. In addition, the magnitude of the impact of development within Habitat Conservation Areas also shall be minimized, such as by use of the habitat-friendly development practices described in Table 3.07-13c; and

c. Mitigate Impacts on Habitat Conservation Areas and Water Quality.

When development occurs, require mitigation to restore the ecological functions that were lost or damaged as a result of the development, after taking into consideration the property owner's efforts to minimize the magnitude of the detrimental impacts through the use of the techniques

described in Table 3.07-13c and through any additional or innovative techniques.

3. When development occurs within delineated wetlands, then the mitigation required under subsections 4(B)(1) and (2) of this title shall not require any additional mitigation than the mitigation required by state and federal law for the fill or removal of such wetlands.

C. City and county comprehensive plans and implementing ordinances shall include procedures to consider claims of hardship and to grant hardship variances for any property demonstrated to be converted to an unbuildable lot by application of any provisions implemented to comply with the requirements of this title.

D. 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 4(D) of this title.

2. The comprehensive plan and implementing ordinances amended, adopted or relied upon to comply with this subsection 4(D) of this title shall comply with subsection 3(G) of this title.

3. Verification of the Location of Habitat Conservation Areas. Each city and county shall establish a verification process consistent with subsections 4(D)(4) through 4(D)(6) 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, as provided in subsection 4(D)(4) of this title. The second step is determining the urban development value of the property, as provided in subsection 4(D)(5) of this title. 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, as provided in subsection 4(D)(6) of this title.

4. Habitat Boundaries.

a. Locating riparian habitat and determining its habitat class is a five-step process.

i. Step 1. Locate the water feature that is the basis for identifying riparian habitat:

(A) Locate the top of bank of all streams, rivers, and open water within 200 feet of the property;

(B) Locate all flood areas within 100 feet of the property. Flood areas are those areas contained within the 100-year floodplain, flood area and floodway as shown on the Federal Emergency Management Agency Flood

Insurance Maps and all lands that were inundated in the February 1996 flood (areas that were mapped as flood areas but were filled to a level above the base flood level prior to the local program effective date, consistent with all applicable local, state, and federal laws and regulations shall no longer be considered habitat based on their status as flood areas); and

(C) Locate all wetlands within 150 feet of the property based on the Local Wetland Inventory map (if completed) and on the Metro 2004 Wetland Inventory Map (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742). Identified wetlands shall be further delineated consistent with methods currently accepted by the Oregon Division of State Lands and the U.S. Army Corps of Engineers.

ii. Step 2. Identify the vegetated cover status of all areas on the property that are within 200 feet of the top of bank of streams, rivers, and open water, are wetlands or are within 150 feet of wetlands, and are flood areas and within 100 feet of flood areas:

(A) Vegetated cover status shall be as identified on the Metro Vegetated Cover Map, attached hereto[5] and incorporated herein by reference. The vegetative cover type assigned to any particular area was based on two factors: the type of vegetation observed in aerial photographs and the size of the overall contiguous area of vegetative cover to which a particular piece of vegetation belonged. As an example of how the categories were assigned, in order to qualify as "forest canopy" the forested area had to be part of a larger patch of forest of at least one acre in size; and

(B) In terms of mapping the location of habitat, the only allowed corrections to the vegetative cover status of a property are those based on an area being developed prior to the local program effective date and those based on errors made at the time the vegetative cover status was determined based on analysis of the aerial photographs used to create the Metro Vegetative Cover Map (for the original map, the aerial photos used were Metro's summer 2002 photos) and application of the vegetated cover definitions provided in the footnotes to Table 3.07-13d.

iii. Step 3. Determine whether the degree that the land slopes upward from all streams, rivers, and open water within 200 feet of the property is greater than or less than 25% (using the

[5] On file in the Metro Council office.

methodology described in the Appendix to Exhibit A to Ordinance No. 00-839 re-adopting Title 3 of the Urban Growth Management Functional Plan).

iv. Step 4. Identify the habitat class (Class I, Class II, or none) of the areas within up to 200 feet of the identified water feature, consistent with Table 3.07-13d. Note that areas that have been identified as habitats of concern, as depicted on the Metro Habitats of Concern Map, attached hereto[6] and incorporated herein by reference, are all classified as Class I riparian habitat.

v. Step 5. Confirm that the development and vegetated cover status of areas within up to 200 feet of the identified water feature has not been altered without the required approval of the city or county since the local program effective date and, if it has, then verify the original habitat location using the best available evidence of its location on local program effective date.

b. For territory brought within the Metro UGB after the effective date of Metro Ordinance No. 05-1077, the location of upland wildlife habitat and its habitat class shall be as identified in Metro's habitat inventory of such territory performed pursuant to Section 6 of this title. The only factors that may be reviewed to verify the location of upland wildlife habitat shall be:

i. For territory that was within the Metro boundary on the effective date of Metro Ordinance No. 05-1077, whether regionally significant fish and wildlife habitat was removed, consistent with all other applicable local, state, and federal laws and regulations, prior to the date that the property was brought within the Metro UGB and, if so, then areas where habitat was removed shall not be identified as Habitat Conservation Areas;

ii. Whether errors were made at the time the vegetative cover status was determined based on (1) analysis of the aerial photographs used to determine the vegetative cover status, and (2) application of the vegetated cover definitions provided in the footnotes to Table 3.07-13d; and

iii. Whether there are discrepancies between the locations of property lot lines and the location of Habitat Conservation Areas, as shown on the Habitat Conservation Areas Map.

5. 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[7] 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

[6] On file in the Metro Council office.
[7] On file in the Metro Council office.

value of property, and the Metro 2040 Design Type designation of property. Cities and counties shall 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:

a. 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

b. The property, or adjacent lots or parcels, is owned by a regionally significant educational or medical 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.

    i. The following facilities are regionally significant educational or medical facilities, as further identified on the Regionally Significant Educational or Medical Facilities Map, attached hereto[8]:

        (A) Clackamas Community College, 19600 S. Molalla Ave., Oregon City;

        (B) Lewis & Clark College, 0615 S.W. Palatine Hill Rd, Portland;

        (C) Marylhurst University, 17600 Hwy 43, in Lake Oswego;

        (D) Mt. Hood Community College, 26000 S.E. Stark St., Gresham;

        (E) Oregon Health Sciences University, 3181 SW Sam Jackson Park Rd., Portland;

        (F) Oregon Health Sciences University, Portland South Waterfront, Portland;

        (G) Oregon Health Sciences University/Oregon Graduate Institute, 20000 N.W. Walker, Hillsboro;

        (H) Pacific University, 2043 College Way, Forest Grove;

[8] On file in the Metro Council office.

(I) Portland Community College, Rock Creek Campus, 17865 N.W. Springdale Rd., Portland;

(J) Portland Community College, Sylvania Campus, 12000 S.W. 49th Ave, Portland;

(K) Providence St. Vincent Medical Center, 9115 SW Barnes Rd., Portland;

(L) Reed College, 3203 S.E. Woodstock Blvd., Portland; and

(M) University of Portland, 5000 N. Willamette Blvd., Portland

(N) Veterans Hospital, 3710 SW U.S. Veterans Hospital Rd., Portland.

ii. The Metro Council may add a property to the list of facilities identified in subsection 4(D)(5)(b)(i) in the future by adopting an ordinance amending that section if the Council finds that 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 in which it is located.

6. 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 3.07-13a and 3.07-13b.

Section 5. Measure 37 Claims

A. The purpose of this section is to provide for Metro to accept potential liability and to process and settle claims made by property owners against cities and counties pursuant to

Statewide Ballot Measure 37, adopted by the voters in November 2004, as a result of the cities' and counties' good faith implementation of this title. As a corollary of accepting financial and administrative responsibility for these claims, Metro seeks the authority and cooperation of cities and counties in the evaluation and settlement of claims.

B. Provided that cities and counties meet the requirements set out below, Metro shall administer any claim made against a city or county based on its implementation of the requirements of this title and Metro shall indemnify a city or county from any financial responsibility or other required remedy for such claim. If Metro rejects any such claim, then Metro shall be solely responsible to defend such decision, at Metro's own cost and expense. If a property owner prevails in the courts on any claim that Metro rejects, then Metro shall be solely responsible to pay any compensation, attorneys' fees, expenses, and costs awarded to such property owner. In order to receive the benefits of this provision, a local government must:

1. Upon receipt of a written Measure 37 demand for compensation from an owner of private real property located within its jurisdiction alleging that a comprehensive plan amendment or land use regulation adopted or relied upon to comply with the requirements of this title reduces the fair market value of the property, a city or county shall forward a copy of the demand to Metro no later than seven (7) days following receipt of the demand;

2. Reasonably cooperate with Metro throughout Metro's consideration and disposition of the claim, including promptly providing Metro with any information related to the property in question, to an assessment of its fair market value, or to the city's or county's adoption of the comprehensive plan amendment or land use regulation that is the basis of the Measure 37 demand; and

3. Amend any land use regulation or other ordinance, or enter into an intergovernmental agreement with Metro, in order to grant Metro sufficient authority to implement Metro's decision regarding the disposition of the claim, which disposition may include, but not be limited to, a cash payment or other compensation, waiver or modification of the regulation, dismissal, and the imposition of appropriate conditions.

Section 6. Program Objectives, Monitoring and Reporting

This section describes the program performance objectives, the roles and responsibilities of Metro, cities, counties, and special districts in regional data coordination and inventory maintenance, monitoring and reporting, and program evaluation.

A. The following program objectives are established:

1. Performance objectives:

a. Preserve and improve streamside, wetland, and floodplain habitat and connectivity;

b. Preserve large areas of contiguous habitat and avoid habitat fragmentation;

c. Preserve and improve connectivity for wildlife between riparian corridors and upland wildlife habitat; and

d. Preserve and improve special habitats of concern such as native oak habitats, native grasslands, wetlands, bottomland hardwood forests, and riverine islands.

2. Implementation objectives:

a. Increase the use of habitat-friendly development throughout the region; and

b. Increase restoration and mitigation actions to compensate for adverse effects of new and existing development on ecological function.

B. Program Monitoring and Evaluation.

1. Metro will monitor the region's progress toward meeting the vision of conserving, protecting, and restoring the region's fish and wildlife habitat and the intent of this title by:

a. Developing and monitoring regional indicators and targets as set forth in Table 3.07-13e to evaluate progress in achieving the four performance objectives described in subsection 5(A)(1) of this title;

b. Developing and monitoring regional indicators as set forth in Table 3.07-13e to evaluate progress in achieving the two implementation objectives described in subsection 5(A)(2) of this title;

c. Collaborating with local, state, and federal agencies and non-governmental organizations in carrying out field studies and data sharing to increase understanding of the health of the region's watersheds and to identify restoration opportunities and priorities; and

d. Preparing and presenting monitoring and program evaluation reports to Metro Council no later than December 31, 2006, and by December 31 of each even-numbered year thereafter.

2. Metro will practice adaptive management by using the results of monitoring studies and the availability of new information to assess whether the goals, objectives, and targets of this title are being achieved.

C. Reporting Requirements for Cities and Counties.

1. Cities and counties shall report to Metro no later than December 31, 2007, and by December 31 of each odd-numbered year thereafter on their progress in using voluntary and incentive-based education, acquisition, and restoration habitat protection efforts; and

2. At least 45 days prior to a city's or county's final public hearing on a proposed new or amended ordinance or regulation relating to protection of, or mitigation of damage to, habitat, trees or other vegetation, cities and counties shall mail written notice of the proposed ordinance or regulation to Metro. Cities and counties that require applications for land use approvals or a building, grading, or tree removal permits to include documentation that the development meets habitat, tree, or vegetation protection and mitigation requirements adopted by a special district, including any county service district established pursuant to ORS chapter 451, shall mail written notice to Metro of any proposed new or amended ordinance or regulation relating to protection of, or mitigation of damage to, trees or other vegetation that is proposed by such a special district at least 45 days prior to the special district's final public hearing on the proposed new or amended ordinance or regulation.

D. Regional data coordination and maintenance.

1. Metro will act as the regional coordinator for Geographic Information System (GIS) data used to create and maintain the Regionally Significant Fish and Wildlife Habitat Inventory Map and other data relevant to program implementation, monitoring, and evaluation. To carry out this role cities and counties shall provide Metro with local data in a timely fashion and in a form compatible with Metro's GIS program. To the extent that such data is collected by county service districts established pursuant to ORS chapter 451, then the county in which the county service district operates shall comply with this section. Such data shall include:

   a. Adopted and revised Local Wetland Inventories approved by the Division of State Lands and those determined to be locally significant under ORS 197.279(3)(b);

   b. Wetland mitigation sites approved by the Division of State Lands or U.S. Army Corps of Engineers;

   c. For cities and counties that have not carried out Local Wetland Inventories, wetland boundaries delineated using accepted protocols by Division of State Lands or U.S. Army Corps of Engineers;

   d. Revised or updated local surface stream inventories;

   e. Revised or updated 100-year Federal Emergency Management Act (FEMA) flood area maps or revisions to the 1996 area of inundation maps to incorporate FEMA-approved floodplain map revisions or floodplain fills approved by the U.S. Army Corps of Engineers;

   f. Completed restoration and enhancement projects; and

   g. Revised or updated Metro's Habitats of Concern data layer.

2. Metro will periodically update its Regionally Significant Fish and Wildlife Habitat Inventory for use in program monitoring and evaluation. Metro will

maintain a study area boundary one mile beyond the perimeter of the Metro boundary and Metro Urban Growth Boundary.

Section 7. Future Metro Urban Growth Boundary Expansion Areas

The Metro Inventory Map identifies regionally significant fish and wildlife habitat within the entire Metro boundary, including areas outside of the Metro UGB at the time this title was adopted. As described in section 2 of this title, the Metro Council has designated as Habitat Conservation Areas the regionally significant fish and wildlife habitat that has been identified as riparian Class I and II habitat within the Metro boundary. In addition, the Metro Council has also determined that the regionally significant fish and wildlife habitat identified as upland wildlife Class A and B habitat that is currently outside of the Metro UGB shall be designated as Habitat Conservation Areas at such time that those areas are brought within the Metro UGB. Territory where the Metro UGB may expand includes both areas within the current Metro boundary and areas outside of the current Metro boundary.

A. New Urban Territory That Was Previously Within the Metro Boundary.

The Metro Inventory Map already identifies the regionally significant upland wildlife Class A and B habitat in territory within the current Metro boundary but outside the current Metro UGB. At the time such territory is brought within the Metro UGB, consistent with Title 11 of this functional plan, Metro Code sections 3.07.1110 et seq., Metro shall update its inventory of regionally significant fish and wildlife habitat for such territory using the same methodology used by Metro to establish the Metro Inventory Map. Based on the updated Metro Inventory Map, Metro shall prepare a Habitat Conservation Areas Map for such new territory, as described in subsection 2(B) of this title, using the 2040 Design Types that are assigned to such territory to determine the area's urban development value.

B. New Urban Territory That Was Previously Outside of the Metro Boundary.

At the time such territory is brought within the Metro UGB, consistent with Title 11 of this functional plan, Metro Code sections 3.07.1110 et seq., Metro shall prepare an inventory of regionally significant fish and wildlife habitat for such territory using the same methodology used by Metro to establish the Metro Inventory Map. Upon adoption of such inventory, Metro shall update its Metro Inventory Map to include such information. Based on the updated Metro Inventory Map, Metro shall prepare a Habitat Conservation Areas Map for such new territory, as described in subsection 2(B) of this title, using the 2040 Design Types that are assigned to such territory to determine the area's urban development value.

C. Metro recognizes that the assigned 2040 Design Types may change as planning for territory added to the Metro UGB progresses, and that the relevant Habitat Conservation Area designations will also change as a result of the 2040 Design Type changes during such planning.

Table 3.07-13a: Method for Identifying Habitat Conservation Areas ("HCA")

Fish & wildlife habitat classification	*High Urban development value*[1]	*Medium Urban development value*[2]	*Low Urban development value*[3]	*Other areas: Parks and Open Spaces, no design types outside UGB*
Class I Riparian	Moderate HCA	High HCA	High HCA	High HCA / High HCA+[4]
Class II Riparian	Low HCA	Low HCA	Moderate HCA	Moderate HCA / High HCA+[4]
Class A Upland Wildlife	No HCA	No HCA	No HCA	No HCA / High HCA[5] / High HCA+[4]
Class A Upland Wildlife	No HCA	No HCA	No HCA	No HCA / High HCA[5] / High HCA+[4]

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 4(E)(5) of this title.

[1] Primary 2040 design types: Regional Centers, Central City, Town Centers, and Regionally Significant Industrial Areas
[2] Secondary 2040 design types: Main Streets, Station Communities, Other Industrial Areas, and Employment Centers
[3] Tertiary 2040 design types: Inner and Outer Neighborhoods, Corridors
[4] Cities and counties shall give Class I and II riparian habitat and Class A and B upland wildlife habitat in parks designated as natural areas even greater protection than that afforded to High Habitat Conservation Areas, as provided in Section 4(A)(4) of this title.
[5] All Class A and B upland wildlife habitat in publicly-owned parks and open spaces, except for parks and open spaces where the acquiring agency clearly identified that it was acquiring the property to develop it for active recreational uses, shall be considered High HCAs.

Table 3.07-13b: Method for Identifying Habitat Conservation Areas ("HCA") in Future Metro Urban Growth Boundary Expansion Areas

Fish & wildlife habitat classification	*High Urban development value*[1]	*Medium Urban development value*[2]	*Low Urban development value*[3]	*Other areas: Parks and Open Spaces, no design types outside UGB*
Class I Riparian	Moderate HCA	High HCA	High HCA	High HCA / High HCA+[4]
Class II Riparian	Low HCA	Low HCA	Moderate HCA	Moderate HCA / High HCA+[4]
Class A Upland Wildlife	Low HCA	Moderate HCA	Moderate HCA	High HCA / High HCA[5] / High HCA+[4]
Class B Upland Wildlife	Low HCA	Low HCA	Moderate HCA	Moderate HCA / High HCA[5] / High HCA+[4]

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 4(E)(5) of this title.

[1] Primary 2040 design types: Regional Centers, Central City, Town Centers, and Regionally Significant Industrial Areas
[2] Secondary 2040 design types: Main Streets, Station Communities, Other Industrial Areas, and Employment Centers
[3] Tertiary 2040 design types: Inner and Outer Neighborhoods, Corridors
[4] Cities and counties shall give Class I and II riparian habitat and Class A and B upland wildlife habitat in parks designated as natural areas even greater protection than that afforded to High Habitat Conservation Areas, as provided in Section 4(A)(4) of this title.
[5] All Class A and B upland wildlife habitat in publicly-owned parks and open spaces, except for parks and open spaces where the acquiring agency clearly identified that it was acquiring the property to develop it for active recreational uses, shall be considered High HCAs.

Table 3.07-13c. Habitat-friendly development practices.

Part (a): Design and Construction Practices to Minimize Hydrologic Impacts
1. Amend disturbed soils to original or higher level of porosity to regain infiltration and stormwater storage capacity. 2. Use pervious paving materials for residential driveways, parking lots, walkways, and within centers of cul-de-sacs. 3. Incorporate stormwater management in road right-of-ways. 4. Landscape with rain gardens to provide on-lot detention, filtering of rainwater, and groundwater recharge. 5. Use green roofs for runoff reduction, energy savings, improved air quality, and enhanced aesthetics. 6. Disconnect downspouts from roofs and direct the flow to vegetated infiltration/filtration areas such as rain gardens. 7. Retain rooftop runoff in a rain barrel for later on-lot use in lawn and garden watering. 8. Use multi-functional open drainage systems in lieu of more conventional curb-and-gutter systems. 9. Use bioretention cells as rain gardens in landscaped parking lot islands to reduce runoff volume and filter pollutants. 10. Apply a treatment train approach to provide multiple opportunities for storm water treatment and reduce the possibility of system failure. 11. Reduce sidewalk width and grade them such that they drain to the front yard of a residential lot or retention area. 12. Reduce impervious impacts of residential driveways by narrowing widths and moving access to the rear of the site. 13. Use shared driveways. 14. Reduce width of residential streets, depending on traffic and parking needs. 15. Reduce street length, primarily in residential areas, by encouraging clustering and using curvilinear designs. 16. Reduce cul-de-sac radii and use pervious vegetated islands in center to minimize impervious effects, and allow them to be utilized for truck maneuvering/loading to reduce need for wide loading areas on site. 17. Eliminate redundant non-ADA sidewalks within a site (i.e., sidewalk to all entryways and/or to truck loading areas may be unnecessary for industrial developments). 18. Minimize car spaces and stall dimensions, reduce parking ratios, and use shared parking facilities and structured parking. 19. Minimize the number of stream crossings and place crossing perpendicular to stream channel if possible. 20. Allow narrow street right-of-ways through stream corridors whenever possible to reduce adverse impacts of transportation corridors.
Part (b): Design and Construction Practices to Minimize Impacts on Wildlife Corridors and Fish Passage
1. Carefully integrate fencing into the landscape to guide animals toward animal crossings under, over, or around transportation corridors. 2. Use bridge crossings rather than culverts wherever possible. 3. If culverts are utilized, install slab, arch or box type culverts, preferably using bottomless designs that more closely mimic stream bottom habitat. 4. Design stream crossings for fish passage with shelves and other design features to facilitate terrestrial wildlife passage. 5. Extend vegetative cover through the wildlife crossing in the migratory route, along with sheltering areas.
Part (c): Miscellaneous Other Habitat-Friendly Design and Construction Practices
1. Use native plants throughout the development (not just in HCA). 2. Locate landscaping (required by other sections of the code) adjacent to HCA. 3. Reduce light-spill off into HCAs from development.

Table 3.07-13d: Locating Boundaries of Class I and II Riparian Areas

Distance in feet from Water Feature	Development/Vegetation Status[1]			
	Developed areas not providing vegetative cover[2]	Low structure vegetation or open soils[3]	Woody vegetation (shrub and scattered forest canopy)[4]	Forest Canopy (closed to open forest canopy)[5]
Surface Streams				
0-50	Class II [6]	Class I	Class I	Class I
50-100		Class II [6]	Class I	Class I
100-150		Class II if slope>25% [6]	Class II if slope>25% [6]	Class II [6]
150-200		Class II if slope>25% [6]	Class II if slope>25% [6]	Class II if slope>25% [6]
Wetlands (Wetland feature itself is a Class I Riparian Area)				
0-100		Class II [6]	Class I	Class I
100-150				Class II [6]
Flood Areas (Undeveloped portion of flood area is a Class I Riparian Area)				
0-100			Class II [6]	Class II [6]

[1] Development/vegetated cover status is identified on the Metro Vegetated Cover Map (on file in the Metro Council office). The vegetative cover type assigned to any particular area was based on two factors: the type of vegetation observed in aerial photographs and the size of the overall contiguous area of vegetative cover to which a particular piece of vegetation belonged.

[2] "Developed areas not providing vegetative cover" are areas that lack sufficient vegetative cover to meet the one-acre minimum mapping units of any other type of vegetative cover.

[3] "Low structure vegetation or open soils" means areas that are part of 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, orchards, Christmas tree farms, holly farms, 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).

[4] "Woody vegetation" means areas that are part of 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.

[5] "Forest canopy" means areas that are part of a contiguous grove of trees of 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.

[6] Areas that have been identified as habitats of concern, as designated on the Metro Habitats of Concern Map (on file in the Metro Council office), shall be treated as Class I riparian habitat areas in all cases, subject to the provision of additional information that establishes that they do not meet the criteria used to identify habitats of concern as described in Metro's Technical Report for Fish and Wildlife. Examples of habitats of concern include: Oregon white oak woodlands, bottomland hardwood forests, wetlands, native grasslands, riverine islands or deltas, and important wildlife migration corridors.

Table 3.07-13e: Performance and Implementation Objectives and Indicators

Performance Objectives	Targets	Targeted Condition Based on 2004 Metro Inventory	Example Indicators
Performance Objective 1: Preserve and improve streamside, wetland, and floodplain habitat and connectivity.	**1a.** *10% increase in forest and other vegetated acres within 50 feet* of streams (on each side) and wetlands in each subwatershed over the next 10 years (2015).	**1a. 2004 Baseline Condition (regional data):** • 64% vegetated • 14,000 vegetated acres **10% increase:** • 70% vegetated • 1,400 acre increase in vegetation over 10 years	• Percentage of acres within 50 feet of streams (on each side) and wetlands with any vegetation • Percentage of acres within 50 feet of streams (on each side) and wetlands with forest canopy • Percentage of acres between 50 and 150 feet of streams (on each side) and wetlands with any vegetation • Percentage of acres between 50 and 150 feet of streams (on each side) and wetlands with forest canopy • Number of acres of Class I and II Riparian Habitat • Percentage of floodplain acres that are developed* * "Developed" for purposes of this indicator means the methodology used in Metro's Fish and Wildlife Inventory to identify developed floodplains.
	1b. *5% increase in forest and other vegetated acres within 50 to 150 feet of streams* (on each side) and wetlands in each subwatershed over the next 10 years (2015).	**1b. 2004 Baseline Condition (regional data):** • 59% vegetated • 15,250 vegetated acres **5% increase:** • 62% vegetated • 760 acre increase in vegetation over 10 years	
	1c. No more than *20% increase in developed floodplain acreage* in each subwatershed over the next 10 years (2015).	**1c. 2004 Baseline Condition (regional data):** • 10% of all floodplain acres are developed • 3,450 total acres of developed floodplains **20% increase:** • 4,200 total acres of developed floodplains	

Performance Objectives	Targets	Targeted Condition Based on 2004 Metro Inventory	Example Indicators
Performance Objective 2: Preserve large areas of contiguous habitat and avoid fragmentation.	**2a.** *Preserve 75% of vacant Class A and B* upland wildlife habitat in each subwatershed over the next 10 years (2015).	**2a. 2004 Baseline Condition:** • 15,500 acres of vacant Class A and B upland wildlife habitat **75% retention:** • 11,600 acres of vacant Class A and B upland wildlife habitat remaining	• Number of acres of Class A habitat • Number of acres of Class B habitat • Number of wildlife habitat patches that contain 30 acres or more of upland wildlife habitat
	2b. Of the upland habitat preserved, *retain 80% of the number of patches 30 acres or larger* in each subwatershed over the next 10 years (2015).	**2b. 2004 Baseline Condition:** • 23,400 acres of upland habitat in 133 patches that contain 30 acres or more of upland wildlife habitat **80% retention:** 106 upland habitat patches that contain 30 acres or more of upland habitat	
Performance Objective 3: Preserve and improve connectivity for wildlife between riparian corridors and upland wildlife habitat.	**3a.** *Preserve 90% of forested wildlife habitat acres located within 300 feet of surface streams* in each subwatershed over the next 10 years (2015).	**3a. 2004 Baseline Condition:** • 28,300 acres within 1,453 patches of forested wildlife habitat located within 300 feet of surface streams **90% retention:** • 25,500 acres of forested wildlife habitat located within 300 feet of surface streams	• Number and miles of all wildlife corridors • Corridor quality: % of habitat acres within corridors with a vegetative width of 200 ft • Acres of wildlife patches with a connectivity score of 3 or greater • Acres and number of forested wildlife habitat patches (forest canopy or wetland with a total combined size greater than 2 acres) within 300 feet of surface streams compared to acres of the patches located outside of 300 feet of surface streams.

Performance Objectives	Targets	Targeted Condition Based on 2004 Metro Inventory	Example Indicators
Performance Objective 3 (continued):	**3b.** *Preserve 80% of non-forested wildlife habitat acres located within 300 feet of surface streams* in each subwatershed over the next 10 years (2015).	**3b. 2004 Baseline Condition:** 14,400 acres within 1,633 patches of non-forested wildlife habitat located within 300 feet of surface streams **80% retention:** 11,500 acres of non-forested wildlife habitat located within 300 feet of surface streams	• Acres and number of non-forested wildlife patches (shrub or low structure/open soils with a total combined size greater than 2 acres) located within 300 feet of a surface streams.
Performance Objective 4: Preserve and improve special habitats of concern.	**4a.** *Preserve 95% of habitats of concern acres* in each subwatershed over the next 10 years (2015).	**4a. 2004 Baseline Condition:** • 33% of all habitat designated as HOCs • 26,700 total acres of HOCs **95% retention:** • 25,400 total acres of HOCs	• Number of acres of wetland • Number of acres of white oak woodland • Number of acres of bottomland hardwood forest • Number of acres of vegetated riverine islands • Number of acres of key connector habitat (list out HOC connectors)

Implementation Objectives	Example Indicators
Implementation Objective A: Increase the use of habitat-friendly development throughout the region	• Number of jurisdictions that allow or require LID • Number of jurisdictions providing LID incentives • Percentage of region in forest canopy • Percentage of impervious area • B-IBI (benthic index of biological integrity) scores
Implementation Objective B: Increase restoration and mitigation actions to compensate of adverse effects of new and existing development on ecological function	• Number of restoration projects in one year • Number of mitigation projects in one year • Acres and distribution by resource class of habitat inventory • Number of culverts that need improvement • Number of watersheds in region with adopted action plans

EXHIBIT C—ORDINANCE NO. 05-1077A

ATTACHMENT 1. HABITAT CONSERVATION AREAS MAP

This map is available at the Metro Planning Department, 503.797.1555 or online at http://www.metro-region.org/.

[Note: This map was amended by the Metro Council on May 12, 2005, when the Council approved other amendments to Ordinance No. 05-1077. An updated copy of this map will be available for public review prior to final consideration of this ordinance, now scheduled for September 22, 2005. Please contact the Metro Planning Department for further information.]

EXHIBIT C—ORDINANCE NO. 05-1077A

ATTACHMENT 2. TUALATIN BASIN NATURAL RESOURCES COORDINATING COMMITTEE GOAL 5 PROGRAM (WITH MAPS)

This attachment is available at the Metro Planning Department, 503.797.1555.

- **Program Report (copy attached to Resolution 05-3577)**
- **Tualatin Basin program maps**
- **Clean Water Services Healthy Streams Plan**
- **Clean Water Services Design and Construction Standards**

This information also available on the Washington County and Clean Water Services websites:

http://www.co.washington.or.us/deptmts/lut/planning/tualatin_basin.htm

http://www.CleanWaterServices.org

[Note: This attachment was not amended by the Metro Council on May 12, 2005, when the Council approved other amendments to Ordinance No. 05-1077. Persons interested in reviewing this attachment should refer to the attachment submitted with Ordinance No. 05-1077.]

EXHIBIT C—ORDINANCE NO. 05-1077A

ATTACHMENT 3. METRO 2004 WETLAND INVENTORY MAP

This map is available at the Metro Planning Department, 503.797.1555 or online at http://www.metro-region.org/.

[Note: This map was not amended by the Metro Council on May 12, 2005, when the Council approved other amendments to Ordinance No. 05-1077. Persons interested in reviewing this map should refer to the map submitted with Ordinance No. 05-1077.]

EXHIBIT C—ORDINANCE NO. 05-1077A

ATTACHMENT 4. METRO HABITAT URBAN DEVELOPMENT VALUE MAP

This map is available at the Metro Planning Department, 503.797.1555.

[Note: This map was not amended by the Metro Council on May 12, 2005, when the Council approved other amendments to Ordinance No. 05-1077. Persons interested in reviewing this map should refer to the map submitted with Ordinance No. 05-1077.]

EXHIBIT C—ORDINANCE NO. 05-1077A

ATTACHMENT 5. METRO VEGETATED COVER MAP

This map is available at the Metro Planning Department, 503.797.1555 or online at http://www.metro-region.org/.

[Note: This map was not amended by the Metro Council on May 12, 2005, when the Council approved other amendments to Ordinance No. 05-1077. Persons interested in reviewing this map should refer to the map submitted with Ordinance No. 05-1077.]

EXHIBIT C—ORDINANCE NO. 05-1077A

ATTACHMENT 6. METRO HABITATS OF CONCERN MAP

This map is available at the Metro Planning Department, 503.797.1555.

[Note: This map was not amended by the Metro Council on May 12, 2005, when the Council approved other amendments to Ordinance No. 05-1077. Persons interested in reviewing this map should refer to the map submitted with Ordinance No. 05-1077.]

EXHIBIT C—ORDINANCE NO. 05-1077A

ATTACHMENT 7. REGIONALLY SIGNIFICANT EDUCATIONAL OR MEDICAL FACILITIES MAP

This map is available at the Metro Planning Department, 503.797.1555.

[Note: This map was amended by the Metro Council on May 12, 2005, when the Council approved other amendments to Ordinance No. 05-1077. An updated copy of this map will be available for public review prior to final consideration of this ordinance, now scheduled for September 22, 2005. Please contact the Metro Planning Department for further information.]

EXHIBIT D—ORDINANCE NO. 05-1077A

AMENDMENTS TO TITLES 3, 8, 10 AND 11 OF THE URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN

Amendment 1. Title 3 of the Urban Growth Management Functional Plan shall be renamed, "Water Quality and Flood Management."

Amendment 2. Metro Code Section 3.07.310, "Intent," shall be amended as follows:

To protect the beneficial water uses and functions and values of resources within the Water Quality and Flood Management Areas by limiting or mitigating the impact on these areas from development activities, and protecting life and property from dangers associated with flooding ~~and working toward a regional coordination program of protection for Fish and Wildlife Habitat Areas~~.

Amendment 3. Metro Code Section 3.07.320, "Applicability," shall be amended as follows:

A. Title 3 applies to:

1. Development in Water Quality Resource and Flood Management Areas.

2. Development which may cause temporary or permanent erosion on any property within the Metro Boundary.

~~3. Development in Fish and Wildlife Habitat Conservation Areas when Metro's Section 3.07.350 analysis and mapping are completed.~~

B. Title 3 does not apply to work necessary to protect, repair, maintain, or replace existing structures, utility facilities, roadways, driveways, accessory uses and exterior improvements in response to emergencies provided that after the emergency has passed, adverse impacts are mitigated in accordance with the performance standards in Section 3.07.340.

Amendment 4. Metro Code Section 3.07.340, "Performance Standards," shall be amended as follows:

A. Flood Management Performance Standards.

1. The purpose of these standards is to reduce the risk of flooding, prevent or reduce risk to human life and property, and maintain functions and values of floodplains such as allowing for the storage and conveyance of stream flows through existing and natural flood conveyance systems.

2. All development, excavation and fill in the Flood Management Areas shall conform to the following performance standards:

a. Development, excavation and fill shall be performed in a manner to maintain or increase flood storage and conveyance capacity and not increase design flood elevations.

b. All fill placed at or below the design flood elevation in Flood Management Areas shall be balanced with at least an equal amount of soil material removal.

c. Excavation shall not be counted as compensating for fill if such areas will be filled with water in non-storm winter conditions.

d. Minimum finished floor elevations for new habitable structures in the Flood Management Areas shall be at least one foot above the design flood elevation.

e. Temporary fills permitted during construction shall be removed.

f. Uncontained areas of hazardous materials as defined by DEQ in the Flood Management Area shall be prohibited.

3. The following uses and activities are not subject to the requirements of subsection 2:

a. Excavation and fill necessary to plant new trees or vegetation.

b. Excavation and fill required for the construction of detention facilities or structures, and other facilities such as levees specifically designed to reduce or mitigate flood impacts. Levees shall not be used to create vacant buildable lands.

c. New culverts, stream crossings, and transportation projects may be permitted if designed as balanced cut and fill projects or designed to not significantly raise the design flood elevation. Such projects shall be designed to minimize the area of fill in Flood Management Areas and to minimize erosive velocities. Stream crossing shall be as close to perpendicular to the stream as practicable. Bridges shall be used instead of culverts wherever practicable.

B. Water Quality Performance Standards.

1. The purpose of these standards is to: (1) protect and improve water quality to support the designated beneficial water uses as defined in Title 10, and (2) protect the functions and values of the Water Quality Resource Area which include, but are not limited to:

a. Providing a vegetated corridor to separate Protected Water Features from development;

b. Maintaining or reducing stream temperatures;

c. Maintaining natural stream corridors;

d. Minimizing erosion, nutrient and pollutant loading into water;

e. Filtering, infiltration and natural water purification; and

f. Stabilizing slopes to prevent landslides contributing to sedimentation of water features.

2. Local codes shall require all development in Water Quality Resource Areas to conform to the following performance standards:

a. The Water Quality Resource Area is the vegetated corridor and the Protected Water Feature. The width of the vegetated corridor is specified in Table 3.07-3. At least three slope measurements along the water feature, at no more than 100-foot increments, shall be made for each property for which development is proposed. Depending on the width of the property, the width of the vegetated corridor will vary.

b. Water Quality Resource Areas shall be protected, maintained, enhanced or restored as specified in Section 3.07.340(B)(2).

c. Prohibit development that will have a significant negative impact on the functions and values of the Water Quality Resource Area, which cannot be mitigated in accordance with subsection 2(f).

d. ~~Vegetative cover native to the Metro Area~~Native vegetation shall be maintained, enhanced or restored, if disturbed, in the Water Quality Resource Area. Invasive non-native or noxious vegetation may be removed from the Water Quality Resource Area ~~and replaced with native cover~~. ~~Only n~~Use of native vegetation shall be ~~used~~ encouraged to enhance or restore the Water Quality Resource Area. This shall not preclude construction of energy dissipaters at outfalls consistent with watershed enhancement, and as approved by local surface water management agencies.

e. Uncontained areas of hazardous materials as defined by DEQ in the Water Quality Resource Area shall be prohibited.

f. Cities and counties may allow development in Water Quality Resource Areas provided that the governing body, or its designate, implement procedures which:

i. Demonstrate that no practicable alternatives to the requested development exist which will not disturb the Water Quality Resource Area; and

ii. If there is no practicable alternative, limit the development to reduce the impact associated with the proposed use; and

iii. Where the development occurs, require mitigation to ensure that the functions and values of the Water Quality Resource Area are restored.

g. Cities and counties may allow development for repair, replacement or improvement of utility facilities so long as the Water Quality Resource Area is restored consistent with Section 3.07.340(B)(2)(d).

h. The performance standards of Section 3.07.340(B)(2) do not apply to routine repair and maintenance of existing structures, roadways, driveways, utilities, accessory uses and other development.

3. For lots or parcels which are fully or predominantly within the Water Quality Resource Area and are demonstrated to be unbuildable by the vegetative corridor regulations, cities and counties shall reduce or remove vegetative corridor regulations to assure the lot or parcel will be buildable while still providing the maximum vegetated corridor practicable. Cities and counties shall encourage landowners to voluntarily protect these areas through various means, such as conservation easements and incentive programs.

C. Erosion and Sediment Control.

1. The purpose of this section is to require erosion prevention measures and sediment control practices during and after construction to prevent the discharge of sediments.

2. Erosion prevention techniques shall be designed to prevent visible and measurable erosion as defined in Title 10.

3. To the extent erosion cannot be completely prevented, sediment control measures shall be designed to capture, and retain on-site, soil particles that have become dislodged by erosion.

D. Implementation Tools to Protect Water Quality and Flood Management Areas.

1. Cities and counties shall either adopt land use regulations, which authorize transfer of permitted units and floor area to mitigate the effects of development restrictions in Water Quality and Flood Management Areas, or adopt other measures that mitigate the effects of development restrictions.

2. Metro encourages local governments to require that approvals of applications for partitions, subdivisions and design review actions be conditioned upon one of the following:

a. Protection of Water Quality and Flood Management Areas with a conservation easement;

b. Platting Water Quality and Flood Management Areas as common open space; or

c. Offer of sale or donation of property to public agencies or private non-profits for preservation where feasible.

3. Additions, alterations, rehabilitation or replacement of existing structures, roadways, driveways, accessory uses and development in the Water Quality and Flood Management Area may be allowed provided that:

a. The addition, alteration, rehabilitation or replacement is not inconsistent with applicable city and county regulations, and

b. The addition, alteration, rehabilitation or replacement does not encroach closer to the Protected Water Feature than the existing structures, roadways, driveways or accessory uses and development, and

c. The addition, alteration, rehabilitation or replacement satisfies Section 3.07.340(C) of this title.

d. In determining appropriate conditions of approval, the affected city or county shall require the applicant to:

i. Demonstrate that no reasonably practicable alternative design or method of development exists that would have a lesser impact on the Water Quality Resource Area than the one proposed; and

ii. If no such reasonably practicable alternative design or method of development exists, the project should be conditioned to limit its disturbance and impact on the Water Quality Resource to the minimum extent necessary to achieve the proposed addition, alteration, restoration, replacement or rehabilitation; and

iii. Provide mitigation to ensure that impacts to the functions and values of the Water Quality Resource Area will be mitigated or restored to the extent practicable.

4. Cities and counties may choose not to apply the Water Quality and Flood Management Area performance standards of Section 3.07.340 to development necessary for the placement of structures when it does not require a grading or building permit.

5. Metro encourages cities and counties to provide for restoration and enhancement of degraded Water Quality Resource Areas through conditions of approval when development is proposed, or through incentives or other means.

6. Cities and counties shall apply the performance standards of this title to Title 3 Wetlands as shown on the Metro Water Quality and Flood Management Areas Map and locally adopted Water Quality and Flood Management Areas maps. Cities and counties may also apply the performance standards of this title to other wetlands.

E. Map Administration.

Cities and counties shall amend their comprehensive plans and implementing ordinances to provide a process for each of the following:

1. Amendments to city and county adopted Water Quality and Flood Management Area maps to correct the location of Protected Water Features, Water Quality Resource Areas and Flood Management Areas. Amendments shall be initiated within 90 days of the date the city or county receives information establishing a possible map error.

2. Modification of the Water Quality Resource Area upon demonstration that the modification will offer the same or better protection of water quality, the Water Quality and Flood Management Area and Protected Water Feature.

3. Amendments to city and county adopted Water Quality and Flood Management Area maps to add Title 3 Wetlands when the city or county receives significant evidence that a wetland meets any one of the following criteria:

   a. The wetland is fed by surface flows, sheet flows or precipitation, and has evidence of flooding during the growing season, and has 60 percent or greater vegetated cover, and is over one-half acre in size;

      or the wetland qualifies as having "intact water quality function" under the 1996 Oregon Freshwater Wetland Assessment Methodology; or

   b. The wetland is in the Flood Management Area, and has evidence of flooding during the growing season, and is five acres or more in size, and has a restricted outlet or no outlet;

      or the wetland qualifies as having "intact hydrologic control function" under the 1996 Oregon Freshwater Wetland Assessment Methodology; or

   c. The wetland or a portion of the wetland is within a horizontal distance of less than one-fourth mile from a water body which meets the Department of Environmental Quality definition of "water quality limited water body" in OAR Chapter 340, Division 41.

   Examples of significant evidence that a wetland exists that may meet the criteria above are a wetland assessment conducted using the 1996 Oregon Freshwater Wetland Assessment Methodology, or correspondence from the Division of State Lands that a wetland determination or delineation has been submitted or completed for property in the city or county.

4. Cities and counties are not required to apply the criteria in Section 3.07.340(E)(3) to water quality or stormwater detention facilities.

Amendment 5. Metro Code Section 3.07.350, "Fish and Wildlife Habitat Conservation Area," shall be repealed.

Amendment 6. Metro Code Section 3.07.360, "Metro Model Ordinance Required," shall be amended as follows:

Metro shall adopt a Water Quality and Flood Management Areas Model Ordinance and map. The Model Ordinance shall represent one method of complying with this title. The Model Ordinance shall be advisory, and cities and counties are not required to adopt the Model Ordinance, or any part thereof, to substantially comply with this title. However, cities and counties which adopt the Model Ordinance in its entirety and a Water Quality and Flood Management Areas Map shall be deemed to have substantially complied with the requirements of this title.

~~Section 3.07.350 of this title shall be implemented by adoption of new functional plan provisions. The Metro Council may adopt a Fish and Wildlife Habitat Conservation Areas Model Ordinance and Map for protection of regionally significant fish and wildlife habitat.~~

Amendment 7. Metro Code Section 3.07.370, "Variances," shall be repealed.

Amendment 8. Metro Code Section 3.07.810, "Compliance With the Functional Plan," shall be amended as follows:

A. The purpose of this section is to establish a process for determining whether city or county comprehensive plans and land use regulations comply with requirements of the Urban Growth Management Functional Plan. The Council intends the process to be efficient and cost-effective and to provide an opportunity for the Metro Council to interpret the requirements of its functional plan. Where the terms "compliance" and "comply" appear in this title, the terms shall have the meaning given to "substantial compliance" in Section 3.07.1010(~~fff~~).

B. Cities and counties shall amend their comprehensive plans and land use regulations to comply with the functional plan, or an amendment to the functional plan, within two years after its acknowledgement by the Land Conservation and Development Commission, or after such other date specified in the functional plan. The Chief Operating Officer shall notify cities and counties of the compliance date.

C. Notwithstanding subsection ~~A~~B of this section, cities and counties shall amend their comprehensive plans and land use regulations to comply with Sections 3.07.310 to 3.07.340 of Title 3 of the Urban Growth Management Functional Plan by January 31, 2000, and with the requirements in Sections 3.07.710 to 3.07.760 of Title 7 of the Urban Growth Management Functional Plan by January 18, 2003.

D. Cities and counties that amend their comprehensive plans or land use regulations after the effective date of the functional plan shall make the amendments in compliance with the functional plan. After one year following acknowledgement of a functional plan requirement adopted or amended by the Metro Council after January 1, 2005, cities and counties that amend their comprehensive plans and land use regulations shall make such amendments in compliance with the new functional plan requirement. The Chief Operating Officer shall notify cities and counties of the effective date.

E. Cities and counties whose comprehensive plans and land use regulations do not yet comply with a functional plan requirement adopted or amended prior to December 12, 1997, shall make land use decisions consistent with that requirement. If the functional plan requirement was adopted or amended by the Metro Council after December 12, 1997, cities and counties whose comprehensive plans and land use regulations do not yet comply with the requirement shall, after one year following acknowledgment of the requirement, make land use decisions consistent with that requirement. Notwithstanding the previous sentence, however, cities and counties whose comprehensive plans and land use regulations do not yet comply with the requirements of Title 13 of this chapter, Metro Code sections 3.07.1310 to 3.07.1360, shall make land use decisions consistent with those requirements after two years following their acknowledgment. The Chief Operating Officer shall notify cities and counties of the date upon which functional plan requirements become applicable to land use decisions at least 120 days before that date. The notice shall specify which functional plan requirements become applicable to land use decisions in each city and county. For the purposes of this subsection, "land use decision" shall have the meaning of that term as defined in ORS 197.015(10).

F. An amendment to a city or county comprehensive plan or land use regulation shall be deemed to comply with the functional plan if no appeal to the Land Use Board of Appeals is made within the 21-day period set forth in ORS 197.830(9), or if the amendment is acknowledged in periodic review pursuant to ORS 197.633 or 197.644. If an appeal is made and the amendment is affirmed, the amendment shall be deemed to comply with the functional plan upon the final decision on appeal. Once the amendment is deemed to comply with the functional plan, the functional plan shall no longer apply to land use decisions made in conformance with the amendment.

G. An amendment to a city or county comprehensive plan or land use regulation shall be deemed to comply with the functional plan as provided in subsection F only if the city or county provided notice to the Chief Operating Officer as required by Section 3.07.820(A).

Amendment 9. Metro Code Section 3.07.1010, "Definitions," shall be amended as follows:

For the purpose of this functional plan, the following definitions shall apply:

(a) "Accessibility" means the amount of time required to reach a given location or service by any mode of travel.

(b) "Accessway" means right-of-way or easement designed for public access by bicycles and pedestrians, and may include emergency vehicle passage.

(c) "Alternative modes" means alternative methods of travel to the automobile, including public transportation (light rail, bus and other forms of public transportation), bicycles and walking.

(d) "Balanced cut and fill" means no net increase in fill within the floodplain.

(e) "Bikeway" means separated bike paths, striped bike lanes, or wide outside lanes that accommodate bicycles and motor vehicles.

(f) "Boulevard design" means a design concept that emphasizes pedestrian travel, bicycling and the use of public transportation, and accommodates motor vehicle travel.

(g) "Calculated capacity" means the number of dwelling units and jobs that can be contained in an area based on the calculation required by this functional plan.

(h) "Capacity expansion" means constructed or operational improvements to the regional motor vehicle system that increase the capacity of the system.

(i) "Comprehensive plan" means the all inclusive, generalized, coordinated land use map and policy statement of cities and counties defined in ORS 197.015(5).

(j) "Connectivity" means the degree to which the local and regional street systems in a given area are interconnected.

(k) "DBH" means the diameter of a tree measured at breast height.

(l) "Design flood elevation" means the elevation of the 100-year storm as defined in FEMA Flood Insurance Studies or, in areas without FEMA floodplains, the elevation of the 25-year storm, or the edge of mapped flood prone soils or similar methodologies.

(m) "Design type" means the conceptual areas described in the Metro 2040 Growth Concept text and map in Metro's regional goals and objectives, including central city, regional centers, town centers, station communities, corridors, main streets, inner and outer neighborhoods, industrial areas, and employment areas.

(n) "Designated beneficial water uses" means the same as the term as defined by the Oregon Department of Water Resources, which is: an instream public use of water for the benefit of an appropriator for a purpose consistent with the laws and the economic and general welfare of the people of the state and includes, but is not limited to, domestic, fish life, industrial, irrigation, mining, municipal, pollution abatement, power development, recreation, stockwater and wildlife uses.

(o) "Development" means any man-made change defined as buildings or other structures, mining, dredging, paving, filling, or grading in amounts greater than ten (10) cubic yards on any lot or excavation. In addition, any other activity that results in the removal of more than 10 percent of the vegetation in the Water Quality Resource Area on the lot is defined as development, for the purpose of Title 3 except that ~~more~~ less than 10 percent removal of vegetation on a lot must comply with Section 3.07.340(C) - Erosion and Sediment Control. In addition, any other activity that results in the removal of more than either 10 percent or 20,000 square feet of the vegetation in the Habitat Conservation Areas on the lot is defined as development, for the purpose of Title 13. Development does not include the following: (1) Stream enhancement or restoration projects approved by cities and counties; (2) Farming practices as defined in ORS 30.930 and farm use as defined in ORS 215.203, except that buildings associated with farm practices and farm uses are subject to the requirements of Titles 3 and 13; and (3) Construction on lots in subdivisions meeting the criteria of ORS 92.040(2).

(p) "Development application" means an application for a land use decision, limited land decision including expedited land divisions, but excluding partitions as defined in ORS 92.010(7) and ministerial decisions such as a building permit.

(q) "Ecological functions" means the biological and hydrologic characteristics of healthy fish and wildlife habitat. Riparian ecological functions include microclimate and shade, streamflow moderation and water storage, bank stabilization and sediment/pollution control, sources of large woody debris and natural channel dynamics, and organic material sources. Upland wildlife ecological functions include size of habitat area, amount of habitat with interior conditions, connectivity of habitat to water resources, connectivity to other habitat areas, and presence of unique habitat types.

~~(q) "DLCD Goal 5 ESEE" means a decision process local governments carry out under OAR 660-023-0040.~~

(r) "Emergency" means any man-made or natural event or circumstance causing or threatening loss of life, injury to person or property, and includes, but is not limited to, fire, explosion, flood, severe weather, drought earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation disruptions, and disease.

(s) "Enhancement" means the process of improving upon the natural functions and/or values of an area or feature which has been degraded by human activity. Enhancement activities may or may not return the site to a pre-disturbance condition, but create/recreate processes and features that occur naturally.

(t) "Fill" means any material such as, but not limited to, sand, gravel, soil, rock or gravel that is placed in a wetland or floodplain for the purposes of development or redevelopment.

~~(u) "Fish and Wildlife Habitat Conservation Area" means the area defined on the Metro Water Quality and Flood Management Area Map to be completed and attached hereto[1]. These include all Water Quality and Flood Management Areas that require regulation in order to protect fish and wildlife habitat. This area has been mapped to generally include the area 200 feet from top of bank of streams in undeveloped areas with less than 25% slope, and 100 feet from edge of mapped wetland on undeveloped land.~~

~~(v)~~(u) "Flood Management Areas" means all lands contained within the 100-year floodplain, flood area and floodway as shown on the Federal Emergency Management Agency Flood Insurance Maps and the area of inundation for the February 1996 flood. In addition, all lands which have documented evidence of flooding.

~~(w)~~(v) "Floodplain" means land subject to periodic flooding, including the 100-year floodplain as mapped by FEMA Flood Insurance Studies or other substantial evidence of actual flood events.

~~(x)~~(w) "Full street connection" means right-of-way designed for public access by motor vehicles, pedestrians and bicycles.

~~(y) "Functions and values of stream corridors" means stream corridors have the following functions and values: water quality retention and enhancement, flood attenuation, fish and wildlife habitat, recreation, erosion control, education, aesthetic, open space and wildlife corridor.~~

~~(z)~~(x) "Growth Concept Map" means the conceptual map demonstrating the 2040 Growth Concept design types attached to this plan[2].

(y) "Habitat Conservation Area" or "HCA" means an area identified on the Habitat Conservation Areas Map and subject to the performance standards and best management practices described in Section 4 of Title 13.

(z) "Habitat-friendly development" means a method of developing property that has less detrimental impact on fish and wildlife habitat than does traditional development methods. Examples include clustering development to avoid habitat, using alternative materials and designs such as pier, post, or piling foundations designed to minimize tree root disturbance, managing storm water on-site to help filter rainwater and recharge groundwater sources, collecting rooftop water in rain barrels for reuse in site landscaping and gardening, and reducing the amount of effective impervious surface created by development.

(aa) "Habitats of Concern" means the following unique or unusually important wildlife habitat areas as identified based on cite specific information provided by local wildlife or habitat experts:

---

[1] On file in the Metro Council office.
[2] On file in the Metro Council office.

Oregon white oak woodlands, bottomland hardwood forests, wetlands, native grasslands, riverine islands or deltas, and important wildlife migration corridors.

~~(aa)~~(bb) "Hazardous materials" means materials described as hazardous by Oregon Department of Environmental Quality.

~~(bb)~~(cc) "Implementing ordinances or regulations" means any city or county land use regulation as defined by ORS 197.015(11) which includes zoning, land division or other ordinances which establish standards for implementing a comprehensive plan.

~~(cc)~~(dd) "Improved pedestrian crossing." An improved pedestrian crossing is marked and may include signage, signalization, curb extensions and a pedestrian refuge such as a landscaped median.

~~(dd)~~(ee) "Invasive non-native or noxious vegetation" means plants listed as nuisance plants or prohibited plants on the Metro Native Plant List as adopted by Metro Council resolution because they are plant species that have been introduced and, due to aggressive growth patterns and lack of natural enemies in the area where introduced, spread rapidly into native plant communities~~, or which are not listed on the Metro Native Plant List as adopted by Metro Council resolution~~.

(ff) "Land Conservation and Development Commission" or "LCDC" means the Oregon Land Conservation and Development Commission.

~~(ee)~~(gg) "Landscape strip" means the portion of public right-of-way located between the sidewalk and curb.

(hh) "Land use regulation" means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan, as defined in ORS 197.015.

~~(ff)~~(ii) "Level-of-service (LOS)" means the ratio of the volume of motor vehicle demand to the capacity of the motor vehicle system during a specific increment of time.

(jj) "Local program effective date" means the effective date of a city's or county's new or amended comprehensive plan and implementing ordinances adopted to comply with Title 13 of the Urban Growth Management Functional Plan, Sections 1 to 6 of Exhibit C to Ordinance No. 05-1077. If a city or county is found to be in substantial compliance with Title 13 without making any amendments to its comprehensive plan or land use regulations, then the local program effective date shall be the effective date of Ordinance No. 05-1077. If a city or county amends its comprehensive plan or land use regulations to comply with Title 13, then the local program effective date shall be the effective date of the city's or county's amendments to its comprehensive plan or land use regulations, but in no event shall the local program effective date be later than two years after Title 13 is acknowledged by LCDC. For territory brought within the Metro UGB after the effective date of Metro Ordinance No. 05-1077, the local program effective date shall be the effective date of the ordinance adopted by the Metro Council to bring such territory within the Metro UGB.

~~(gg)~~(kk) "Local trips." Local vehicle trips are trips that are five miles or shorter in length.

~~(hh)~~(ll) "Median" means the center portion of public right-of-way, located between opposing directions of motor vehicle travel lanes. A median is usually raised and may be landscaped, and usually incorporates left turn lanes for motor vehicles at intersections and major access points.

~~(ii)~~(mm)"Metro" means the regional government of the metropolitan area, the elected Metro Council as the policy setting body of the government.

~~(jj)~~(nn) "Metro boundary" means the jurisdictional boundary of Metro, the elected regional government of the metropolitan area.

~~(kk)~~(oo)"Metro Urban Growth Boundary" or "Metro UGB" means the urban growth boundary as adopted and amended by the Metro Council, consistent with state law.

~~(ll)~~(pp) "Mitigation" means the reduction of adverse effects of a proposed project by considering, in the following order: (1) avoiding the impact all together by not taking a certain action or parts of an action; (2) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) rectifying the impact by repairing, rehabilitating or restoring the affected environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and (5) compensating for the impact by replacing or providing comparable substitute water quality resource areas or habitat conservation areas.

~~(mm)~~(qq)"Mixed use" means comprehensive plan or implementing regulations that permit a mixture of commercial and residential development.

~~(nn)~~(rr) "Mixed-use development" includes areas of a mix of at least two of the following land uses and includes multiple tenants or ownerships: residential, retail and office. This definition excludes large, single-use land uses such as colleges, hospitals, and business campuses. Minor incidental land uses that are accessory to the primary land use should not result in a development being designated as "mixed-use development." The size and definition of minor incidental, accessory land uses allowed within large, single-use developments should be determined by cities and counties through their comprehensive plans and implementing ordinances.

~~(oo)~~(ss) "Mobility" means the speed at which a given mode of travel operates in a specific location.

~~(pp)~~(tt) "Mode-split target" means the individual percentage of public transportation, pedestrian, bicycle and shared-ride trips expressed as a share of total person-trips.

~~(qq)~~(uu)"Motor vehicle" means automobiles, vans, public and private buses, trucks and semi-trucks, motorcycles and mopeds.

~~(rr)~~(vv) "Multi-modal" means transportation facilities or programs designed to serve many or all methods of travel, including all forms of motor vehicles, public transportation, bicycles and walking.

~~(ss)~~(ww)"Narrow street design" means streets with less than 46 feet of total right-of-way and no more than 28 feet of pavement width between curbs.

~~(tt)~~(xx) "Native vegetation" or "native plant" means any vegetation ~~native to the Portland metropolitan area or~~ listed as a native plant on the Metro Native Plant ~~l~~List as adopted by Metro Council resolution and any other vegetation native to the Portland metropolitan area provided that it is not listed as a nuisance plant or a prohibited plant on the Metro Native Plant List.

~~(uu)~~(yy)"Net acre" means an area measuring 43,560 square feet which excludes:

- Any developed road rights-of-way through or on the edge of the land; and

- Environmentally constrained areas, including any open water areas, floodplains, natural resource areas protected under statewide planning Goal 5 in the comprehensive plans of cities and counties in the region, slopes in excess of 25 percent and wetlands requiring a Federal fill and removal permit under Section 404 of the Clean Water Act. These excluded areas do not include lands for which the local zoning code provides a density bonus or other mechanism which allows the transfer of the allowable density or use to another area or to development elsewhere on the same site; and

- All publicly-owned land designated for park and open spaces uses.

~~(vv)~~(zz)"Net developed acre" consists of 43,560 square feet of land, after excluding present and future rights-of-way, school lands and other public uses.

(aaa) "Net vacant buildable land" means all vacant land less all land that is: (1) within Water Quality Resource Areas; (2) within Habitat Conservation Areas; (3) publicly owned by a local, state or federal government; (4) burdened by major utility easements; and (5) necessary for the provision of roads, schools, parks, churches, and other public facilities.

~~(ww)~~(bbb)"Perennial streams" means all primary and secondary perennial water ways as mapped by the U.S. Geological Survey.

~~(xx)~~(ccc)"Performance measure" means a measurement derived from technical analysis aimed at determining whether a planning policy is achieving the expected outcome or intent associated with the policy.

~~(yy)~~(ddd)"Person-trips" means the total number of discrete trips by individuals using any mode of travel.

~~(zz)~~(eee)"Persons per acre" means the intensity of building development by combining residents per net acre and employees per net acre.

~~(aaa)~~(fff)"Practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose. As used in Title 13 of this functional plan, "practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose and probable impact on ecological functions.

~~(bbb)~~(ggg)"Primarily developed" means areas where less than 10% of parcels are either vacant or underdeveloped.

~~(ccc)~~(hhh)"Protected Water Features"

Primary Protected Water Features shall include:

- Title 3 wetlands; and

- Rivers, streams, and drainages downstream from the point at which 100 acres or more are drained to that water feature (regardless of whether it carries year-round flow); and

- Streams carrying year-round flow; and
- Springs which feed streams and wetlands and have year-round flow; and
- Natural lakes.

Secondary Protected Water Features shall include intermittent streams and seeps downstream of the point at which 50 acres are drained and upstream of the point at which 100 acres are drained to that water feature.

~~(ddd)~~(iii)"Redevelopable land" means land on which development has already occurred which, due to present or expected market forces, there exists the strong likelihood that existing development will be converted to more intensive uses during the planning period.

~~(eee)~~(jjj)"Regional Goals and Objectives" are the land use goals and objectives that Metro is required to adopt under ORS 268.380(1).

~~(fff)~~(kkk)"Regional vehicle trips" are trips that are greater than five miles in length.

(lll) "Regionally significant fish and wildlife habitat" means those areas identified on the Regionally Significant Fish and Wildlife Habitat Inventory Map, adopted in Section 2 of Title 13, as significant natural resource sites.

~~(ggg)~~(mmm)"Restoration" means the process of returning a disturbed or altered area or feature to a previously existing natural condition. Restoration activities reestablish the structure, function, and/or diversity to that which occurred prior to impacts caused by human activity.

~~(hhh)~~(nnn)"Retail" means activities which include the sale, lease or rent of new or used products to the general public or the provision of product repair or services for consumer and business goods. Hotels or motels, restaurants or firms involved in the provision of personal services or office space are not considered retail uses.

~~(iii)~~(ooo)"Riparian area" means the water influenced area adjacent to a river, lake or stream consisting of the area of transition from an hydric ecosystem to a terrestrial ecosystem where the presence of water directly influences the soil-vegetation complex and the soil-vegetation complex directly influences the water body. It can be identified primarily by a combination of geomorphologic and ecologic characteristics.

~~(jjj)~~(ppp)"Routine repair and maintenance" means activities directed at preserving an existing allowed use or facility, without expanding the development footprint or site use.

~~(kkk)~~(qqq)"Shared-ride" means private passenger vehicles carrying more than one occupant.

~~(lll)~~(rrr)"Significant increase in Single Occupancy Vehicle (SOV) capacity for multi-modal arterials." An increase in SOV capacity created by the construction of additional general purpose lanes totaling ½ lane miles or more in length. General purpose lanes are defined as through travel lanes or multiple turn lanes. This also includes the construction of a new general purpose highway facility on a new location. Lane tapers are not included as part of the general purpose lane. Significant increases in SOV capacity should be assessed for individual facilities rather than for the planning area.

~~(mmm)~~(sss)"Significant increase in Single Occupancy Vehicle (SOV) capacity for regional through-route freeways." Any increase in SOV capacity created by the construction of additional general purpose lanes other than that resulting from a safety project or a project solely intended to eliminate a bottleneck. An increase in SOV capacity associated with the elimination of a bottleneck is considered significant only if such an increase provides a highway section SOV capacity greater than ten percent over that provided immediately upstream of the bottleneck. An increase in SOV capacity associated with a safety project is considered significant only if the safety deficiency is totally related to traffic congestion. Construction of a new general purpose highway facility on a new location also constitutes a significant increase in SOV capacity. Significant increase in SOV capacity should be assessed for individual facilities rather than for the planning area.

~~(nnn)~~(ttt)"Significant negative impact" means an impact that affects the natural environment, considered individually or cumulatively with other impacts on the Water Quality Resource Area, to the point where existing water quality functions and values are degraded.

~~(ooo)~~(uuu)"Single occupancy vehicle (SOV)" means private passenger vehicles carrying one occupant.

~~(ppp)~~(vvv)"Straight-line distance" means the shortest distance measured between two points.

~~(qqq)~~(www)"Stream" means a body of running water moving over the earth's surface in a channel or bed, such as a creek, rivulet or river. It flows at least part of the year, including perennial and intermittent streams. Streams are dynamic in nature and their structure is maintained through build-up and loss of sediment.

~~(rrr)~~(xxx)"Substantial compliance" means city and county comprehensive plans and implementing ordinances, on the whole, conform with the purposes of the performance standards in the functional plan and any failure to meet individual performance standard requirements is technical or minor in nature.

~~(sss)~~(yyy)"Target capacities" means the capacities in Table 3.07-1 required to be demonstrated by cities and counties for compliance with Title 1, Section 3.07.120.

~~(ttt)~~(zzz)"Target densities" means the average combined household and employment densities established for each design type in the RUGGO 2040 Growth Concept.

~~(uuu)~~(aaaa)"Title 3 Wetlands" means wetlands of metropolitan concern as shown on the Metro Water Quality and Flood Management Area Map and other wetlands added to city or county adopted Water Quality and Flood Management Area maps consistent with the criteria in Title 3, Section 3.07.340(E)(3). Title 3 wetlands do not include artificially constructed and managed stormwater and water quality treatment facilities.

~~(vvv)~~(bbbb)"Top of bank" means the same as "bankfull stage" defined in OAR 141-085-0010~~(2)~~.

~~(www)~~(cccc)"Traffic calming" means street design or operational features intended to maintain a given motor vehicle travel speed.

(dddd) "Urban development value" means the economic value of a property lot or parcel as determined by analyzing three separate variables: assessed land value, value as a property that could generate jobs ("employment value"), and the Metro 2040 design type designation of property. The urban development value of all properties containing regionally significant fish and wildlife habitat is

depicted on the Metro Habitat Urban Development Value Map referenced in Section 4(E) of Title 13.

(eeee) "Urban Growth Boundary" or "UGB" means an urban growth boundary adopted pursuant to ORS chapter 197.

~~(xxx)~~(ffff)"Underdeveloped parcels" means those parcels of land with less than 10% of the net acreage developed with permanent structures.

~~(yyy)~~(gggg)"Utility facilities" means buildings, structures or any constructed portion of a system which provides for the production, transmission, conveyance, delivery or furnishing of services including, but not limited to, heat, light, water, power, natural gas, sanitary sewer, stormwater, telephone and cable television.

~~(zzz)~~(hhhh)"Vacant land" means land identified in the Metro or local government inventory as undeveloped land.

~~(aaaa)~~(iiii)"Variance" means a discretionary decision to permit modification of the terms of an implementing ordinance based on a demonstration of unusual hardship or exceptional circumstance unique to a specific property.

~~(bbbb)~~(jjjj)"Visible or measurable erosion." Visible or measurable erosion includes, but is not limited to:

- Deposits of mud, dirt sediment or similar material exceeding one-half cubic foot in volume on public or private streets, adjacent property, or onto the storm and surface water system, either by direct deposit, dropping discharge, or as a result of the action of erosion.

- Evidence of concentrated flows of water over bare soils; turbid or sediment laden flows; or evidence of on-site erosion such as rivulets on bare soil slopes, where the flow of water is not filtered or captured on the site.

- Earth slides, mudflows, earth sloughing, or other earth movement that leaves the property.

(kkkk) "Water feature" means all rivers, streams (regardless of whether they carry year-round flow, i.e., including intermittent streams), springs which feed streams and wetlands and have year-round flow, Flood Management Areas, wetlands, and all other bodies of open water.

~~(eeee)~~(llll)"Water Quality and Flood Management Area" means an area defined on the Metro Water Quality and Flood Management Area Map, to be attached hereto[3]. These are areas that require regulation in order to mitigate flood hazards and to preserve and enhance water quality. This area has been mapped to generally include the following: stream or river channels, known and mapped wetlands, areas with flood-prone soils adjacent to the stream, floodplains, and sensitive water areas. The sensitive areas are generally defined as 50 feet from top of bank of streams for areas of less than 25% slope, and 200 feet from top of bank on either side of the stream for areas greater than 25% slope, and 50 feet from the edge of a mapped wetland.

[3] On file in Metro Council office.

~~(dddd)~~(mmmm)"Water Quality Resource Areas" means vegetated corridors and the adjacent water feature as established in Title 3.

~~(eeee)~~(nnnn)"Wetlands." Wetlands are those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support and under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands are those areas identified and delineated by a qualified wetland specialist as set forth in the 1987 Corps of Engineers Wetland Delineation Manual.

~~(ffff)~~(oooo)"Zoned capacity" means the highest number of dwelling units or jobs that are allowed to be contained in an area by zoning and other city or county jurisdiction regulations.

Amendment 10. Metro Code Section 3.07.1120, "Urban Growth Boundary Amendment Urban Reserve Plan Requirements," shall be amended as follows:

All territory added to the Urban Growth Boundary as either a major amendment or a legislative amendment pursuant to Metro Code chapter 3.01 shall be subject to adopted comprehensive plan provisions consistent with the requirements of all applicable titles of the Metro Urban Growth Management Functional Plan and in particular this Title 11. The comprehensive plan provisions shall be fully coordinated with all other applicable plans. The comprehensive plan provisions shall contain an urban growth plan diagram and policies that demonstrate compliance with the RUGGO, including the Metro Council adopted 2040 Growth Concept design types. Comprehensive plan amendments shall include:

A. Provision for annexation to the district and to a city or any necessary service districts prior to urbanization of the territory or incorporation of a city or necessary service districts to provide all required urban services.

B. Provision for average residential densities of at least 10 dwelling units per acre of net ~~developable residential acre~~vacant buildable land in zones in which residences are allowed, or other density prescribed by the Council in the ordinance adding the territory to the UGB~~lower densities which conform to the 2040 Growth Concept Plan design type designation for the area~~.

C. Demonstrable measures that will provide a diversity of housing stock that will fulfill needed housing requirements as defined by ORS 197.303. Measures may include, but are not limited to, implementation of recommendations in Title 7 of the Urban Growth Management Functional Plan.

D. Demonstration of how residential developments will include, without public subsidy, housing affordable to households with incomes at or below area median incomes for home ownership and at or below 80 percent of area median incomes for rental as defined by U.S. Department of Housing and Urban Development for the adjacent urban jurisdiction. Public subsidies shall not be interpreted to mean the following: density bonuses, streamlined permitting processes, extensions to the time at which systems development charges (SDCs) and other fees are collected, and other exercises of the regulatory and zoning powers.

E. Provision for sufficient commercial and industrial development for the needs of the area to be developed consistent with 2040 Growth Concept design types. Commercial and industrial

designations in nearby areas inside the Urban Growth Boundary shall be considered in comprehensive plans to maintain design type consistency.

F. A conceptual transportation plan consistent with the applicable provision of the Regional Transportation Plan, Title 6 of the Urban Growth Management Functional Plan, and that is also consistent with the protection of natural resources either identified in acknowledged comprehensive plan inventories or as required by Title 3 of the Urban Growth Management Functional Plan. The plan shall, consistent with OAR Chapter 660, Division 11, include preliminary cost estimates and funding strategies, including likely financing approaches.

G. Identification, and mapping ~~and a funding strategy for protecting~~of areas to be protected from development due to fish and wildlife habitat protection, water quality enhancement and mitigation, and natural hazards mitigation, ~~,~~ including, without limitation, all Habitat Conservation Areas, Water Quality Resource Areas, and Flood Management Areas. A natural resource protection plan to protect fish and wildlife habitat, water quality enhancement areas, and natural hazard areas shall be completed as part of the comprehensive plan and zoning for lands added to the Urban Growth Boundary prior to urban development. The plan shall include zoning strategies to avoid and minimize the conflicts between planned future development and the protection of Habitat Conservation Areas, Water Quality Resource Areas, Flood Management Areas, and other natural hazard areas. The plan shall also include a preliminary cost estimate and funding strategy, including likely financing approaches, for options such as mitigation, site acquisition, restoration, enhancement, ~~or~~ and easement dedication to ensure that all significant natural resources are protected.

H. A conceptual public facilities and services plan for the provision of sanitary sewer, water, storm drainage, transportation, parks and police and fire protection. The plan shall, consistent with OAR Chapter 660, Division 11, include preliminary cost estimates and funding strategies, including likely financing approaches.

I. A conceptual school plan that provides for the amount of land and improvements needed, if any, for school facilities on new or existing sites that will serve the territory added to the UGB. The estimate of need shall be coordinated with affected local governments and special districts.

J. An urban growth diagram for the designated planning area showing, at least, the following, when applicable:

1. General locations of arterial, collector and essential local streets and connections and necessary public facilities such as sanitary sewer, storm sewer and water to demonstrate that the area can be served;

2. Location of steep slopes and unbuildable lands including but not limited to wetlands, floodplains and riparian areas;

3. Location of Habitat Conservation Areas;

~~3~~4. General locations for mixed use areas, commercial and industrial lands;

45. General locations for single and multi-family housing;

~~5~~6. General locations for public open space, plazas and neighborhood centers; and

67. General locations or alternative locations for any needed school, park or fire hall sites.

K. The plan amendments shall be coordinated among the city, county, school district and other service districts.

M:\attorney\confidential\07 Land Use\04 2040 Growth Concept\03 UGMFP\02 Stream Protection (Title 3)\02 Goal 5\02 Program\Ord 05-1077A Ex D UGMFP 051205.doc

EXHIBIT E—ORDINANCE NO. 05-1077A

METRO CODE CHAPTER 3.07
URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN

TITLE 13 MODEL ORDINANCE

Table of Contents

Section 1. Intent
The purpose of this ordinance is to comply with Section 4 of Title 13 of Metro's Urban Growth Management Functional Plan.

A. To protect and improve the following functions and values that contribute to fish and wildlife habitat in urban streamside areas:

   1. Microclimate and shade;

   2. Stream-flow moderation and water storage;

   3. Bank stabilization, sediment and pollution control;

   4. Large wood recruitment and retention and channel dynamics; and

   5. Organic material sources.

B. To protect and improve the following functions and values that contribute to upland wildlife habitat in new urban growth boundary expansion areas:

   1. Large habitat patches

   2. Interior habitat

   3. Connectivity and proximity to water

   4. Connectivity and proximity to other upland habitat areas

C. To establish High, Moderate, and Low Habitat Conservation Areas (HCA) to implement the performance standards of Title 13 of the Urban Growth Management Functional Plan.

D. To provide clear and objective standards and a discretionary process for development within regionally significant fish and wildlife habitats in compliance with Statewide Land Use Planning Goal 5.

Section 2. Relationship to Water Quality Resource Area and Flood Management Area, Consistency with Other Regulations

A. The requirements of this Code [i.e., the city's or county's entire zoning code] related to development in Water Quality Resource Areas and Flood Management Areas located within HCAs apply in addition to requirements specified in this ordinance.

B. Where the provisions of this ordinance are less restrictive than comparable provisions of the zoning ordinance, regional, state, or federal law, the provisions that are more restrictive shall govern. Where this ordinance imposes restrictions that are more stringent than regional, state, and federal law, the provisions of this ordinance shall govern, except for wetlands mitigation requirements imposed by state and federal law (see Sections 6(F) and 7(D)(4) of this ordinance).

Section 3. Applicability and Map Administration

A. This ordinance applies to all development on real property lots or parcels that contain or include any Habitat Conservation Areas ("HCAs"), provided, however, that the requirements of sections 5

through 9 of this ordinance do not apply to the uses and activities described in section 4 of this ordinance. HCAs are those areas identified on the HCA map, as refined in the map verification process described in subsection 3(B) of this ordinance.

B. Map Administration.

1. Exempt development. As provided in subsection 4(C)(10), development that is no closer than 100 feet to the border of an HCA (including all impervious surfaces and landscaping) based on the HCA map may proceed without having to comply with this section or the requirements of sections 5 through 9 of this ordinance.

2. Verification of the location of HCAs as described in this section shall not be considered a comprehensive plan amendment.

3. At any time, a property owner, or another person with the property owner's consent, may request to verify the location of HCAs on a real property lot or parcel pursuant to this section 3 of this ordinance. If a person receives such a verification separate from a simultaneous request for a building permit, grading permit, tree removal permit, land division approval, or some other land use decision, then the person may use the verification to satisfy the requirements of this section at any time up until five years after the date the verification was issued.

4. Basic Verification Approaches. The basic verification approaches described in subsections 4(a) through (c) of this ordinance are available for applicants who believe that the HCA map is accurate, that there is a simple incongruity between the HCA map and the boundary lot lines of a property, or that the property was developed prior to the effective date of this ordinance or two years after acknowledgement of the regional program, whichever is earlier.

   a. *Applicant Believes HCA Map is Accurate.* An applicant who believes that the HCA map is accurate and will not use the discretionary approval approach described in section 7 of this ordinance may comply with this subsection 3(B)(4)(a) of this ordinance. The applicant shall submit the following information regarding the real property lot or parcel:

      i. A detailed property description;

      ii. A copy of the applicable HCA map;

      iii. A summer 2005 aerial photograph of the property, with lot lines shown, at a scale of at least 1 map inch equal to 50 feet for lots of 20,000 or fewer square feet, and a scale of 1 map inch equal to 100 feet for larger lots (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742);

      iv. The information described in subsection 6(B) of this ordinance if the applicant proposes development within any HCA consistent with section 6 of this ordinance; and

      v. Any other information that the applicant wishes to provide to support the assertion that the HCA map is accurate.

   b. *Obvious Incongruities Between Mapped Habitat and Property Lot Lines.* The HCA map was created based, in part, on the type of vegetated cover on properties as depicted on detailed aerial photographs. That analysis mapped the vegetated cover into a geographical information system (GIS) database, and that information was then cross-correlated with a GIS

database from local assessors' offices depicting the lot line boundaries of properties in their jurisdiction. In some cases, the two databases do not align precisely with one another, resulting in some habitat designations on properties where the existence, type, and shape of habitat is not disputed, but its precise location may be misrepresented in relation to the property's lot lines. An applicant who believes that the HCA map is inaccurate based on such an obvious incongruity between mapped habitat and mapped property lot lines and will not use the discretionary approval approach described in section 7 of this ordinance may comply with this subsection 3(B)(4)(b) of this ordinance. The applicant shall submit the following information regarding the real property lot or parcel:

i. The information described in subsections 3(B)(4)(a)(i) through (iv) of this ordinance; and

ii. A detailed, clear, and documented explanation of the incongruity between the HCA map and the property's boundary lines. For example, an applicant could compare the boundary lot lines shown for roads within 500 feet of a property with the location of such roads as viewed on the aerial photograph of the area surrounding a property to provide evidence of the scale and amount of incongruity between the HCA maps and the property lot lines, and the amount of adjustment that would be appropriate to accurately depict habitat on the property.

c. *Property Developed Between Summer 2002 And Approval of Regional Program.* As noted above, the HCA map was created based, in part, on the type of vegetated cover on properties as depicted on detailed aerial photographs taken in the summer of 2002. Applicants who believe that a property was developed between the time of the aerial photo used to determine the regional habitat inventory (summer 2002) and the time the regional program was approved and who will not use the discretionary approval approach described in section 7 of this ordinance may comply with this subsection 3(B)(4)(c) of this ordinance. The applicant shall submit the following information regarding the real property lot or parcel:

i. The information described in subsection 3(B)(4)(a)(i) through (iv) of this ordinance;

ii. A summer 2002 aerial photograph of the property, with lot lines shown, at a scale of at least 1 map inch equal to 50 feet for lots of 20,000 or fewer square feet, and a scale of 1 map inch equal to 100 feet for larger lots (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742);

iii. Any approved building permits or other development plans and drawings related to the development of the property that took place between summer 2002 and the time the regional program was approved; and

iv. A detailed and clear explanation, and supporting maps or drawings, indicating what new development occurred and where previously identified habitat no longer exists because it is now part of a developed area.

d. *Notice requirements.* Upon receipt of a completed application pursuant to subsections 3(B)(4)(a) through (c) of this ordinance, the [Director] shall provide notice to Metro and to all property owners within 300 feet of the subject property and shall accept written public comments regarding the matter during a public comment period.

i. The [Director] shall consider information submitted by the applicant and all other persons and shall confirm the location of any HCAs based on the HCA map, the information

submitted by the applicant and other persons, and any additional information readily available, including information collected during a site visit to the lot or parcel.

ii. The applicant and all persons that submitted written comments shall be provided with an explanation of its decision and the information on which it relied to make the decision.

e. *Decision Process.* A decision made pursuant to subsection 3(B)(4)(d) of this ordinance may be an administrative decision.

5. Intermediate Verification Approach. The following intermediate verification approach is available for applicants who believe that the HCA map is inaccurate, are not able to use one of the basic verification approaches described in subsection 3(B)(4) of this ordinance, and will not use the discretionary approval approach described in section 7 of this ordinance.

a. *Submittal requirements.* The applicant shall submit the following information regarding the real property lot or parcel:

i. The information described in subsections 3(B)(4)(a)(i) through (iv) of this ordinance;

ii. The information described in subsections 3(B)(4)(b)(ii) and 3(B)(4)(c)(ii) through (iv) of this ordinance, if the applicant believes such information is relevant to the verification of habitat location on the subject lot or parcel; and

iii. A detailed and clear explanation of why the HCA map is inaccurate and where any HCAs are located on the property based on the application of the verification criteria in subsection 3(B)(7) of this ordinance, and including factual documentation to support the analysis.

b. *Notice requirements.* Upon receipt of a completed application pursuant to this subsection 3(B)(5) of this ordinance, the Director shall provide notice to Metro and to all property owners within 300 feet of the subject property and shall accept written public comments regarding the matter during a public comment period.

i. The verification criteria in subsection 3(B)(7) of this ordinance shall be applied to confirm the location of any HCAs based on the HCA map, the information submitted by the applicant, information submitted by other persons, and any additional information readily available, including information collected during a site visit to the lot or parcel.

ii. The applicant and all persons that submitted written comments shall be provided with an explanation of its decision and the information on which it relied to make the decision.

c. *Decision process.* The decision under this subsection 3(B)(5) may be an administrative decision.

6. Detailed Verification Approach. All applicants who will use the discretionary approval process described in section 7 of this ordinance shall comply with this subsection 3(B)(6) of this ordinance. Any other applicant may choose to file a verification request consistent with this subsection 3(B)(6) of this ordinance.

a. *Submittal requirements.* The applicant shall submit a report prepared and signed by either (1) a knowledgeable and qualified natural resource professional, such as a wildlife biologist,

botanist, or hydrologist, or (2) an engineer registered in Oregon to design public sanitary or storm systems, storm water facilities, or other similar facilities. Such report shall include:

i. A description of the qualifications and experience of all persons that contributed to the report, and, for each person that contributed, a description of the elements of the analysis to which the person contributed;

ii. The information described in subsections 3(B)(4)(a)(i) through (iv) of this ordinance;

iii. The information described in subsections 3(B)(4)(b)(ii) and 3(B)(4)(c)(ii) through (iv) of this ordinance, if the applicant believes such information is relevant to the verification of habitat location on the subject lot or parcel;

iv. Additional aerial photographs if the applicant believes they provide better information regarding the property, including documentation of the date and process used to take the photos and an expert's interpretation of the additional information they provide;

v. A map showing the topography of the property shown by contour lines of 2 foot intervals for slopes less than 15% and by 10 foot intervals for slopes 15% or greater;

vi. Additional specific, objective, and clear information necessary to address each of the verification criteria in subsection 3(B)(7) of this ordinance, a description of where any HCAs are located on the property based on the application of the verification criteria in subsection 3(B)(7) of this ordinance, and factual documentation to support the analysis.

b. *Notice requirements.* Upon receipt of a completed application pursuant to this subsection 3(B)(5) of this ordinance, the Director shall provide notice to Metro and to all property owners within 300 feet of the subject property and shall accept written public comments regarding the matter during a public comment period.

i. The verification criteria in subsection 3(B)(7) of this ordinance shall be applied to confirm the location of any HCAs based on the HCA map, the information submitted by the applicant, and any additional information readily available, including information collected during a site visit to the lot or parcel.

ii. The applicant and all persons that submitted written comments shall be provided with an explanation of its decision and the information on which it relied to make the decision.

c. *Decision process.* The decision under this subsection 3(B)(5) may be an administrative decision.

7. Verification Criteria. The verification of the location of HCAs shall be according to the three-step process described in this subsection 3(B)(7) of this ordinance. A verification application shall not be considered complete and shall not be granted unless all the information required to be submitted with the verification application has been received.

a. *Step 1. Verifying boundaries of inventoried riparian habitat.* Locating habitat and determining its riparian habitat class is a four-step process:

i. Locate the Water Feature that is the basis for identifying riparian habitat.

(A) Locate the top of bank of all streams, rivers, and open water within 200 feet of the property.

(B) Locate all flood areas within 100 feet of the property..

(C) Locate all wetlands within 150 feet of the property based on the Local Wetland Inventory map (if completed) and on the Metro 2002 Wetland Inventory Map (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742). Identified wetlands shall be further delineated consistent with methods currently accepted by the Oregon Division of State Lands and the U.S. Army Corps of Engineers.

ii. Identify the vegetated cover status of all areas on the property that are within 200 feet of the top of bank of streams, rivers, and open water, are wetlands or are within 150 feet of wetlands, and are flood areas and within 100 feet of flood areas.

(A) Vegetated cover status shall be as identified on the Metro Vegetated Cover Map (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742).

(B) In terms of mapping the location of habitat, the only allowed corrections to the vegetative cover status of a property are those based on an area being developed prior to the time the regional program was approved (see subsection 3(B)(4)(c) of this ordinance, above) and those based on errors made at the time the vegetative cover status was determined based on analysis of the summer 2002 aerial photographs. Applicants who wish to assert the latter type of error shall do so as part of a detailed map verification application submitted pursuant to subsection 3(B)(6) of this ordinance.

iii. Determine whether the degree that the land slopes upward from all streams, rivers, and open water within 200 feet of the property is greater than or less than 25% (using the methodology as described in [city or county should insert a reference to the city or county code section that describes the methodology used to identify Water Quality Resource Areas pursuant to Title 3 of the Urban Growth Management Functional Plan]); and

iv. Identify the riparian habitat classes applicable to all areas on the property using Table 1 and the data identified in subsections 3(B)(7)(a)(i) through (iii).

b. *Step 2. Verifying boundaries of inventoried upland habitat in future urban growth boundary expansion areas.* The process described below shall be used to verify the location of upland habitat areas:

i. Identify the vegetated cover status of all areas on the property.

(A) Vegetated cover status shall be as identified on the Metro Vegetated Cover Map used to inventory habitat at the time the area was brought within the urban growth boundary (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742).

(B) In terms of mapping the location of habitat, the only allowed corrections to the vegetative cover status of a property is determined based on analysis of the aerial

photographs used to inventory the habitat at the time the area was brought within the urban growth boundary. Applicants who wish to assert the latter type of error shall do so as part of a detailed map verification application submitted pursuant to subsection 3(B)(6) of this ordinance.

Table 1: Method for Locating Boundaries of Class I and II Riparian Areas

Distance in feet from Water Feature	Development/Vegetation Status[1]			
	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)
Surface Streams				
0-50	Class II	Class I	Class I	Class I
50-100		Class II[2]	Class I	Class I
100-150		Class II[2] if slope>25%	Class II[2] if slope>25%	Class II[2]
150-200		Class II[2] if slope>25%	Class II[2] if slope>25%	Class II[2] if slope>25%
Wetlands (Wetland feature itself is a Class I Riparian Area)				
0-100		Class II[2]	Class I	Class I
100-150				Class II[2]
Flood Areas (Undeveloped portion of flood area is a Class I Riparian Area)				
0-100			Class II[2]	Class II[2]

[1]The vegetative cover type assigned to any particular area was based on two factors: the type of vegetation observed in aerial photographs and the size of the overall contiguous area of vegetative cover to which a particular piece of vegetation belonged. As an example of how the categories were assigned, in order to qualify as "forest canopy" the forested area had to be part of a larger patch of forest of at least one acre in size.

[2]Areas that have been identified as habitats of concern, as designated on the Metro Habitats of Concern Map (on file in the Metro Council office), shall be treated as Class I riparian habitat areas in all cases, subject to the provision of additional information that establishes that they do not meet the criteria used to identify habitats of concern as described in Metro's Technical Report for Fish and Wildlife. Examples of habitats of concern include: Oregon white oak woodlands, bottomland hardwood forests, wetlands, native grasslands, riverine islands or deltas, and important wildlife migration corridors.

c. *Step 3. 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 (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742).

i. A property's urban development value designation shall be adjusted upward if the Metro 2040 Design Type designation for the property lot or parcel has changed from a category designated as a lower urban development value category to one designated as a higher urban development value category. 2040 Design Type designations are identified on the Metro 2040 Applied Concept Map (also available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742).

ii. Properties in areas designated on the 2040 Applied Concept Map 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.

iii. As designated in Title 13 of Metro's Urban Growth Management Functional Plan, properties owned by a regionally significant educational or medical facility are designated as high urban development value.

d. *Step 4. Cross-Reference 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 2 and 3.

Table 2: Method for Identifying Habitat Conservation Areas ("HCA")

Fish & wildlife habitat classification	High Urban development value[1]	Medium Urban development value[2]	Low Urban development value[3]	Other areas: Parks and Open Spaces, no design types outside UGB
Class I Riparian	Moderate HCA	High HCA	High HCA	High HCA / High HCA+[4]
Class II Riparian	Low HCA	Low HCA	Moderate HCA	Moderate HCA / High HCA+[4]
Class A Upland Wildlife	No HCA	No HCA	No HCA	No HCA / High HCA[5] / High HCA+[4]
Class B Upland Wildlife	No HCA	No HCA	No HCA	No HCA / High HCA[5] / High HCA+[4]

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 HCA adjustment.

[1]Primary 2040 design type: Regional Centers, Central City, Town Centers, and Regionally Significant Industrial Areas
[2]Secondary 2040 design type: Main Streets, Station Communities, Other Industrial areas, and Employment Centers
[3]Tertiary 2040 design type: Inner and outer neighborhoods, Corridors
[4] Cities and counties shall give Class I and II riparian habitat and Class A and B upland wildlife habitat in parks designated as natural areas even greater protection than that afforded to High Habitat Conservation Areas.
[5] All Class A and B upland wildlife habitat in publicly-owned parks and open spaces, except for parks and open spaces where the acquiring agency clearly identified that it was acquiring the property to develop it for active recreational uses, shall be considered High HCAs.

Table 3: Method for Identifying Habitat Conservation Areas ("HCA") in Future Urban Growth Boundary Expansion Areas

Fish & wildlife habitat classification	High Urban development value[1]	Medium Urban development value[2]	Low Urban development value[3]	Other areas: Parks and Open Spaces, no design types outside UGB
Class I Riparian	Moderate HCA	High HCA	High HCA	High HCA / High HCA+[4]
Class II Riparian	Low HCA	Low HCA	Moderate HCA	Moderate HCA / High HCA+[4]
Class A Upland Wildlife	Low HCA	Moderate HCA	Moderate HCA	High HCA / High HCA[5] / High HCA+[4]
Class B Upland Wildlife	Low HCA	Low HCA	Moderate HCA	Moderate HCA / High HCA[5] / High HCA+[4]

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 HCA adjustment.

[1]Primary 2040 design types: Regional Centers, Central City, Town Centers, and Regionally Significant Industrial Areas

[2]Secondary 2040 design types: Main Streets, Station Communities, Other Industrial areas, and Employment Centers

[3]Tertiary 2040 design types: Inner and outer neighborhoods, Corridors

[4] Cities and counties shall give Class I and II riparian habitat and Class A and B upland wildlife habitat in parks designated as natural areas even greater protection than that afforded to High Habitat Conservation Areas.

[5] All Class A and B upland wildlife habitat in publicly-owned parks and open spaces, except for parks and open spaces where the acquiring agency clearly identified that it was acquiring the property to develop it for active recreational uses, shall be considered High HCAs.

Section 4. Exempt Uses and Activities

The following uses and activities are exempt from the requirements of this chapter:

A. Change of ownership.

B. Emergency procedures or activities undertaken which are necessary to remove or abate hazards and nuisances or for the protection of public health, safety and welfare and that require remedial or preventative action in a timeframe too short to allow for compliance with the requirements of this Chapter. Hazards that may be removed or abated include those required to maintain aircraft safety. After the emergency, the person or agency undertaking the action shall fully restore any impacts to the HCA resulting from the emergency action .

C. Limited types of development, redevelopment, operations, and improvements, including the following:

1. Maintenance, alteration, expansion, repair and replacement of existing structures, and exterior improvements.

a. Existing residential and non-residential structures may be rebuilt if damaged by fire or other natural hazards provided the structure is placed within the same foundation lines ("building footprint"); or

b. The alteration, expansion, or replacement of a structure that will not intrude more than 500 sq. ft. into the HCA, and so long as the new intrusion is no closer to the protected water feature than the pre-existing structure or improvement.

2. Maintenance, alteration, repair, and replacement of roads and utilities when no additional incursion into the HCA is proposed.

3. Owners and residents of residential properties where construction of the residence was completed prior to January 1, 2006 shall not be restricted from engaging in any use of their developed residential properties that they could have undertaken prior to September 1, 2005, without having to obtain a land use decision or a building, erosion control, or grading permit.

4. Maintenance of existing gardens, pastures, lawns and landscape perimeters, including the installation of new irrigation systems within existing gardens, pastures, lawns, and landscape perimeters.

5. Farming practices and the construction of farm structures on farm use land situated outside the Metro UGB and within an exclusive farm use zone established under ORS 215.203 or within an area designated as marginal land under ORS 197.247 (1991 Edition). "Farming practice" as used in this subsection shall have the meaning set out in ORS 30.930.

6. Forest practices on forestlands situated outside the Metro UGB, except as provided in ORS 527.722(2), (3) and (4). "Forest practices" and "forestlands" as used in this subsection shall have the meaning set out in ORS 30.930.

7. Operation, maintenance, and repair of manmade water control facilities such as irrigation and drainage ditches, constructed ponds or lakes, wastewater facilities, and stormwater detention or retention facilities.

8. Maintenance and repair of existing streets, railroads, shipping terminals, and utilities within rights-of-way, easements, and access roads.

9. Removal of plants identified as nuisance or prohibited plants on the *Metro Native Plant List* and the planting or propagation of plants identified as native plants on the *Metro Native Plant List.*

10. Existing water-dependent uses that can only be carried out on, in, or adjacent to water because they require access to the water for waterborne transportation or recreation.

11. Based on existing HCA mapping without going through the map verification process a property owner may designate a specific building site, including building footprint and related site improvements, within the site. This may be accomplished without an HCA map verification providing that no boundary of the proposed building site is closer than 100 feet to an HCA.

12. A building permit for a phased development project for which the applicant has previously met the application requirements, so long as the site for new construction was identified on the original permit and no new portion of the HCA will be disturbed.

13. Minor encroachments not to exceed 120 sq. ft. of impervious surface such as accessory buildings, eave overhangs, exterior building improvements for access and exiting requirements or other similar features.

14. Projects with the sole purpose of restoring or enhancing wetlands, streams, or fish and wildlife habitat areas, provided that the project is part of an approved local, state, or federal restoration or enhancement plan.

15. Temporary and minor clearing not to exceed 200 square feet for the purpose of site investigations and pits for preparing soil profiles, provided that such areas are restored to their original condition when the investigation is complete.

16. Low-impact outdoor recreation facilities, outside of Title 3 Water Quality Resource Areas, including, but not limited to, public multi-use paths, access ways, trails, picnic areas, or interpretive and educational displays and overlooks, including benches and outdoor furniture that meet the following requirements:

    a. Contain less than 500 sq. ft. of new impervious surface; and

    b. If trails, constructed using non-hazardous, pervious materials with maximum width of four feet.

Section 5. Prohibitions
The planting or propagation of any plant identified as a nuisance plant or a prohibited plant on the *Metro Native Plant List* is prohibited in HCAs.

Section 6. Development Standards
The development standards described in this section apply to all development and redevelopment on properties with Habitat Conservation Areas, unless exempted in Section 4 or the applicant chooses to follow discretionary process in Section 7.

A. Intent. These provisions are intended to:

    1. Allow and encourage habitat-friendly development while minimizing the impact on fish and wildlife habitat functions.

    2. Provide clear and objective standards for development within Habitat Conservation Areas.

B. Process. Application for a land use, building, grading, land division, or other development permit through the clear and objective process may be an administrative decision made by the [city/county] Planning Director (ministerial "Type I" decision).

C. Application Requirements. Applications for a building permit or development permit must provide a site plan and accompanying narrative explanation that includes the following information in addition to any other building permit or development permit requirements. All of the application requirements must be met prior to approval of a building or development permit.

    1. For the entire subject property (HCA and non-HCA)

        a. Location of all High, Moderate, and Low HCAs on site;

        b. Outline of any existing disturbance area, including the location of existing streets and paved areas, utilities, culverts, stormwater management facilities, or bridges;

c. Location of any wetlands or water bodies on the site or within 50 feet (suggestion was made to make this 300 feet to be consistent with map verification process) of the site;

d. Location of 100 year floodplain and floodway boundary as defined by the Federal Emergency Management Agency (FEMA) and the area of the 1996 flood inundation;

e. Topography shown by contour lines of 2-ft. intervals for slopes less than 15% and by 10 ft. intervals for slopes 15% or greater. On sites that are two acres or larger, such a contour map is required only for the portion of the site to be developed.

2. Detailed site plan of proposed development outlining total disturbance area, including, but not limited to, proposed building footprints, site improvements, utilities and landscaping.

3. If any proposed development will extend into one or more designated HCAs on the site, the following additional information shall be provided:

a. The location of trees greater than six inches diameter at breast height (DBH), identified by size and species. When trees are located in clusters they may be described by the approximate number of trees, the diameter range, and a listing of dominant species;

b. The distribution outline of trees less than six inches diameter at breast height (DBH), shrubs and ground covers, with a list of the most abundant species;

c. An outline of the proposed disturbance area that identifies the vegetation that will be removed. All trees to be removed with a diameter of six inches or greater shall be specifically identified as to number, trunk diameters, and species;

d. If grading will occur within the HCA, a grading plan showing the proposed alteration of the ground at 1-ft. vertical contours in areas of slopes less than 5%, and 2-ft. vertical contours in areas of slopes 6-15%, and at 5-ft. vertical contours of slopes 15% or greater.

4. Whether or not the proposed development will extend into a designated HCA on the site, the applicant will provide a construction management plan, including:

a. Location of site access and egress that construction equipment will use;

b. Equipment and material staging and stockpile areas;

c. Erosion and sediment control measures;

d. Measures to protect trees and other vegetation located outside the disturbance area.

D. Incentives for avoiding Habitat Conservation Areas. The following habitat-friendly development practices may be used to avoid or minimize development within HCAs by allowing flexible site design.

1. ***Building setback flexibility*** allowed to avoid or minimize development within HCAs.

a. The maximum front building setback shall be no greater than the minimum front building setback of the base zone. On a lot with more than one front lot line, this standard applies to

the front lot line that is farthest from the HCA. In zones with no minimum setback, the maximum setback is 10-ft.

b. The minimum front and street building setback and garage entrance setback of the base zone may be reduced to any distance between the base zone minimum and zero. Where a side lot line is also a street lot line, the side building and garage entrance setback may be reduced to any distance between the base zone minimum and zero.

2. ***Flexible landscaping requirements*** to avoid or minimize development within HCAs.

   a. Landscaping requirements may be met by preserving the HCA.

   b. Facilities that infiltrate stormwater onsite may be included within the HCA so long as forest canopy is not removed, such as:

      i. Vegetated swales

      ii. Grassed swales

      iii. Rain gardens

      iv. Vegetated filter strip

      v. Vegetated infiltration basin

3. ***Flexible Site Design*** (On-site Density Transfer) to avoid or minimize development within HCAs.

   a. *Residential.* For residential development proposals on lands with a HCA, a transfer of density within the site is permitted. The Expected Maximum Density is calculated by multiplying the total acreage of the property by the maximum density permitted in the applicable zoning district.

   b. *Commercial and Industrial Zones.* For on-site density transfers in Commercial or Industrial zones, the transfer credit is 10,000 sq. ft (FAR) per acre of land within the HCA.

   c. *Mixed-Use Zones.* Within mixed-use zones the density transfer credit can be factored using either 3(a) or 3(b) above, depending on the type of development proposed.

   d. The owner of the transferring property shall execute a covenant with the authorizing agency that records the transfer of units. The covenant must be recorded before building permits are issued. No additional application or review requirements are required other than those described in this ordinance.

   e. In order to accommodate the transferred density, dimensional standards and lot sizes may be adjusted by 30 percent.

   f. All remaining HCA shall be permanently restricted from development and maintained for habitat functions, such as by making a public dedication or executing a restrictive covenant.

4. ***Site Capacity Incentives.*** The following site capacity standards provide flexibility in the design of land divisions in order to allow ways to better protect HCAs.

a. Density bonus if HCA is protected. In multi-family residential zones, a 25 percent density bonus may be allowed for any development of four (4) or more dwelling units if 75 percent or more of the HCA on a site is permanently preserved, such as by making a public dedication or executing a restrictive covenant. The bonus density shall be in addition to the base density allowed in the applicable zoning district.

b. All area within a HCA, or any portion of it, may be subtracted from the calculations of net size for purposes of determining minimum density provided that such area is protected, such as by making a public dedication or executing a restrictive covenant. This provision may only be applied to properties that were inside the Metro UGB on January 1, 2002.

c. ***Optional:*** Transfer of development rights (off-site) in residential zones. Transfer of development rights preserves development opportunities and reduces development pressure on environmentally-sensitive sites. The regulations described below allow development rights to be transferred from sites with HCAs off-site to areas that can accommodate the additional density without environmental conflict. Transfer of development rights between sites is allowed as follows. "Development rights" are the number of potential dwelling units that would be allowed on the site by the base zone.

   i. Sending sites. Sites where at least 50 percent of the site is within a HCA may transfer development rights.

   ii. Receiving sites.

   Option 1: All sites in 2040 Mixed-Use areas may receive development rights from sending sites except:

   (A) Where any portion of the receiving site is within a HCA; or

   (B) Where any portion of the receiving site is in the undeveloped 100-year floodplain as currently defined by the Federal Emergency Management Agency (FEMA).

   Option 2: City or county may identify receiving sites upon adoption of this ordinance to be selected using the criteria in Option 1. The resulting map or criteria to identify receiving sites may include fewer sites than Option 1.

   iii. Maximum density. The density of the receiving site may not exceed 200 percent of the allowable density of the receiving site.

   iv. In order to accommodate the transferred density, dimensional standards and lot sizes may be adjusted by 30 percent.

   v. Transfer procedure. Transfer of development rights is allowed as follows:

   (A) Covenant required. The owner of the sending site must execute a covenant with the authorizing authority that reflects the reduced development potential on the sending site. The covenant must be recorded before approval of the final plan. Density transfers shall be recorded on the title of the sending lot in the HCA and on the title of the transfer (receiving) lot.

(B) Sending site included. The sending site must be a part of the application for development on the receiving site. A copy of the covenant for the sending site must be included with the application.

(C) City or county may purchase development rights from sending sites to place in a development rights bank for later sale to developers to use on receiving sites.

E. Development within HCAs. The following development standards apply to all development that occurs within the HCA and is not exempt in Section 4 or follows the discretionary approach in Section 7. If all development occurs outside of an HCA on a site, these standards do not apply.

1. ***Disturbance area limitations*** to minimize impact to HCA.

a. *Single-family residential.* The maximum disturbance area (MDA) allowed within HCAs is determined by subtracting the area of the lot or parcel outside of the HCAs from the total disturbance area calculated as described in Table 4 below.

i. Moderate and Low HCAs are subject to the same disturbance area limitations.

ii. Calculation of maximum disturbance area. If a lot or parcel includes both High and Moderate/Low HCAs then:

(A) If there is more High HCA than Moderate/Low HCA on the lot or parcel, then the MDA shall be calculated as if all of the Moderate/Low and High HCA were High, per Table 4 below; or

(B) If there is more Moderate/Low HCA than High HCA on the lot or parcel, then the MDA shall be calculated as if all of the Moderate/Low and High HCA were Moderate/Low, per Table 4 below.

iii. Location of MDA. If a lot or parcel includes different types of HCAs, then:

(A) The amount of development that may occur within the High HCA is equal to the total disturbance area minus the area of the lot or parcel outside of the High HCA (TDA – non-High HCA = MDA). If the area of the lot or parcel outside the High HCA is greater than the total disturbance area, then development shall not occur within the High HCA;

(B) The amount of development that may occur within the Moderate HCA is equal to the total disturbance area minus the area of the lot or parcel outside of the High and Moderate HCA (TDA – (Low HCA + non-HCA) = MDA). If the area of the lot or parcel outside the Moderate HCA is greater than the total disturbance area, then development shall not occur within the Moderate HCA; and

(C) The amount of development that may occur within the Low HCA is equal to the total disturbance area minus the area of the lot or parcel outside of the High, Moderate and Low HCA (TDA – non-HCA = MDA). If the area of the lot or parcel outside the Low HCA is greater than the total disturbance area, then development shall not occur within the Low HCA.

Table 4. HCA Total Disturbance Area Limitations for SFR.

HCA type	Total Disturbance Area
High	50 percent of the lot area, up to maximum of 5,000 sq. ft.
Moderate/Low	65 percent of the lot area, up to maximum of 6,000 sq. ft.

b. *All other zones.* The maximum disturbance area (MDA) allowed within a HCA is specified in Table YY below.

i. MDA in Low, Moderate and High HCAs is allowed by right in these zones, per Table 5 below, subject to mitigation requirements described in Section 7(F).

Table 5. HCA Disturbance Area Limitations for all zones other than SFR.

HCA type	Maximum Disturbance Area
High	10 percent of HCA on site
Moderate	15 percent of HCA on site
Low	50 percent of HCA on site

2. ***Protection of habitat during site development.*** During development of any site containing a HCA, the following standards apply:

a. Work areas shall be marked to reduce potential damage to the HCA.

b. Trees in HCAs shall not be used as anchors for stabilizing construction equipment.

c. Conserve on-site native soil and vegetation for stormwater management.

d. An erosion and sediment control plan is required and shall be prepared in compliance with requirements set forth in the [*locally adopted Title 3 erosion control regulations*];

e. Prior to construction, the HCA that is to remain undeveloped shall be flagged, fenced, or otherwise marked and shall remain undisturbed.

f. All work on the site shall conform to the Construction Management Plan described in subsection 6(C)(4).

3. ***Utility facility standards.*** In addition to the disturbance area limitations in subsection 6(E)(1) above, the following standards apply to new utilities, private connections to existing or new utility lines, and upgrades of existing utility lines within a HCA:

a. The disturbance area for utility facility connections to utility facilities is no greater than 10 feet wide.

b. The disturbance area for the upgrade of existing utility facilities is no greater than 15 feet wide.

c. No fill or excavation is allowed within the ordinary high water mark of a stream, unless a permit is obtained from the US Army Corps of Engineers through the Standard Local Operating Procedures for Endangered Species (SLOPES) process.

d. Mitigation is required as described in subsection F below.

4. ***Subdivision standards.*** The purpose of this section is to require that new subdivision plats delineate and show the Moderate and High HCAs as a separate non-buildable tract.

    a. The applicant must place at least 90% of a High HCA and 80% of a Moderate HCA in a separate tract.

        i. If over 50% of the HCA on a site is of a High designation, the entire calculation is for High (i.e., 90% of the HCA must be placed within a separate tract).

        ii. If over 50% of the HCA on a site is of a Moderate designation, the entire calculation is for Moderate (i.e., 80% of the HCA must be placed within a separate tract).

    b. If the tract is to serve as the backyard for residences, the minimum backyard requirement is reduced to 10 ft.

    c. The standards for land divisions in Moderate and High HCAs shall apply in addition to the requirements of the city/county land division ordinance and zoning ordinance.

    d. Prior to preliminary plat approval, the Moderate and/or High HCA shall be shown as a separate tract, which shall not be a part of any parcel used for construction of a dwelling unit.

    e. Prior to final plat approval, ownership of the HCA tract shall be identified to distinguish it from lots intended for sale. The tract may be identified as any one of the following:

        i. Private natural area held by the owner or homeowners association; or

        ii. For residential land divisions, private natural area subject to an easement conveying storm and surface water management rights to the city/county and preventing the owner of the tract from activities and uses inconsistent with the purpose of this ordinance; or

        iii. At the owner's option, public natural area where the tract has been dedicated to the city/county or other governmental unit, or a private non-profit with the mission of land conservation.

F. Mitigation requirements for disturbance in HCAs. Tree replacement and vegetation planting are required when development intrudes into a HCA according to the following standards, except for wetlands mitigation requirements imposed by state and federal law. An applicant must meet Mitigation Option 1 or 2, whichever results in more vegetation planting.

1. ***Vegetation standards.***

    a. Replacement trees must be at least one inch in caliper, measured at 6 inches above the ground level for field grown trees or above the soil line for container grown trees (the one inch minimum size may be an average caliper measure, recognizing that trees are not uniformly round); shrubs must be in at least a 1-gallon container or the equivalent in ball and burlap.

    b. Shrubs must consist of at least two (2) different species.

    c. All trees and shrubs must be native plants selected from the *Metro Native Plant List.*

    d. All vegetation must be planted on the applicant's site.

2. ***Mitigation Option 1.*** In this option, the mitigation requirement is calculated based on the number and size of trees that are removed from the site. Trees that are removed from the site must be replaced as shown in Table 6.

   a. Conifers must be replaced with conifers.

Table 6. Tree Replacement

Size of tree to be removed (inches in diameter)	Number of trees and shrubs to be planted
6 to 12	2 trees and 3 shrubs
13 to 18	3 trees and 6 shrubs
19 to 24	5 trees and 12 shrubs
25 to 30	7 trees and 18 shrubs
over 30	10 trees and 30 shrubs

3. ***Mitigation Option 2.*** In this option, the mitigation requirement is calculated based on the size of the disturbance area within a HCA.

   a. Native trees and shrubs are required to be planted at a rate of eight (8) trees and thirty-six (36) shrubs per every 500 square feet of disturbance area.

Section 7. Discretionary Review
The discretionary review standards described in this section may be applied to all development in HCA that is not exempted in Section 4 and does not comply with the development standards in Section 6.

A. Purpose.

1. Allow and encourage habitat-friendly development while minimizing the impact on fish and wildlife functions.

2. Provide a mechanism to modify the development standards if the proposed development or activity can meet the purpose.

3. Provide flexibility for unique situations.

B. Process.

1. Discretionary review is required for all development in a HCA that is not exempted in Section 4 and does not meet the development standards in Section 6.

2. Application for a land use, building, grading, land division, or other development permit through the discretionary review process may be an administrative decision made by the [city/county] Planning Director (quasi-judicial "Type II" decision).

C. Incentives for avoiding and minimizing impacts to HCAs.

1. Property owners may use any of the approaches included in Section 6(D) to avoid and/or minimize impacts to HCAs.

2. In particular, all area within a HCA, or any portion of it, may be subtracted from the calculations of net size for purposes of determining minimum density provided that such area is protected, such as by making a public dedication or executing a restrictive covenant. This provision may only be applied to properties that were inside the Metro UGB on January 1, 2002.

D. Application Requirements. In addition to the application requirements described in Section 6, an applicant must provide a supplemental narrative that includes:

1. The supplemental narrative for subsection 7(D)(2) and 7(D)(4) shall be prepared and signed by either (1) a knowledgeable and qualified natural resource professional, such as a wildlife biologist, botanist, or hydrologist, or (2) an engineer registered in Oregon to design public sanitary or storm systems, storm water facilities, or other similar facilities. The narrative shall include a description of the qualifications and experience of all persons that contributed to the report, and, for each person that contributed, a description of the elements of the analysis to which the person contributed.

2. ***Impact evaluation.*** An impact evaluation is required to determine compliance with the approval criteria and to evaluate development alternatives for a particular site. The alternatives must be evaluated on the basis of their impact on the HCA and habitat functional values of the site. To the extent that the site resources and functional values are part of a larger natural system such as a watershed, the evaluation must also consider the cumulative impacts on that system. The impact evaluation shall include all of the following items:

a. Identification of the ecological functional values of riparian habitat found on the site as described in Table 7 below.

b. For upland habitat in future urban growth boundary expansion areas, identification of the impact the proposed development would have on the following ecological functional values:

   i Habitat patch size,

   ii Interior habitat,

   iii Connectivity of the habitat to water, and

   iv Connectivity of the habitat to other habitat areas.

c. Evaluation of alternative locations, design modifications, or alternative methods of development to determine which options reduce the significant detrimental impacts on the HCAs and the ecological functional values of the site. At a minimum, the following items must be considered:

   i. Multi-story construction,

   ii. Minimizing building footprint,

   iii. Siting of a residence close to the street,

   iv. Maximizing the use of native landscaping materials, and

   v. Minimizing parking area and garage space.

d. Determination of the alternative that best meets the applicable approval criteria and identification of significant detrimental impacts that are unavoidable.

Table 7. Ecological functional values of riparian corridors.

Ecological function	Landscape features providing functional values
Microclimate and shade	Forest[1] or woody vegetation within **100 feet** of a stream; a wetland[2]; or a flood area[3].
Streamflow moderation and water storage	A wetland or other water body[4] with a hydrologic connection to a stream; or a flood area[3].
Bank stabilization, sediment and pollution control	A 50-foot band is included within the riparian corridor as a default to maintain basic functions. All sites within **50 feet** of a surface stream receive a primary score; and/or Forest, woody vegetation, or low structure vegetation/undeveloped soils within **100 feet** of a stream or a wetland; or forest, woody vegetation, or low structure vegetation/ undeveloped soils within a flood area; and/or Forest, woody vegetation, or low structure vegetation/undeveloped soils within **100-200 feet** of a stream if the slope is greater than 25%.
Large wood and channel dynamics	Forest within **150 feet** of a stream or wetland; or within a flood area; and/or The channel migration zone is basically defined by the floodplain, but where there is no mapped floodplain a default of **50 feet** was selected to allow for the channel migration zone.
Organic material sources	Forest or woody vegetation within **100 feet** of a stream or wetland; or within a flood area.

[1]Only trees that are part of a minimum patch size of 1 acre are mapped as regionally significant habitat. The entire forest patch may not be on one property.
[2]Refers to "hydrologically-connected wetlands," which are located partially or wholly within ¼ mile of a surface stream or flood area.
[3]Developed floodplains are not included as a regionally significant resource since they do not receive a primary ecological function score.
[4]"Other water body" could include lakes, ponds, reservoirs, or manmade water feature that is not a water quality facility or farm pond.

3. ***Construction management plan.*** The applicant must submit a construction management plan that includes the following items:

   a. Identify measures that will be taken during construction to protect the ecological functions of the remaining HCA at or near the construction site and a description of how undisturbed areas will be protected;

   b. Location of site access and egress that construction equipment will use;

   c. Equipment and material staging and stockpile areas;

   d. Erosion and sediment control measures;

   e. Measures to protect trees and other vegetation located outside the disturbance area.

4. ***Mitigation plan.*** The purpose of a mitigation plan is to compensate for unavoidable significant detrimental impacts to ecological functions that result from the chosen development alternative as identified in the impact evaluation. However, when development occurs within delineated wetlands, then the mitigation required under subsection 7(E)(4) shall not require any additional mitigation than the mitigation required by state and federal law for the fill or removal of such wetlands. A mitigation plan shall include:

   a. An explanation of how the proposed mitigation will adequately compensate for the impacts to ecological function described in the impact evaluation required by subsection 7(C)(2).

b. Documentation of coordination with appropriate local, regional, special district, state, and federal regulatory agencies.

c. A list of all responsible parties.

d. A site plan showing where the specific mitigation activities will occur.

e. Monitoring and evaluation procedures.

f. An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting and a contingency plan. All in-stream work in fish-bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife in-stream timing schedule.

5. Within Multnomah County Drainage District No. 1, Peninsula Drainage District No. 1, Peninsula Drainage District No. 2, and the area managed by the Sandy Drainage Improvement Company, routine operations, repair, maintenance, reconfiguration, rehabilitation, or replacement of existing drainage, flood control, and related facilities, including any structures, pump stations, water control structures, culverts, irrigation systems, roadways, utilities, accessory uses (such as off-load facilities that facilitate water-based maintenance), erosion control projects, levees, soil and bank stabilization projects, dredging and ditch clearing within the hydraulic cross-section in existing storm water conveyance drainageways, or other water quality and flood storage projects required to be undertaken pursuant to ORS chapters 547 or 554 or Titles 33 or 44 of the Code of Federal Regulations are not required to meet the application requirements described in subsections 7(D)(1-4) of this ordinance. Such activities must submit documentation that:

   a. The project is consistent with all other applicable local, state and federal laws and regulations;

   b. A site plan showing:

      i. Location of surface streams or rivers, wetlands, or other body of open water;

      ii. Location of existing operations and development; and

      iii. Location of proposed project.

   c. Revegetation plan that describes how disturbed vegetation will be replaced consistent with the approval criteria in subsection E.

6. Any activity that is required to implement a Federal Aviation Administration (FAA) - compliant Wildlife Hazard Management Plan (WHMP) on property owned by the Port of Portland within 10,000 feet of an Aircraft Operating Area, as defined by the FAA, shall not have to comply with subsections 7(D)(1-3).

E. Approval Criteria.

1. All application requirements in subsection 7(D) shall be met.

2. ***Avoid.*** An applicant must first avoid the intrusion of development into the HCA to the extent practicable. To avoid development in the HCA, and to the extent practicable, applicants shall use the approaches described in subsection 6(D), reduce building footprints, and use minimal excavation foundation systems (e.g., pier, post or piling foundation). The development that is proposed must have less detrimental impact to HCAs than other practicable alternatives, including significantly different alternatives that propose less development within HCAs.

3. ***Minimize.*** If the applicant demonstrates that there is no practicable alternative that will not avoid disturbance of the HCA, then the development proposed by the applicant within the HCA must minimize detrimental impacts to the extent practicable.

    a. Development must minimize detrimental impacts to ecological functions and loss of habitat consistent with uses allowed under base zone, to the extent practicable;

    b. To the extent practicable within the HCA, the proposed development shall be designed, located, and constructed to:

        i. Minimize grading, removal of native vegetation, and disturbance and removal of native soils by using the approaches described in subsection 6(D), reducing building footprints, and using minimal excavation foundation systems (e.g., pier, post or piling foundation);

        ii. Minimize adverse hydrological impacts on water resources such as by using the techniques described in Part (a) of Table 8;

        iii. Minimize impacts on wildlife corridors and fish passage such as by using the techniques described in Part (b) of Table 8; and

        iv. Consider using the techniques described in Part (c) of Table 8 to further minimize the impacts of development in the HCA.

Table 8. Habitat-friendly development practices.

Part (a): Design and Construction Practices to Minimize Hydrologic Impacts

1. Amend disturbed soils to original or higher level of porosity to regain infiltration and stormwater storage capacity.
2. Use pervious paving materials for residential driveways, parking lots, walkways, and within centers of cul-de-sacs.
3. Incorporate stormwater management in road right-of-ways.
4. Landscape with rain gardens to provide on-lot detention, filtering of rainwater, and groundwater recharge.
5. Use green roofs for runoff reduction, energy savings, improved air quality, and enhanced aesthetics.
6. Disconnect downspouts from roofs and direct the flow to vegetated infiltration/filtration areas such as rain gardens.
7. Retain rooftop runoff in a rain barrel for later on-lot use in lawn and garden watering.
8. Use multi-functional open drainage systems in lieu of more conventional curb-and-gutter systems.
9. Use bioretention cells as rain gardens in landscaped parking lot islands to reduce runoff volume and filter pollutants.
10. Apply a treatment train approach to provide multiple opportunities for storm water treatment and reduce the possibility of system failure.
11. Reduce sidewalk width and grade them such that they drain to the front yard of a residential lot or retention area.
12. Reduce impervious impacts of residential driveways by narrowing widths and moving access to the rear of the site.
13. Use shared driveways.
14. Reduce width of residential streets, depending on traffic and parking needs.
15. Reduce street length, primarily in residential areas, by encouraging clustering and using curvilinear designs.
16. Reduce cul-de-sac radii and use pervious vegetated islands in center to minimize impervious effects, and allow them to be utilized for truck maneuvering/loading to reduce need for wide loading areas on site.
17. Eliminate redundant non-ADA sidewalks within a site (i.e., sidewalk to all entryways and/or to truck loading areas may be unnecessary for industrial developments).
18. Minimize car spaces and stall dimensions, reduce parking ratios, and use shared parking facilities and structured parking.
19. Minimize the number of stream crossings and place crossing perpendicular to stream channel if possible.
20. Allow narrow street right-of-ways through stream corridors whenever possible to reduce adverse impacts of transportation corridors.

Part (b): Design and Construction Practices to Minimize Impacts on Wildlife Corridors and Fish Passage

1. Carefully integrate fencing into the landscape to guide animals toward animal crossings under, over, or around transportation corridors.
2. Use bridge crossings rather than culverts wherever possible.
3. If culverts are utilized, install slab, arch or box type culverts, preferably using bottomless designs that more closely mimic stream bottom habitat.
4. Design stream crossings for fish passage with shelves and other design features to facilitate terrestrial wildlife passage.
5. Extend vegetative cover through the wildlife crossing in the migratory route, along with sheltering areas.

Part (c): Miscellaneous Other Habitat-Friendly Design and Construction Practices
1. Use native plants throughout the development (not just in HCA). 2. Locate landscaping (required by other sections of the code) adjacent to HCA. 3. Reduce light-spill off into HCAs from development.

4. ***Mitigate.*** If the applicant demonstrates that there is no practicable alternative that will not avoid disturbance of the HCA, then development must mitigate for adverse impacts to the HCA. All proposed mitigation plans must meet the following standards.

   i The mitigation plan shall demonstrate that it compensates for detrimental impacts to ecological function in HCAs, after taking into consideration the applicant's efforts to minimize such detrimental impacts through the use of the techniques described in Table 8 and through any additional or innovative techniques;

   ii Mitigation shall occur on the site of the disturbance, to the extent feasible and appropriate. All revegetation shall be with native plants listed on the *Metro Native Plan List*;

   iii If on-site mitigation is not feasible or appropriate, then the applicant shall possess a legal instrument, such as an easement, sufficient to carry out and ensure the success of mitigation off-site. The mitigation shall occur in the same subwatershed (6^{th} Field Hydrologic Unit Code) as the proposed use or development, except when the purpose of the mitigation could provide more ecological functional value if implemented outside the subwatershed;

   iv Where the proposed mitigation includes alteration or replacement of development in a stream channel, wetland, or other water body, there shall be no detrimental impact related to the migration, rearing, feeding, or spawning of fish.

5. ***Mitigation maintenance plan.*** An appropriate long-term mitigation maintenance plan must be included as a condition of development.

6. ***Municipal Water Utility Facilities Standards.*** Municipal potable water, storm water (drainage) and wastewater utility facilities may be built, expanded, repaired, maintained, reconfigured, rehabilitated, replaced or upsized if not exempted in Section 4 of this Ordinance. These facilities may include but are not limited to water treatment plants, wastewater treatment plants, raw water intakes, pump stations, transmission mains, conduits or service lines, terminal storage reservoirs, and outfall devices provided that:

   a. The project is consistent with all other applicable local, state, and federal laws and regulations;

   b. Where practicable, the project does not encroach closer to a surface stream or river, wetland, or other body of open water than existing operations and development;

   c. Where practicable, vegetation native to the Metro area is maintained and restored, if disturbed; other vegetation is replaced, if disturbed, with any vegetation other than invasive non-native or noxious vegetation; and the planting of native vegetation and removal of invasive non-native or noxious vegetation is encouraged; and

d. Best management practices will be employed that accomplish the following:

i Account for watershed assessment information in project design;

ii Minimize the trench area and tree removal within the HCA;

iii Utilize and maintain erosion controls until other site stabilization measures are established, post-construction;

iv Replant immediately after backfilling or as soon as effective;

v Preserve wetland soils and retain soil profiles;

vi Minimize compactions and the duration of the work within the HCA;

vii Complete in-water construction during appropriate seasons, or as approved within requisite Federal or State permits;

viii Monitor water quality during the construction phases if applicable; and

ix Implement a full inspection and monitoring program during and after project completion, if applicable.

7. ***Multnomah County Drainage District Standards.*** Within Multnomah County Drainage District No. 1, Peninsula Drainage District No. 1, Peninsula Drainage District No. 2, and the area managed by the Sandy Drainage Improvement Company, routine operations, repair, maintenance, reconfiguration, rehabilitation, or replacement of existing drainage, flood control, and related facilities, including any structures, pump stations, water control structures, culverts, irrigation systems, roadways, utilities, accessory uses (such as off-load facilities that facilitate water-based maintenance), erosion control projects, levees, soil and bank stabilization projects, dredging and ditch clearing within the hydraulic cross-section in existing storm water conveyance drainageways, or other water quality and flood storage projects required to be undertaken pursuant to ORS chapters 547 or 554 or Titles 33 or 44 of the Code of Federal Regulations are not required to meet the approval criteria described in subsections 7(E)(1-5) of this ordinance. Such projects shall demonstrate that:

a. The project is consistent with all other applicable local, state, and federal laws and regulations;

b. Where practicable, the project does not encroach closer to a surface stream or river, wetland, or other body of open water than existing operations and development; and

c. Where practicable, vegetation native to the Metro Area is maintained, enhanced and restored, if disturbed; other vegetation is replaced, if disturbed, with any vegetation other than invasive non-native or noxious vegetation; and the planting of native vegetation and removal of invasive non- native or noxious vegetation is encouraged.

8. ***Wildlife Hazard Management Plan.*** Any activity that is required to implement a Federal Aviation Administration (FAA) - compliant Wildlife Hazard Management Plan (WHMP) on property owned by the Port of Portland within 10,000 feet of an Aircraft Operating Area, as defined by the FAA, shall not have to comply with subsection 7(E)(2) or 7(E)(3) of this

ordinance. In addition, mitigation required pursuant to subsection 7(E)(4) of this ordinance as part of any development on property owned by the Port of Portland within 10,000 feet of an Aircraft Operating Area, as defined by the FAA, shall be permitted at any property located within the same 6th Field Hydrologic Unit Code subwatershed as delineated by the United States Department of Agriculture's Natural Resources Conservation Service (NRCS) if on-site mitigation would conflict with a FAA-compliant WHMP.

Section 8. Variances

A. The purpose of this Section is to ensure that compliance with this ordinance does not cause unreasonable hardship. To avoid such instances, the requirements of this ordinance may be varied. Variances are also allowed when strict application of this ordinance would deprive an owner of all economically viable use of land.

B. This Section applies in addition to the standards governing proposals to vary the requirements of the base zone.

C. Notice of variance applications shall be provided:

1. Upon receiving an application to vary the requirements of this ordinance, the notice shall be provided to all property owners within 300 feet of the subject property inside the urban growth boundary, and within 500 feet of the subject property outside the urban growth boundary and Metro.

2. Within seven (7) days of a decision on the variance, the notice shall be provided to all property owners within 300 feet of the subject property inside the urban growth boundary, and within 500 feet of the subject property outside the urban growth boundary and Metro.

D. Hardship Variance. Variances to avoid unreasonable hardship caused by the strict application of this ordinance are permitted subject to the criteria set forth in this section. To vary from the requirements of this ordinance, the applicant must demonstrate the following:

1. The variance is the minimum necessary to allow the proposed use or activity;

2. Unless the proposed variance is from Section 6(E) or 7(D)(4) (mitigation), the proposed use will comply with those standards, as applicable; and

3. The proposed use complies with the standards of the base zone.

E. Buildable Lot Variance. A variance to avoid the loss of all economically viable use of a lot that is partially inside a HCA is permitted. Applicants must demonstrate the following:

1. Without the proposed variance, the applicant would be denied economically viable use of the subject property. To meet this criterion, the applicant must show that:

a. The proposed use cannot meet the standards in Section 8(D) (hardship variance); and

b. No other application could result in permission for an economically viable use of the subject property. Evidence to meet this criterion shall include a list of uses allowed on the subject property.

2. The proposed variance is the minimum necessary to allow for the requested use;

3. The proposed variance will comply with Section 6(E) or 7(D)(4) (mitigation); and

4. The proposed use complies with the standards of the base zone.

F. Variance Conditions. Conditions may be imposed to limit any adverse impacts that may result from granting any variance.

Section 9. Severability
The provisions of this ordinance are severable. If any section, clause, or phrase of this ordinance is adjudged to be invalid by a court of competent jurisdiction, the decision of that court shall not affect the validity of the remaining portions of this ordinance.

Section 10. Definitions
Unless specifically defined below, words or phrases used in this section shall be interpreted to give them the same meaning as they have in common usage and to give this classification its most reasonable application.

Building site- The area on a lot or parcel that is designated to contain a structure, impervious surface, or non-native landscaping.

Building footprint - The area that is covered by buildings or other roofed structures. A roofed structure includes any structure more than 6 feet above grade at any point, and that provides an impervious cover over what is below. Building footprint also includes uncovered horizontal structures such as decks, stairways and entry bridges that are more than 6 feet above grade. Eaves are not included in building coverage. Underground facilities and structures are defined based on the foundation line.

Developed areas not providing vegetative cover - are areas that lack sufficient vegetative cover to meet the one-acre minimum mapping units of any other type of vegetative cover.

Developed floodplain - Any man-made change to improved or unimproved lands within a FEMA defined floodplain, including but not limited to buildings or other structures, dredging, filling, grading, paving, excavation, or storage of equipment and materials.

Development - Any man-made change defined as buildings or other structures, mining, dredging, paving, filling, or grading in amounts greater than ten (10) cubic yards on any lot or excavation, and any other activity that results in the removal of trees and native vegetation. In addition, any other activity that results in the removal of more than either 10 percent or 20,000 square feet of the vegetation in the Habitat Conservation Areas on the lot is defined as development. Development does not include the following: a) Stream enhancement or restoration projects approved by cities and counties; b) Farming practices as defined in ORS 30.930 and farm use as defined in ORS 215.203, except that buildings associated with farm practices and farm uses are subject to the requirements of Titles 3 and 13; and c) Construction on lots in subdivisions meeting the criteria of ORS 92.040(2) (1995).

Disturb - Man-made changes to the existing physical status of the land, which are made in connection with development. The following uses are excluded from the definition:

- enhancement or restoration of the Water Quality Resource Area;
- planting native cover identified in the Metro Native Plant List.

Disturbance Area -. An area that contains all temporary and permanent development, exterior improvements, and staging and storage areas on the site. For new development the disturbance area must be contiguous. The disturbance area does not include agricultural and pasture lands or naturalized areas.

Ecological functions - The primary biological and hydrologic characteristics of healthy fish and wildlife habitat. Riparian ecological functions include microclimate and shade, streamflow moderation and water storage, bank stabilization and sediment/pollution control, sources of large woody debris and natural channel dynamics, and organic material sources. Upland wildlife ecological functions include size of habitat area, amount of habitat with interior conditions, connectivity of habitat to water resources, connectivity to other habitat areas, and presence of unique habitat types.

Effective Impervious Area - A subset of total impervious area that is hydrologically connected via sheet flow or discrete conveyance to a drainage system or receiving body of water

Emergency - any man-made or natural event or circumstance causing or threatening loss of life, injury to person or property, and includes, but is not limited to, fire, explosion, flood, severe weather, drought earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation disruptions, and disease.

Engineer - A registered professional engineer licensed by the State of Oregon.

Enhancement - the process of improving upon the natural functions and/or values of an area or feature that has been degraded by human activity. Enhancement activities may or may not return the site to a pre-disturbance condition, but create/recreate beneficial processes and features that occur naturally.

Erosion - Erosion is the movement of soil particles resulting from actions of water or wind.

Fill - any material such as, but not limited to, sand, gravel, soil, rock or gravel that is placed in a Title 3 wetland or floodplain for the purposes of development or redevelopment.

Floodplain - The land area identified and designated by the United States Army Corps of Engineers, the Oregon Division of State Lands, FEMA, or (identify name) county/city that has been or may be covered temporarily by water as a result of a storm event of identified frequency. It is usually the flat area of land adjacent to a stream or river formed by floods.

Floodway - The portion of a watercourse required for the passage or conveyance of a given storm event as identified and designated by the (identify name) city/county pursuant to this Ordinance. The floodway shall include the channel of the watercourse and the adjacent floodplain that must be reserved in an unobstructed condition in order to discharge the base flood without flood levels by more than one foot.

Flood Management Areas - all lands contained within the 100-year floodplain, flood area and floodway as shown on the Federal Emergency Management Agency Flood Insurance Maps and the area of inundation for the February 1996 flood. In addition, all lands which have documented evidence of flooding.

Flood areas - those areas contained within the 100-year floodplain, flood area and floodway as shown on the Federal Emergency Management Agency Flood Insurance Maps and all lands that were inundated in the February 1996 flood (note that areas that were mapped as flood areas but were filled to a level above the base flood level prior to September 30, 2005, consistent with all applicable local, state, and federal laws shall no longer be considered habitat based on their status as flood areas).

Floor Area Ratio (FAR) - The amount of floor area in relation to the amount of site area, expressed in square feet. For example, a floor area ratio of 2 to 1 means two square feet of floor area for every one square foot of site area.

Forest Canopy - areas that are part of a contiguous grove of trees of 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.

Habitat Conservation Area or HCA - An area identified on the Habitat Conservation Areas Map and subject to the development standards.

Habitat-friendly development - A method of developing property that has less detrimental impact on fish and wildlife habitat than does traditional development methods. Examples include clustering development to avoid habitat, using alternative materials and designs such as pier, post, or piling foundations designed to minimize tree root disturbance, managing storm water on-site to help filter rainwater and recharge groundwater sources, collecting rooftop water in rain barrels for reuse in site landscaping and gardening, and reducing the amount of effective impervious surface created by development.

Invasive Non-native or Noxious Vegetation - Plant species that are listed as nuisance plants or prohibited plants on the Metro Native Plant List as adopted by Metro Council resolution because they are plant species that have been introduced and, due to aggressive growth patterns and lack of natural enemies in the area where introduced, spread rapidly into native plant communities.

Lot - Lot means a single unit of land that is created by a subdivision of land. (ORS 92.010).

Low structure vegetation or open soils - areas that are part of 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, orchards, Christmas tree farms, holly farms, 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).

Mitigation - The reduction of adverse effects of a proposed project by considering, in the order: a) avoiding the impact all together by not taking a certain action or parts of an action; b) minimizing impacts by limiting the degree or magnitude of the action and its implementation; c) rectifying the impact by repairing, rehabilitating or restoring the affected environment; d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and e) compensating for the impact by replacing or providing comparable substitute water quality resource areas or habitat conservation areas.

Native Vegetation or Native plant - Vegetation listed as a native plant on the Metro Native Plant List as adopted by Metro Council resolution and any other vegetation native to the Portland metropolitan area provided that it is not listed as a nuisance plant or a prohibited plant on the Metro Native Plant List.

Open Space - Land that is undeveloped and that is planned to remain so indefinitely. The term encompasses parks, forests and farmland. It may also refer only to land zoned as being available to the public, including playgrounds, watershed preserves and parks.

Owner or Property Owner - The person who is the legal record owner of the land, or where there is a recorded land sale contract, the purchaser thereunder.

Parcel - Parcel means a single unit of land that is created by a partitioning of land. (ORS 92.010).

Phased development project - A phased development plan includes the following:

- A site plan showing the proposed final development of the site and phases, including the initial and interim phases.
- A written statement describing each phase, including the potential uses, and the approximate timeline for each phase of development.

Practicable - means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose and probable impact on ecological functions. The practicability of a development option shall include consideration of the type of HCA that will be affected by the proposed development. For example, High HCAs have been so designated because they are areas that have been identified as having lower urban development value and higher-valued habitat, so it should be more difficult to show that alternative development options that avoid the habitat are not practicable. On the other hand, Low HCAs have been so designated because they are areas that have been identified as having higher urban development value and lower-valued habitat, so it should be less difficult to show that alternative development options that avoid the habitat are not practicable.

Redevelopment – Development that occurs on sites that have previously been developed.

Restoration - the process of returning a disturbed or altered area or feature to a previously existing natural condition. Restoration activities reestablish the structure, function, and/or diversity to that which occurred prior to impacts caused by human activity.

Riparian - Those areas associated with streams, lakes and wetlands where vegetation communities are predominately influenced by their association with water.

Routine Repair and Maintenance - activities directed at preserving an existing allowed use or facility, without expanding the development footprint or site use.

Set-back Adjustment - The placement of a building a specified distance away from a road, property line or protected resource.

Significant Negative Impact - an impact that affects the natural environment, considered individually or cumulatively with other impacts on the HCA, to the point where existing fish and wildlife habitat functional values are degraded.

Statewide Land Use Planning Goal 5 - Oregon's statewide planning goal that addresses open space, scenic and historic areas, and natural resources. The purpose of the goal is to conserve open space and protect natural and scenic resources.

Steep slopes - Steep slopes are those slopes that are equal to or greater than 25%. Steep slopes have been removed from the "buildable lands" inventory and have not been used in calculations to determine the number of acres within the urban growth boundary that are available for development.

Stormwater Pre-treatment Facility – any structure or drainage way that is designed, constructed, and maintained to collect and filter, retain, or detain surface water run-off during and after a storm event for the purpose of water quality improvement.

Stream - a body of running water moving over the earth's surface in a channel or bed, such as a creek, rivulet or river. It flows at least part of the year, including perennial and intermittent streams. Streams are dynamic in nature and their structure is maintained through build-up and loss of sediment.

Structure - A building or other major improvement that is built, constructed or installed, not including minor improvements, such as fences, utility poles, flagpoles or irrigation system components, that are not customarily regulated through zoning codes.

Top of Bank - The same as "bankful stage" defined in OAR 141-85-010.

Urban Development Value - The economic value of a property lot or parcel as determined by analyzing three separate variables: assessed land value, value as a property that could generate jobs ("employment value"), and the Metro 2040 design type designation of property. The urban development value of all properties containing regionally significant fish and wildlife habitat is depicted on the Metro Habitat Urban Development Value Map

Urban Growth Boundary or UGB - means an urban growth boundary adopted pursuant to ORS chapter 197.

Utility Facilities - buildings, structures or any constructed portion of a system which provides for the production, transmission, conveyance, delivery or furnishing of services including, but not limited to, heat, light, water, power, natural gas, sanitary sewer, stormwater, telephone and cable television. Utility facilities do not include stormwater pre-treatment facilities.

Variance - means a discretionary decision to permit modification of the terms of an implementing ordinance based on a demonstration of unusual hardship or exceptional circumstances unique to a specific property.

Water-Dependent – A use which can be carried out only on, in, or adjacent to water because it requires access to the water for waterborne transportation or recreation. Water-dependent also includes development, which by its nature, can be built only on, in, or over water. Bridges supported by piers or pillars, as opposed to fill, are water-dependent development.

Water Feature - All rivers, streams (regardless of whether they carry year-round flow, i.e., including intermittent streams), springs which feed streams and wetlands and have year-round flow, Flood Management Areas, wetlands, and all other bodies of open water

Watershed - A watershed is a geographic unit defined by the flows of rainwater or snowmelt. All land in a watershed drains to a common outlet, such as a stream, lake or wetland.

Wetlands - Wetlands are those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support and under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands are those areas identified and delineated by a qualified wetland specialist as set forth in the 1987 Corps of Engineers Wetland Delineation Manual.

Woody Vegetation - areas that are part of 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.

EXHIBIT F—ORDINANCE NO. 05-1077A

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

[To be drafted prior to final adoption]

EXHIBIT F—ORDINANCE NO. 05-1077A

ATTACHMENT 1. METRO'S RIPARIAN CORRIDOR AND WILDLIFE HABITAT INVENTORIES REPORT

This report is available upon request from the Metro Planning Department at 503.797.1555 or on Metro's website: **http://www.metro-region.org/**.

[Note: This report was not amended by the Metro Council on May 12, 2005, when the Council approved other amendments to Ordinance No. 05-1077. Persons interested in reviewing this report should refer to the report submitted with Ordinance No. 05-1077.]

EXHIBIT F—ORDINANCE NO. 05-1077A

ATTACHMENT 2. METRO'S TECHNICAL REPORT FOR FISH AND WILDLIFE HABITAT

This report is available upon request from the Metro Planning Department at 503.797.1555 or on Metro's website: **http://www.metro-region.org/**.

[Note: This report was not amended by the Metro Council on May 12, 2005, when the Council approved other amendments to Ordinance No. 05-1077. Persons interested in reviewing this report should refer to the report submitted with Ordinance No. 05-1077.]

EXHIBIT F—ORDINANCE NO. 05-1077A

ATTACHMENT 3. METRO'S PHASE I ECONOMIC, SOCIAL, ENVIRONMENTAL, AND ENERGY (ESEE) ANALYSIS

This report is available upon request from the Metro Planning Department at 503.797.1555 or on Metro's website: **http://www.metro-region.org/**.

[Note: This report was not amended by the Metro Council on May 12, 2005, when the Council approved other amendments to Ordinance No. 05-1077. Persons interested in reviewing this report should refer to the report submitted with Ordinance No. 05-1077.]

EXHIBIT F—ORDINANCE NO. 05-1077A

ATTACHMENT 4. METRO'S PHASE II ECONOMIC, SOCIAL, ENVIRONMENTAL, AND ENERGY (ESEE) ANALYSIS

This report is available upon request from the Metro Planning Department at 503.797.1555 or on Metro's website: **http://www.metro-region.org/**.

[Note: This report was not amended by the Metro Council on May 12, 2005, when the Council approved other amendments to Ordinance No. 05-1077. Persons interested in reviewing this report should refer to the report submitted with Ordinance No. 05-1077.]

EXHIBIT F – ORDINANCE NO. 05-1077A
ATTACHMENT 5. SEPTEMBER 2004 HABITAT INVENTORY UPDATE

Habitat Class & Habitat Conservation Area (HCA)	Developed			Parks			Total Devel. & Park Habitat	Vacant				Total Vacant Habitat	Total Devel., Park & Vacant Habitat
								Constrained			Uncon-strained Outside Title 3		
	Inside Title 3 WQRA	Inside Title 3 FMA	Outside WQRA/ FMA	Inside Title 3 WQRA	Inside Title 3 FMA	Outside WQRA/ FMA		Inside Title 3 WQRA	Inside Title 3 FMA	Other Con-straints			
Class I riparian corridors													
High HCA	1,499	624	1,654	5,041	3,729	3,509	16,056	4,425	1,517	1,002	4,127	11,070	27,126
Moderate HCA	227	85	81	123	168	22	707	687	537	227	1,796	3,247	3,953
Low HCA	0	0	0	0	0	0	0	0	0	0	0	0	0
Allow	3	4	2	0	0	0	9	1	2	0	1	4	13
Total acres	*1,729*	*713*	*1,737*	*5,164*	*3,897*	*3,532*	*16,772*	*5,113*	*2,056*	*1,229*	*5,923*	*14,321*	*31,092*
Class II riparian corridors													
High HCA	2	1	2	1	1	4	11	1	1	0	1	4	14
Moderate HCA	742	163	1,121	350	667	602	3,645	778	480	253	1,742	3,254	6,899
Low HCA	303	142	325	7	17	5	799	312	378	162	795	1,646	2,445
Allow	2	7	7	0	0	1	17	0	4	1	2	7	24
Total acres	*1,049*	*312*	*1,455*	*359*	*685*	*612*	*4,471*	*1,092*	*862*	*416*	*2,540*	*4,910*	*9,382*
Class III riparian corridors													
High HCA	0	0	0	0	0	0	0	0	0	0	0	0	0
Moderate HCA	0	0	0	0	0	0	0	0	0	0	0	0	0
Low HCA	0	0	0	0	0	0	0	0	0	0	0	0	0
Allow	157	2,172	1,003	7	62	134	3,533	23	61	99	482	665	4,198
Total acres	*157*	*2,172*	*1,003*	*7*	*62*	*134*	*3,533*	*23*	*61*	*99*	*482*	*665*	*4,199*
Class A wildlife habitat													
High HCA	0	0	0	0	0	0	0	0	0	0	0	0	0
Moderate HCA	0	0	0	0	0	0	0	0	0	0	0	0	0
Low HCA	0	0	0	0	0	0	0	0	0	0	0	0	0
Allow	63	34	2,537	107	51	6,858	9,649	201	32	891	6,254	7,379	17,028
Total acres	*63*	*34*	*2,537*	*107*	*51*	*6,858*	*9,649*	*201*	*32*	*891*	*6,254*	*7,379*	*17,028*
Class B wildlife habitat													
High HCA	0	0	0	0	0	0	0	0	0	0	0	0	0
Moderate HCA	0	0	0	0	0	0	0	0	0	0	0	0	0
Low HCA	0	0	0	0	0	0	0	0	0	0	0	0	0
Allow	27	7	3,343	16	8	1,323	4,724	97	25	716	7,312	8,150	12,874
Total acres	*27*	*7*	*3,343*	*16*	*8*	*1,323*	*4,724*	*97*	*25*	*716*	*7,312*	*8,150*	*12,874*
Class C wildlife habitat													
High HCA	0	0	0	0	0	0	0	0	0	0	0	0	0
Moderate HCA	0	0	0	0	0	0	0	0	0	0	0	0	0
Low HCA	0	0	0	0	0	0	0	0	0	0	0	0	0
Allow	14	16	1,901	16	13	805	2,766	81	70	459	3,776	4,386	7,152
Total acres	14	17	1,901	16	13	805	2,766	81	70	459	3,776	4,386	7,152
Total Habitat	*3,039*	*3,255*	*11,975*	*5,668*	*4,715*	*13,263*	*41,916*	*6,607*	*3,105*	*3,810*	*26,288*	*39,811*	*81,727*

Habitat Class & Habitat Conservation Area	Developed			Parks			Total Devel. & Park Habitat	Vacant				Total Vacant Habitat	Total Devel., Park & Vacant Habitat
								Constrained			Uncon-strained Outside Title 3		
	Inside Title 3 WQRA	Inside Title 3 FMA	Outside WQRA/ FMA	Inside Title 3 WQRA	Inside Title 3 FMA	Outside WQRA/ FMA		Inside Title 3 WQRA	Inside Title 3 FMA	Other Con-straints			
Impact Areas													
High HCA	0	0	0	0	0	0	0	0	0	0	0	0	0
Moderate HCA	0	0	2	0	0	0	2	0	0	0	0	0	2
Low HCA	0	0	0	0	0	0	0	0	0	0	0	0	0
Allow	763	361	9,809	131	166	968	12,197	326	103	608	3,327	4,364	16,561
Total acres	763	361	9,811	131	166	968	12,200	327	103	608	3,327	4,365	16,564
Grand Total	*3,802*	*3,616*	*21,786*	*5,799*	*4,882*	*14,231*	*54,116*	*6,934*	*3,208*	*4,419*	*29,615*	*44,175*	*98,291*

I:\gm\long_range_planning\projects\Goal 5\Council Ord. 05-1077\Ex F Attch 5 Inventory Update.doc

EXHIBIT F—ORDINANCE NO. 05-1077A

ATTACHMENT 6. TUALATIN BASIN ESEE REPORT

This report is available upon request from the Metro Planning Department at 503.797.1555.

[Note: This report was not amended by the Metro Council on May 12, 2005, when the Council approved other amendments to Ordinance No. 05-1077. Persons interested in reviewing this report should refer to the report submitted with Ordinance No. 05-1077.]

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 05-1077 AMENDING THE REGIONAL FRAMEWORK PLAN AND THE URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN RELATING TO NATURE IN NEIGHBORHOODS.

Date: April 14, 2005 Prepared by: Andy Cotugno and Chris Deffebach

Residents of the Metro region value having nature near where they live, work, and play and have expressed the desire to keep nature in neighborhoods as a legacy to future generations. The Metro Council has expressed, as one of four central goals for the region, the aspiration that "(t)he region's wildlife and people thrive in a healthy urban ecosystem." Nature in Neighborhoods is a regional habitat protection, restoration and greenspaces initiative that inspires, strengthens, coordinates, and focuses the activities of individuals and organizations that share an interest in the region's fish and wildlife habitat, natural beauty, clean air and water, and outdoor recreation. Metro plays a leadership role in Nature in Neighborhoods, but recognizes that the protection and restoration of fish and wildlife habitat and the integration of greenspaces into the urban environment is a task of scope and magnitude beyond the reach of any one organization; it will take the coordinated and strategic action of many. This Ordinance addresses one component of the Nature in Neighborhoods initiative, establishing a consistent regional standard for fish and wildlife habitat protection that provides additional support for improving water quality.

CONTEXT AND BACKGROUND

Metro's authority to plan for fish and wildlife habitat protection in the region derives from State Land Use Planning Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces. The Goal 5 administrative rule (OAR 660-023) recognizes Metro's unique planning role and gives Metro the option to develop a functional plan to protect regionally significant fish and wildlife habitat (OAR 660-023-080(3)). In 1996 the Metro Council voted to recognize the regional significance of fish and wildlife habitat and include protection in the functional plan.

The region's 2040 Growth Concept and other policies call for protection of natural areas while managing housing and employment growth. In 1998 the Metro Council adopted Title 3 of the Urban Growth Management Functional Plan to protect water quality and for flood management. Title 3 also included a commitment to develop a regional fish and wildlife habitat protection plan. As defined in a Vision Statement (Attachment 1) that was developed in cooperation with local governments through the Metro Policy Advisory Committee (MPAC) in 2000, the overall goal of the protection program is: "...to conserve, protect and restore a continuous ecologically viable streamside corridor... that is integrated with the urban environment." The Vision Statement also refers to the importance that "...stream and river corridors maintain connections with adjacent upland habitats, form an interconnected mosaic of urban forest and other fish and wildlife habitat..."

Metro's program is part of an agency-wide effort called "Nature in Neighborhoods," which is described in Metro Resolution No. 05-3574. The Nature in Neighborhoods initiative includes

voluntary, incentive-based components that complement the development standards proposed in this ordinance.

The development standards proposed in this ordinance are consistent with one of the goals described in the Vision Statement to ensure contribution towards compliance with the federal Clean Water Act (CWA) and Endangered Species Act (ESA). 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 the Oregon Department of Environmental Quality. More needs to be done to improve the quality of the region's waterways and prevent future listings of species as threatened or endangered, and this program will take additional steps toward doing so.

Metro has completed development of a program to protect and restore fish and wildlife habitat, following the 3-step process established by the State Land Use Planning Goal 5 administrative rule (OAR 660-023). In the first step, Metro conducted a scientific analysis and inventory of the following Goal 5 resources: riparian corridors, associated wetlands, and wildlife habitat. A regional approach to inventorying natural resources required a consistent level of data and analysis across the entire Metro region. Metro's Fish and Wildlife Habitat Inventory is based on the best available information that can be applied consistently at a regional scale. Metro took an ecological functions approach to define and identify riparian corridors and wildlife habitat, based on its extensive scientific literature review. This approach combined geographic information system (GIS) mapping technology, scientific recommendations, and fieldwork. The methodology assigned values to resource features that allowed comparison of their cumulative importance. The upland wildlife habitat was evaluated separately from the riparian wildlife habitat areas. In 2002, after review by independent committees, local governments and residents, Metro Council endorsed the inventory of regionally significant fish and wildlife habitat lands (Resolution No. 02-3176 – riparian corridors, Resolution No. 02-3177A – upland habitat). The inventory includes about 80,000 acres of habitat land inside Metro's jurisdictional boundary. The habitat inventory is included in Exhibit F of this ordinance.

Upon completion of the habitat inventory, staff reviewed the habitat protection in each city and county within Metro's jurisdiction. The *Local Plan Analysis* (approved by Metro Council in Resolution No. 02-3218A, available in Metro Council office and on the internet at http://www.metro-region.org/article.cfm?ArticleID=1047) concluded that the standards to protect habitat varied from city to city, and that the most regionally consistent standards were those adopted by cities and counties to comply with Metro's water quality standards. The Metro Council directed staff to complete the second step of the Goal 5 planning process based on the conclusion that, while some cities and counties may provide adequate protection to regionally significant habitat, the level of protection varied substantially.

As described in Metro's *Local Plan Analysis*, cities and counties in the region currently have varying levels of protection for fish and wildlife habitat. As a result, cities and counties approach similar quality streams or upland areas in different parts of the region with inconsistent levels of protection. In addition, one ecological watershed can cross several different political jurisdictions – each with different approaches to habitat protection. With the adoption of the regional habitat protection program, cities and counties will adjust their protection levels to

establish a consistent minimum level of habitat protection. For some, this will mean minor modifications to their plans, for others more substantive changes will be necessary.

The second step of the Goal 5 review process is to evaluate the Economic, Social, Environmental and Energy (ESEE) consequences of a decision to allow, limit or prohibit conflicting uses on these regionally significant habitat lands and on impact areas adjacent to the habitat areas. As defined in the ESEE process, the impact areas added about 16,000 acres to the inventory. For the ESEE analysis, Metro classified fish and wildlife habitat based on the ecological function scores into six classes, under two main categories: Riparian/wildlife and Upland wildlife. Each class covers a geographically discrete portion of the inventory, and may include riparian and/or wildlife functions and also may be a Habitat of Concern. Class I Riparian/wildlife and Class A Upland wildlife are the highest value habitat. Metro Council endorsed combining the inventories for the ESEE analysis in Resolution No. 02-3218A. The September 2004 update of the fish and wildlife habitat inventory by habitat class and development status provides the most current acreage information on the habitat inventory (Exhibit F, Attachment 5).

As Metro began its work on the ESEE analysis, several local governments and special districts in the Tualatin Basin approached Metro with a proposal to conduct their own separate ESEE analysis and develop their own habitat protection program using Metro's habitat inventory. In January 2002 Metro entered into an intergovernmental agreement ("IGA") with these local governments and special districts in the Tualatin Basin setting forth a cooperative planning process to address regional fish and wildlife habitat within the basin. The IGA provided that the Tualatin Basin partners would submit their program and analysis to Metro for review and, if it met standards for habitat protection described in the IGA, then Metro would include it as part of the regional habitat protection program. Approximately 16,650 acres of Metro's habitat inventory are located within the jurisdiction of the local governments participating in the Tualatin Basin partnership and within the Metro boundary. Thus, as Metro began its ESEE analysis, the Tualatin Basin partners began their own analysis on a separate track, but closely coordinated with Metro's work.

Metro conducted the ESEE analysis in two phases. The first phase was to evaluate the ESEE consequences at a regional level. This work was completed and endorsed by the Metro Council in October 2003 (Resolution No. 03-3376B). The resolution directed staff to evaluate six regulatory program options and non-regulatory tools for fish and wildlife habitat protection in Phase II of the ESEE analysis.

The Phase II ESEE analysis, endorsed by Metro Resolution No. 04-3440A in May 2004, evaluated the ESEE consequences of possible protection and restoration options that included a mix of regulatory and non-regulatory components. Five potential regulatory treatments were applied in each of the six regulatory options, ranging from allowing conflicting uses to prohibiting conflicting uses in habitat and impact areas. The consequences identified the effects on key ESEE issues identified in the Phase I analysis, including:

- Economic implications of urban development and ecosystem values;
- Environmental effects including ecological function loss, fragmentation and connectivity;

- Social values ranging from property owner concerns about limitations on development to concerns about loss of aesthetic and cultural values; and
- Energy trade-offs such as temperature moderating effects of tree canopy and potential fuel use associated with different urban forms.

In addition, the analysis considered how well the six regulatory options would assist in meeting the requirements of the federal Endangered Species Act and the Clean Water Act. Phases I and II of the ESEE Analysis are as attachments to Exhibit F of this ordinance.

The third and final step of the Goal 5 review process is to develop a program that implements the habitat protection plan by ordinance through Metro's Urban Growth Management Functional Plan (UGMFP or Functional Plan) and Regional Framework Plan policies. After acknowledgment by the State Land Conservation and Development Commission, cities and counties within the Metro jurisdiction will be required to amend their comprehensive plans to be in compliance with the regional habitat protection program.

To develop a program that includes the development standards proposed in this ordinance, Metro reviewed local plans that protect fish and wildlife habitat, researched innovative habitat protection approaches in the Pacific Northwest and throughout the country, and consulted with local practitioners. This research, contained in the *Habitat Protection Tools Summary* (Attachment 3), informed the proposed development standards in the Functional Plan and the Model Ordinance.

Based on the Metro Council's review and consideration of the ESEE analysis and public comment, the Council further informed the direction of the habitat protection program. In August 2004, Council clarified that the regulatory program would not restrict currently allowed uses of residential properties in Resolution No. 04-3489A. In December 2004, the Metro Council approved Resolution No. 04-3506A, which directed staff to develop a fish and wildlife habitat protection program to reflect the following principles:

- Focus the regulatory element of the program on the most valuable Class I and II Riparian Habitat. This significantly reduced the area subject to new regulations. Thirty-six percent of the Class I and II habitat is covered by Title 3 Water Quality Resource Area standards, 21 percent is covered by Title 3 Flood Management Area balanced cut and fill requirements;
- Develop a strong voluntary, incentive-based approach to protect and restore regionally significant habitat, including Class III Riparian, and Class A and B upland habitat (described in *Nature in Neighborhoods Initiative*, Resolution No. 05-3574); and
- Apply regulations to limit development in Class III Riparian, and Class A and B upland habitat in future urban growth boundary expansion areas.

The Tualatin Basin partners completed their ESEE analysis and approved a program proposal on April 4, 2005, and forwarded it to the Metro Council for consideration (Resolution No. 05-3577). If approved by the Metro Council, the Tualatin Basin's final program will be incorporated into this ordinance. About 9,600 acres of Class I and II Riparian habitat on Metro's inventory are located within the Tualatin Basin partner jurisdictions and within the Metro boundary.

Current Action
Based on substantial committee review and outreach to stakeholders, Ordinance No. 05-1077 presents the staff recommendation for public comment and Metro Council consideration on an important component of the Nature in Neighborhoods program, the development standards for Class I and II riparian fish and wildlife habitat within the urban growth boundary, with the inclusion of additional protection for Class A and B upland habitats in future urban growth boundary expansion areas. These recommendations and the key issues for Council consideration are highlighted below.

REVIEW PROCESS

Public comment
The development standards in the proposed new Title 13 of the Urban Growth Management Functional Plan, Model Ordinance, and amendments to the Regional Framework Plan policies are being proposed for public review. It is intended that the public will review this proposal in late April and May, with more opportunity for public comment in late summer/early fall 2005 prior to final consideration by the Metro Council. A summary of public comments will be provided prior to final Council consideration.

Staff has met with numerous stakeholder groups on an on-demand basis throughout the program development phase.

Policy Review
The Metro Policy Advisory Committee reviewed the items proposed in this ordinance at several meetings. MPAC comments on larger policy issues have been incorporated into the proposal. Additionally, staff met with city and county councils upon request to provide further information on the proposal as it was developed.

The Water Resources Policy Advisory Committee (WRPAC) reviewed the development standards proposed in Title 13. Policy comments to date have been conveyed to the Metro Council and have been incorporated into the current proposal.

Technical Review
Several committees reviewed Metro's proposed amendments to the Functional Plan, and many of their comments and suggestions have been included in the proposal.

- The Fish and Wildlife Habitat Program Implementation Work Group was charged with providing advice to staff on the workability of proposed requirements to be included in the Functional Plan or a Model Ordinance. Members included developers, property owners, and local government planners who shared experiences and tools with staff as the program was developed.
- The Metro Technical Advisory Committee reviewed the Functional Plan and Model Ordinance.
- The Goal 5 Technical Advisory Committee reviewed the Functional Plan.

1. RECOMMENDATION ON DEVELOPMENT STANDARDS FOR CLASS I AND II RIPARIAN HABITAT AND CLASS A AND B UPLAND HABITAT IN NEW URBAN AREAS

Resolution No. 04-3506A, adopted by the Metro Council, supports developing flexible development standards that will protect streamside habitat (Class I and II Riparian) within the urban growth boundary and within the current Metro jurisdictional boundary, as well as upland habitat (Class A and B) in future urban growth boundary expansion areas. Of the 80,000 acres in Metro's regionally significant habitat inventory, about 44,000 are in Class I and II riparian habitats that are designated as Habitat Conservation Areas. Streamside habitat areas have the highest functional values in Metro's habitat inventory. Key facts about the streamside habitat areas include:

- ***Much of the area is covered by some standards.*** 36% of Class I and II is covered by Title 3 WQRA (subject to avoid-minimize-mitigate standard), an additional 21% is covered by FMA balanced cut and fill standard, for a total 57% covered by existing regional standards.
- ***Impact on vacant unconstrained land.*** 8,460 acres of vacant unconstrained land, most of which is located in the unincorporated portions of Clackamas, Multnomah and Washington counties and the City of Portland.
- ***Much of the Class I and II habitats are in parks.*** 35% of Class I and II habitat is in park use.

Expectations for urban-style development are different in areas that are brought inside the urban growth boundary in the future. Resolution No. 04-3506A supports protecting more types of habitat in these areas where it is easier to plan for a system of natural habitats integrated with the built environment. The proposed amendments to the Functional Plan and Framework Plan will guide how to plan for growth in new urban areas to account for the most valuable streamside (Class I and II) and upland (Class A and B) habitats.

The development standards included in proposed Title 13 of the Functional Plan would require changes in the way development occurs within Habitat Conservation Areas (HCAs) to ensure that impacts on fish and wildlife habitat are minimized while allowing urban-style development to occur. As proposed, Title 13 includes the following elements:

- Expansion of the water quality protection approach currently in place to encompass all of the most valuable streamside habitats (Class I and II Riparian) identified in Metro's inventory. The approach includes a requirement to first try to avoid habitat, then to minimize development impacts, and last to mitigate for lost habitat function. Metro includes a clear and objective approach (in the Model Ordinance – Exhibit E) and discretionary approach (in Model Ordinance – Exhibit E, and Functional Plan – Exhibit C), consistent with the Goal 5 rule.
- 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. The Title 3 exemptions were given for a variety of reasons, a central one being to account

for the economic issues on these sites. Title 3 was carried out for flood management and water quality protection, and did not address fish and wildlife habitat protection. Additionally, Title 3 did not include an examination of the ESEE tradeoffs for fish and wildlife habitat. Substantial consideration to the economic concerns and unique role marine terminals play was included in Metro's ESEE analysis for this program. Therefore, the Title 3 exemptions have not been carried forward in Title 13.

- Habitat-friendly development practices such as clustering, density relaxation, and on-site stormwater management would be required where technically feasible in Habitat Conservation Areas.
- Development standards for Class A and B Upland Habitat in addition to streamside habitats in urban growth boundary expansion areas.
- Several options for city and county compliance, providing flexibility, but also development of a ready-to-implement Model Ordinance. Many cities could use or expand on existing programs to meet regional standards.
- Monitoring and reporting on regional progress.

Each section of Title 13 is described briefly below.

Section 1. Intent.

This section describes that the purpose of the program is two-fold, to achieve the goals described in the Vision Statement and to maintain and improve water quality. It states that the program will include an integrated approach combining voluntary, incentive-based and regulatory tools.

Section 2. Inventory and Habitat Conservation Areas.

This section describes the maps that form the basis of Metro's fish and wildlife habitat protection program. The maps include the inventory map and the Habitat Conservation Area (HCA) map. The HCA map identifies the areas subject to regulatory protection.

A limited few properties that would otherwise have been mapped as HCAs do not appear on the map, as they have been identified as so unique that their economic importance outweighed their fish and wildlife habitat values. Four properties are listed (International Terminal and Port of Portland Marine Terminals 4, 5 and 6), and the following criteria are included for the identification of other, similarly situated sites:

- Property is developed for use as an international marine terminal capable of mooring ocean-going ships, and
- The property is without substantial vegetative cover.

This section also provides that, for properties outside the Metro urban growth boundary but inside the Metro jurisdictional boundary, agricultural and forest activities may continue without new restrictions.

Section 3. Implementation Alternatives for Cities and Counties.

Consistent with Metro's goal of providing regional consistency and local opportunity for flexibility when implementing regional policies, Title 13 as proposed includes several options for a city or county to comply. Compliance with regional habitat protection requirements will also satisfy state requirements, reducing duplicative efforts. A Model Ordinance is included that

serves as one example of how cities and counties could comply with the Functional Plan. Options for compliance include:

- Adopt Metro's Model Code and habitat maps;
- Describe how an existing plan substantially complies with the provisions of the Functional Plan;
- Develop an innovative combination of regulatory and incentive-based programs that meet the habitat protection and restoration objectives; or
- Conduct a special planning process for an area (district) that comprises unique circumstances or challenges for a portion of a city or county (and apply one of the approaches in the previous three items across the rest of the city or county).

Metro's Intergovernmental Agreement with the cities, counties and special districts in the Tualatin Basin is recognized in this section. The Tualatin Basin Partners include Washington County, the cities of Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, Sherwood, Tigard, and Tualatin, as well as Clean Water Services and the Tualatin Hills Parks and Recreation Department. Cities and counties who have partaken in this agreement must amend their comprehensive plans and implementing ordinances to be in compliance with the provisions of the Tualatin Basin approach, which is under consideration by the Metro Council (Resolution No. 05-3577).

This section also includes additional items cities and counties must comply with, including:

- Providing a clear and objective standard as well as a discretionary option for property owners, consistent with the Goal 5 rule.
- Removing barriers in comprehensive plans and implementing ordinances to habitat-friendly development practices in all regionally significant fish and wildlife habitat areas.
- Including a reasonable, timely, and fair process for property owners to verify the location of habitat.
- Provisions to allow for the reduction of density requirements to protect all regionally fish and wildlife significant habitat.

Section 4. Performance Standards and Best Management Practices for Habitat Conservation Areas.

This section describes the performance standards and best management practices that allow development to occur in Habitat Conservation Areas while protecting habitat. Several general standards include:

- Title 3 Water Quality Resource Areas and Flood Management Areas standards still apply.
- Any activity on a property with a single-family home constructed prior to the effective date of the ordinance that would not have required a building, grading, or tree removal permit would be exempt from these standards. If a permit were required the standards would apply.
- Habitat-friendly development practices are required where technically feasible and appropriate to reduce the impacts on the habitat and water quality.

- Publicly-owned parks and open spaces that have been designated as natural areas must be provided with extra protection and special management practices to maintain habitat functions and values.
- Planting of native vegetation is encouraged, planting of invasive non-native species is prohibited, and removal of invasive non-native species is allowed.
- Routine repair, maintenance and replacement of existing structures, roads, utilities and other development are allowed, consistent with other applicable rules.
- Intensification of uses and/or upzoning on sites with HCAs is conditioned upon the restoration of habitat on the site.
- *Federal Aviation Administration Wildlife Hazard Management Plan.* Any activity that is undertaken on Port of Portland property within 10,000 feet of an Aircraft Operating Area that is necessary to comply with the Wildlife Hazard Management Plan is exempt from the requirements to avoid if practicable and to minimize intrusion into a Habitat Conservation Area. Any such intrusion must be mitigated, and the mitigation may occur off-site anywhere within the Metro region.
- *Multnomah County Drainage District No. 1, Peninsula Drainage Districts 1 & 2, and the area managed by the Sandy Drainage Improvement Company.* All of the activities undertaken to manage these flood areas are exempt from the development standards, subject to other applicable laws and the requirement to maintain native vegetation where practicable.

City and county comprehensive plans and implementing ordinances must contain development review standards that include a clear and objective approach and a discretionary approach. Metro has provided an example of a clear and objective approach in the Title 13 Model Ordinance (Exhibit E). The discretionary approval standards include a requirement for all development to first avoid the Habitat Conservation Areas, if practicable, then to minimize intrusion into them, and finally to mitigate to restore the habitat functions and values that were impacted. When implementing the avoid, minimize, and mitigate standard cities and counties are directed to consider the level of Habitat Conservation Area (high, medium, or low) to determine the "practicability" of avoiding habitat and the level of mitigation required. High Habitat Conservation Areas have high habitat value and medium or low urban development value, while Low Habitat Conservation Areas have lower-valued habitat and higher urban development value.

This section also describes the requirements to administer the Habitat Conservation Areas Map and provides a method for site-level verification of the habitat. The city or county is responsible for administering the Habitat Conservation Areas map, or a map that has been deemed by Metro to be in substantial compliance. A process for site-level verification must be included that is consistent with general requirements described in Title 13. The process described includes:

- Locating the habitat boundaries based on site-specific information and Metro's maps.
- Determining the urban development value. There are two ways for the urban development value to change: 1) a change in the 2040 design type designation and 2) the property is owned by a regionally significant educational or medical facility.
- Cross-referencing the habitat class with the urban development value to determine the location of the high, moderate and low Habitat Conservation Areas on a property.

Section 5. Program Objectives, Monitoring, and Reporting.
As part of the Nature in Neighborhoods Initiative, Metro will lead the monitoring of the region's progress towards regional habitat objectives and also coordinate data collection throughout the region. As part of the monitoring and reporting element, Metro will track progress in habitat acquisition and restoration efforts and will continue to map the streams, wetlands, floodplains, vegetation and habitats of concern to monitor habitat quality and quantity by watershed. By coordinating with other agencies and jurisdictions that track stream and upland health Metro will present a regional scorecard of progress in achieving performance objectives. Keeping track of regional progress towards the objectives and targets for habitat protection and restoration will enable policy makers to evaluate the effectiveness of the Nature in Neighborhoods Program and consider altering course if necessary. This section describes the responsibilities of Metro, cities, counties, and special districts in regional data coordination and inventory maintenance, monitoring, reporting, and program evaluation.

Four performance objectives are established to measure the quantity and quality of the region's fish and wildlife habitat. Aspirational targets are included for a ten-year timeframe that are based on existing conditions, a successful protection and restoration commitment, and public ownership patterns. Two implementation objectives are included that help describe the actions to look for as the region moves towards achieving the habitat performance objectives. These include efforts made to increase and allow habitat-friendly development practices and increase restoration and mitigation efforts.

2. POLICY ISSUES

Since January, staff has been soliciting comments on draft versions of proposed Title 13 Functional Plan amendments from the Metro Council, Program Working Group, MTAC, MPAC, Goal 5/WRPAC, private business representatives, non-profit groups, and city and county commissioners throughout the region. These discussions helped to refine the proposal from a technical and policy perspective. Below is a summary of the main policy issues, including potential choices and the direction taken in the proposed Title 13.

A. Measure 37
Voters passed Ballot Measure 37 in November 2004, which required governments to either provide compensation or waive regulations that reduced the fair market value (FMV) of properties. The measure includes exemptions for regulations intended to address public health and safety concerns and that are required to meet federal laws, such as the Clean Water Act and the Endangered Species Act. In response to M37's passage, Council directed staff in their December 2004 resolution (No. 03-3506A) to ensure that the habitat protection program did not result in reductions in FMV of properties unless it provided a source of funds for compensation.

Alternatives staff considered for addressing M37 were:

- Include an explicit statement that the program goal would be to increase fair market value of each property affected (by using flexible development approaches such as clustered development; reducing density requirements, etc.)
- Provide 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).

Some of the main reasons for not recommending this approach include:

- The intent to increase fair market value went 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 would be 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;
- Early drafts of Title 13 would institutionalize Measure 37 and did not take into account the possibility that the measure could be amended in the future; and
- The approach did 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.

Staff has addressed the issue of whether this ordinance will create additional M37 claims by including provisions that give local governments discretion to implement the program in a way that will not result in the reduction in fair market value of any property.

It is also important to note that the flexible development standards in the functional plan will not prevent development on any property, but will simply require a change in the way development occurs within Habitat Conservation Areas. In some cases, a requirement for cities and counties to remove barriers to habitat-friendly development practices may, in fact, increase property values by allowing more innovation and a potential reduction in storm water impact fees.

B. Appropriate level of regional requirements

Title 13 establishes a set of development standards to provide regional consistency for conserving habitat in Class I and II Riparian areas. The primary issue that has been raised is whether the avoid-minimize-mitigate standard (required in Title 3 Water Quality Resource Areas, which covers about 36% of the HCAs) should be applied to development in High, Moderate, and Low Habitat Conservation Areas.

Council's December 2004 Resolution (No. 04-3506A) directed staff to vary the level of protection in accordance with the ESEE analysis. Accordingly, staff considered applying avoid-minimize-mitigate to High HCAs, minimize and mitigate to Moderate HCAs, and only mitigate in Low HCAs. The different levels of protection carried out the intent of the ESEE decision to apply less restrictive standards in 2040 mixed-use areas and regionally significant industrial areas.

However, further discussion among a number of review groups led to reconsideration of the application of the avoid-minimize-mitigate standard. The avoid test as defined in Title 3

includes a "practicability" requirement. The definition of practicable includes an economic test, in effect accounting for the need to apply different levels of protection to High, Moderate, and Low HCAs. Generally, the economic practicability of protecting more habitat in a Low HCA with high urban development value would be greater, resulting in less protection.

Therefore, the proposed development standards in Title 13 apply the avoid-minimize-mitigate standard to all three types of HCA. When implementing the "avoid if practicable" test and mitigate requirements, cities and counties are directed to consider the type of HCA. For example, High Habitat Conservation Areas have been designated as such because they have lower urban development value and the highest value habitat, while Low Habitat Conservation Areas have higher urban development value and lower-valued habitat. In addition, this ordinance would refine the definition of "practicable" for purposes of Title 13 requirements to include a provision that any requirement that would result in a decrease in the fair market value of a property would not be considered practicable. This is how the program is designed to avoid the creation of new M37 claims.

The application of avoid-minimize-mitigate requires discretion. The Goal 5 rule requires a city or county to include a clear and objective approach in its land use ordinances, and the option of adopting a discretionary approach. The proposed ordinance would pass this requirement through to the cities and counties upon implementation, providing the Title 13 Model Ordinance as an option to meet the Goal 5 rule requirements.

C. Habitat-friendly development practices

Using habitat-friendly development practices, or low impact development (LID), can help a community better protect its streams, fish and wildlife habitat, wetlands, and drinking water supplies as it grows. Several cities in the region are already encouraging the use of these practices, and some developers are making a point of reducing the impacts of the built environment by meeting environmental standards.

The use of these habitat-friendly practices can serve to increase the value of developments both at the outset and over time. Studies have shown that residential and commercial uses near open space and water features are more valuable and desirable. Additionally, innovative storm water management practices that use natural processes to retain and detain storm water runoff on-site may be less expensive to construct and maintain.

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.

Title 13 would require revision of city and county codes to require the use of these practices in Habitat Conservation Areas. Since there is not a set menu of practices that can be consistently required, the requirements would apply only when technically feasible and appropriate. Cities and counties would also be required to remove barriers to these practices in all other regionally

significant habitat areas. Alternatives considered included requiring cities and counties to remove barriers in all areas and not requiring habitat-friendly development practices in Habitat Conservation Areas.

D. New UGB expansion areas

Council direction in the December 2004 resolution (No. 04-3506A) was to extend the regulatory requirements that would apply inside the urban growth boundary (UGB) to Class I and II Riparian Habitat to Class III Riparian, Class A and B Upland Habitat in future UGB expansion areas.

The proposed Title 13 requirements, and associated amendments to other Functional Plan, Framework Plan, and Metro Code amendments related to new urban area planning, would extend regulatory protection to the four highest value habitat classes, Class I and II Riparian and Class A and B Upland Habitat. Class III Riparian encompasses areas providing two habitat functions. First, developed floodplains are included that are providing the water storage function. Second, forest canopy within 780 feet of a stream is included that is providing microclimate to reduce stream temperatures. The large search area for the microclimate habitat function is important when considering ecological values for the habitat inventory, but the arbitrary cutoff at 780 feet results in slivers of forest patches falling within the riparian inventory. Staff has concluded that developing map verification and program elements for these slivers of habitat would be too burdensome and costly for local governments and citizens as compared with the benefits of protecting such habitat. For this reason staff has recommended not including Class III habitat in the HCAs for new urban areas.

The same avoid-minimize-mitigate standard developed for riparian areas inside the current UGB would be applied to upland areas in new urban areas. However, new urban areas also offer opportunities to avoid the habitat in the initial concept planning in ways not possible inside the UGB. Several tools may be more useful in new urban areas prior to upzoning, such as transfer of development rights to address equity concerns of "windfalls and wipeouts." This is addressed by including the following policy statements in the Regional Framework Plan Chapter 1 and Titles 10 and 11 of the Functional Plan:

- Explicitly stating the intent to protect habitat and limit development in new urban areas;
- Metro will assume lower housing and employment capacity and capture rates for habitat areas when calculating the size of future UGB expansions; and
- Future UGB expansions will be conditioned in such a way to ensure that habitat areas are protected without giving rise to Measure 37 claims.

E. Residential densities

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 apply to Metro, in March of each year, for approval of a density requirement reduction to support protection of natural resource areas. To date, no local jurisdiction has made a request under these provisions.

Title 13 proposes a process that would not require further approval by Metro. Approval would occur automatically if the decision was documented as necessary to protect regionally significant

habitat from development and offered permanent protection of the habitat. The loss of housing units would be taken into consideration when sizing the next UGB expansion. Cities and counties are encouraged to consider transferring development rights to minimize the effect on land supply.

This ability to reduce density would apply only to areas on Metro's Habitat 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 residential density offers the ability to build larger lots at a lower density than currently allowed within the UGB. Minimum density requirements would be calculated after subtracting out the regionally significant habitat that would be protected. There are about 11,730 acres of vacant unconstrained residential regionally significant habitat (including all habitat classes) land inside the UGB to which this density relaxation could apply. This density reduction would not apply to land brought in the UGB after January 2002, such as the area that is now the City of Damascus, since these areas have not yet been upzoned and there are more opportunities to plan around the habitat.

F. Restoration requirements upon redevelopment

Past development practices have had a significant detrimental impact on fish and wildlife habitat and water quality in this region, adversely affecting the habitat of several fish and wildlife species listed as threatened or endangered. While existing development is not affected by the development standards described in Title 13, over time many of the properties near and next to streams and wetlands may be redeveloped. Upon redevelopment, some mitigation can be conducted to help restore habitat functions and values. For example, the intensive redevelopment that is underway in the South Waterfront area of Portland is including habitat restoration and improvement, and the redevelopment will likely result in significantly increased property values in that area.

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:

- Developed areas that have been mapped as Class I and II resources, such as fully developed areas near streams and underneath tree canopy and all areas within 50 feet of streams (with or without vegetation);
- Developed floodplains (3,460 acres), which are included within Class III riparian areas; and
- Riparian impact areas—those areas within 150 ft. of the stream that would have qualified as riparian habitat but for the fact that they are developed.

The proposed functional plan addresses only those areas that are identified as Habitat Conservation Areas through regulations, leaving cities and counties the option of working with developers in Class III and Riparian Impact Areas to restore habitat function to those areas upon redevelopment. In Habitat Conservation Areas, the following standards are described for redevelopment:

- 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). Title 3 currently applies the avoid-minimize-mitigate standard to redevelopment within the WQRA (typically within 50 feet of streams).
- Mitigation would be required upon redevelopment that required upzoning or significantly increased the intensity of the development on a site. For example, if a site had heavy industrial use and was redeveloped as mixed-use residential it would require mitigation to reflect the new, additional impacts that the new development would have on the habitat areas.

G. Similarly situated sites to receive an "allow" decision

Council, in Resolution No. 04-3440A, adopted May 20, 2004, determined that the economic importance of the International Terminal Site on the Willamette Harbor outweighed the identified habitat values and directed staff to identify any other "similarly situated" sites that would be subject to an "allow" decision in the ESEE analysis. The "allow" decision means no further requirements under Metro's Goal 5 program. Since then, staff has worked with several stakeholder groups to identify other sites that might qualify as similarly situated.

Title 13 addresses these unique facilities and the sites where they are located by allowing all conflicting uses, unless a change of zoning occurs (i.e., heavy industrial to mixed-use residential). The functional plan names four sites by name (the International Terminal site, and Port of Portland Marine Terminals 4, 5 and 6) and includes criteria to identify future sites that are similarly situated. The criteria state that a site must be in use as an international marine terminal and must be substantially without vegetative cover.

H. Adjustment in Urban Development Value for Regionally Significant Educational and Medical Facilities

The economic model Metro used to determine urban development value underwent significant peer review, and was developed with the guidance of an Economic Technical Advisory Committee. The model incorporated potential job density, land value (except for residential land), and 2040 design types to determine the urban development value of land within the UGB. Generally, the model worked well, but it did not account for certain unique circumstances. Regionally significant educational and medical facilities typically locate in residential areas to better serve their users. This frequently results in their location in a low-priority 2040 design type, inner and outer neighborhoods, potentially undervaluing the economic importance of these facilities. In May 2004, Council directed staff (Resolution No. 04-3440A) to develop a proposal to consider the urban development value of regionally significant major institutions.

One of the major reasons for this adjustment process was the inclusion of upland habitats in the proposed regulatory treatments under Council Resolutions Nos. 03-3376B and 04-3440. Some 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.

Title 13 includes the following approach to recognize the economic importance of regionally significant educational and medical facilities:

- Identifies by name ten existing regionally significant educational and medical facilities that have Class I and II Habitat on their properties.
- Adjusts the urban development value for these facilities to high, resulting in either moderate or low Habitat Conservation Areas depending on the habitat value.
- Describes criteria to identify future regionally significant educational and medical facilities to be determined by the Metro Council (not at the city or county level).

I. Program objectives, monitoring and reporting

Resolution No. 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 called for an annual assessment of progress including, but not limited to, an evaluation of the habitat inventory. Title 13 proposes to assess progress every two years, since more frequent reporting is unlikely to detect measurable changes, and to tie it to Metro's overall Performance Measures Report.

As part of the monitoring and reporting element, the functional plan proposes to track progress in habitat acquisition and restoration efforts and changes in streams, wetlands, floodplains, vegetation and habitats of concern to monitor habitat quality and quantity by watershed. This will require substantial coordination with cities, counties, agencies, and special districts, which are required to update Metro with new data when it is available. Keeping track of regional progress towards the objectives and targets for habitat protection and restoration will enable policy makers to evaluate the effectiveness of the Nature in Neighborhoods initiative and consider altering course if necessary.

Title 13 includes four performance objectives to measure the quantity and quality of the region's fish and wildlife habitat. The aspirational targets for each of the performance objectives are included as part of the monitoring section, and are not tied to any city or county compliance alternative. These targets, 2004 baseline, considerations that played a role in determining the targets, and a numeric description of what it would require to meet the target within a ten-year period is included in Table 1 below.

Table 1. Targets, 2004 Baseline, and Considerations in setting targets.

Targets	2004 Baseline and Targeted Condition	Considerations in setting the target
1a. *10% increase in forest and other vegetated acres within 50 feet* of streams (on each side) and wetlands in each subwatershed over the next 10 years (2015).	**1a. 2004 Baseline Condition (regional data):** • 64% vegetated • 14,000 vegetated acres **10% increase:** • 70% vegetated • 1,400 acre increase in vegetation over 10 years	• Most local and regional 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. • As redevelopment occurs, habitat within 50 of streams and wetlands can be restored.
1b. *5% increase in forest and other vegetated acres within 50 to 150 feet of streams* (on each side) and wetlands in each subwatershed over the next 10 years (2015).	**1b. 2004 Baseline Condition (regional data):** • 59% vegetated • 15,250 vegetated acres **5% increase:** • 62% vegetated • 760 acre increase in vegetation over 10 years	• Some local regulatory programs protect land between 50 and 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). • Reducing regional residential capacity requirements can help to preserve habitat within 150 feet of streams inside the 2002 UGB. • As redevelopment occurs, habitat within 150 of streams and wetlands can be restored
1c. *No more than 20% increase in developed floodplain acreage* in each subwatershed over the next 10 years (2015).	**1c. 2004 Baseline Condition (regional data):** • 10% of all floodplain acres are developed • 3,450 acres of developed floodplains **20% increase:** • 4,200 acres of developed floodplains	• Applying the "avoid, minimize, and mitigate" tests to undeveloped floodplains would increase protection levels compared to existing Title 3 "cut and fill" requirements. • Loss of undeveloped floodplains in industrial and mixed-use areas is expected to continue to occur but at reduced amounts compared to current trends.
2a. *Preserve 75% of vacant Class A and B* upland wildlife habitat in each subwatershed over the next 10 years (2015).	**2a. 2004 Baseline Condition:** • 15,500 acres of vacant Class A and B upland **75% retention:** • 11,600 acres of vacant Class A and B upland remaining	• 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. • Regional development standards focused on Riparian Class I and II habitats will place development pressure on upland habitats. • Acquisition programs and habitat friendly development practices can help preserve some upland wildlife habitat. • Reforestation programs can help restore upland wildlife habitat. • Reducing regional residential capacity requirements can help preserve upland habitat. • New urban area planning (e.g., Damascus area) offers opportunities to better protect upland habitat. • Council's decision to protect Class A and B habitats in future UGB annexations will increase retention of upland habitats.
2b. Of the upland habitat preserved, *retain 80% of the number of patches 30 acres or larger* in each subwatershed over the next 10 years (2015).	**2b. 2004 Baseline Condition:** • 23,400 acres of upland habitat in 133 patches that contain 30 acres or more of upland wildlife habitat **80% retention:** • 106 upland habitat patches that contain 30 acres or more of upland habitat	

3a. *Preserve 90% of forested wildlife habitat acres located within 300 feet of surface streams* in each subwatershed over the next 10 years (2015).	**3a. 2004 Baseline Condition:** • 28,300 acres within 1,453 patches of forested wildlife habitat located within 300 feet of surface streams **90% retention:** • 25,500 acres of forested wildlife habitat located within 300 feet of surface streams	• Vacant 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 2002 UGB. • Non-forested wildlife habitat within 300 feet of surface streams is more vulnerable to loss compared to forested habitat. • Forested wildlife habitat located within parks and developed residential areas is more stable and will support higher connectivity for wildlife between riparian corridors and upland wildlife habitat. • Acquisition and habitat friendly development practices (cluster development, on and off site density transfers) can help slow the loss of habitat connectivity. • Reducing regional residential capacity requirements can help preserve connectivity between riparian corridors and upland wildlife habitat.
3b. *Preserve 80% of non-forested wildlife habitat acres located within 300 feet of surface streams* in each subwatershed over the next 10 years (2015).	**3b. 2004 Baseline Condition:** • 14,400 acres within 1,633 patches of non-forested wildlife habitat located within 300 feet of surface streams **80% retention:** • 11,500 acres of non-forested wildlife habitat located within 300 feet of surface streams	
4a. *Preserve 95% of habitats of concern acres* in each subwatershed over the next 10 years (2015).	**4a. 2004 Baseline Condition:** • 33% of all habitat designated as HOCs • 26,700 total acres of HOCs **95% retention:** • 25,400 total acres of HOCs	• Habitats of concern are located in Class I riparian areas and Class A upland wildlife habitat, a majority of which are located in parks, riverine islands and deltas, wetlands, floodplains, and riparian corridors. These areas are less vulnerable to loss due to development constraints and public park ownership. • Acquisition, habitat friendly development practices, and reducing regional residential capacity requirements can help slow the loss of Habitats of Concern.

Two implementation objectives are included that help describe the actions to look for as the region moves towards achieving the habitat performance objectives. These would measure how well cities and counties are allowing and encouraging habitat-friendly development practices and the number of mitigation and restoration projects conducted.

J. Tree protection and vegetative clearing

Tree canopy located in vacant Class I and II riparian habitat areas (19,230 acres including constrained and unconstrained) 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 would help address this situation. The tree protection would apply to forested land within Class A and B upland habitats coming into the UGB.

Policy options include:

- Establish mandatory tree protection requirements in the functional plan to address tree removal outside the development 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 Habitat Conservation Areas.

The proposed Title 13 extends the current Title 3 approach to vegetation removal and tree protection beyond the WQRA to include all HCAs. Removal of more than 10% of the vegetation within an HCA is considered development, and will thereby be subject to the requirements established pursuant to Title 13 (except for excepted activities as noted above, such as for currently developed residential properties).

3. TITLE 13 MODEL ORDINANCE

Metro's Title 13 Model Ordinance serves two purposes: as an example for cities and counties to guide substantial compliance and as an alternative for cities and counties to adopt and be in substantial compliance without further efforts. The model ordinance is written to be consistent with the Goal 5 rule, including a clear and objective standards approach and a discretionary review approach. The main components of the model ordinance are described below.

A. Section 3. Applicability and map administration

This section describes when the ordinance applies, upon development and redevelopment, and includes a site-specific habitat verification process. There are three basic approaches for verification:

1. Basic approach, property owner must use clear and objective development standards
   - Property owner believes map is accurate,
   - Lot lines do not match with HCA boundaries, or
   - Property was developed before Title 13 came into effect
2. Intermediate approach, property owner must use clear and objective development standards
   - HCA map is inaccurate due to incorrect location of a landscape feature
3. Detailed approach, required for all property owners using the discretionary review standards
   - Application must be completed by qualified professional
   - Detailed criteria must be completed

B. Section 4. Uses and activities that are exempt

This section carries forward the activities that were identified in Title 13 and adds to the list other items that can be exempted from further review in this ordinance. Emergency procedures, routine maintenance and repair, existing developed residential properties, replacement to structures within the existing building footprint, and minor expansions to structures are included. Other key exemptions include:

- Development on a site that will remain at least 100 feet away from the boundary of the HCA (i.e. sufficient distance to ensure habitat protection even if there were any mapping errors).

- Sites with a phased development plan, once they have followed the procedures for the initial permit and site plan, are exempt from further review so long as building sites and coverages remain consistent with the original permit.
- Removal of nuisance plants and planting of native plants.
- Restoration projects that are part of an approved plan.
- Low-impact outdoor recreation facilities outside of Title 3 WQRAs, so long as they contain less than 500 sq. ft. of new impervious surface.

C. Section 5. Uses Allowed Under Prescribed Conditions

In this section two specific areas are called out for special attention.

- The Port of Portland has developed a Wildlife Hazard Management Plan to minimize the wildlife hazards, primarily from birds, to jets arriving and departing from international airports in the region. Port of Portland activities required to comply with a Federal Aviation Administration wildlife hazard management plan are exempted from all standards except mitigation, and mitigation is allowed off-site anywhere within the region.
- Within Multnomah County Drainage District No. 1, Peninsula Drainage District No. 1, Peninsula Drainage District No. 2, and the area managed by the Sandy Drainage Improvement Company, activities required to maintain the managed floodplain are allowed so long as native vegetation is maintained or enhanced, further disturbance to the waterways is minimized, and all applicable laws are followed.

D. Section 7. Development Standards

This section describes the clear and objective development standards, if an applicant proposes development that complies with these standards then there is no additional process required. The intent of Title 13, which directs all development within Habitat Conservation Areas to follow the avoid-minimize-mitigate standard, is carried out in this section through incentives for avoiding habitat, disturbance area limitations for High and Moderate HCAs, and mitigation requirements for all development within an HCA.

Flexible development standards are a critical component of this section, providing incentives to avoid and minimize Habitat Conservation Areas. Flexible development standards include:

- *Building setback flexibility*, reducing or eliminating front, side, and back-yard setbacks to allow placement of the building site as far from the HCA as possible.
- *Flexible landscaping requirements* to allow these to be met by preserving the HCA in a natural condition, and allowing certain on-site stormwater management facilities in the HCA. This incentive may be particularly helpful for commercial and industrial developments.
- *Flexible site design, or clustering,* to allow smaller lot sizes and creative configurations to cluster development away from or to minimize disturbance within the HCA.
- *Density bonus for habitat protection,* specifically for multi-family zones.
- *Density reduction for habitat protection,* which allows all habitat that will be permanently protected to be subtracted from calculations to determine minimum density.

- *Transfer of development rights,* an optional provision to transfer density from sites with over 50% in an HCA to 2040 mixed-use areas.

When development does occur within the Habitat Conservation Area there are certain standards that apply.

- *Disturbance area limitations*, to minimize impact to High and Moderate HCAs. There is one calculation method for single-family and another for all other zones.
- *Construction standards* to protect habitat during site development.
- *Utility standards* to minimize disturbance of habitat for utility connections.
- *Subdivision standards* that require new subdivision plats to show a percentage of the High and Moderate HCA as a separate non-buildable tract.

All disturbance within the Habitat Conservation Area must be mitigated. The amount of mitigation is calculated based on the size and number of trees removed or the area disturbed, whichever results in more vegetation planting.

E. Section 8. Discretionary Review

The discretionary review approach closely follows the performance standards and best management practices described in Title 13. An applicant who cannot or chooses not to meet the clear and objective standards may use this approach for development on a site with a Habitat Conservation Area.

All applications for development using these standards must conduct an impact evaluation that includes identification of the ecological functional values on the site, an evaluation of alternative locations, designs, or methods of development to minimize negative impacts, and determination of the development alternative that best meets the approval criteria. The approval criteria include:

- *Avoid.* Applicant must first avoid intrusion into the HCA to the extent practicable. The economic considerations are greater in a Low HCA than in a High HCA. Again, any requirement that would result in a decrease in the fair market value of a property is considered not practicable.
- *Minimize.* All development must minimize, to the extent practicable, detrimental impacts to ecological functions.
- *Mitigate.* An applicant must mitigate for adverse impacts to the HCA. Mitigation must occur on-site to the extent possible, second within the subwatershed, and outside the subwatershed only when the purpose can be better provided elsewhere. Two mitigation options are included; both include requirements to use habitat-friendly development practices. Option 1 allows the applicant to choose from a menu of habitat-friendly development practices and use a set mitigation ratio. Option 2 allows the applicant to reduce the mitigation ratio by achieving a lower percentage of effective impervious area through habitat-friendly development practices.

The other sections of the model ordinance are standard to address:

- Section 1. Intent
- Section 2. Relationship to Water Quality Resource Area and Flood Management Area, Consistency with Other Regulations

- Section 5. Prohibitions – nuisance plants, unauthorized clearing or grading
- Section 9. Variances
- Section 10. Severability
- Section 11. Definitions

4. REGIONAL FRAMEWORK PLAN AMENDMENTS

Several of the policies identified by the Council to implement a fish and wildlife habitat protection program as part of the Nature in Neighborhoods Initiative would be implemented through amendments to the Regional Framework Plan. These amendments are described below.

A. Summary of Growth Concept

This section would be amended to more accurately describe the functional plan requirements related to fish and wildlife habitat.

B. Chapter 1 – Land Use

A new section would be added, 1.9.4 "Protection of Regionally Significant Fish and Wildlife Habitat," to describe the Council's policies to protect habitat in new urban growth boundary expansion areas. It includes direction to conduct an inventory and provides direction to limit future conflicts between habitat protection and urbanization.

C. Chapter 3

The Council is currently considering Resolution No. 05-3574 that would direct the regional fish and wildlife protection, restoration and greenspaces initiative to be named "Nature In Neighborhoods." Chapter 3 of the Regional Framework Plan is currently entitled "Parks, Natural Areas, Open Spaces and Recreational Facilities," yet describes most of the programs that are proposed to be included within the Nature in Neighborhoods Initiative. Based on this, a key proposed amendment is to change the title of Chapter 3 to "Nature in Neighborhoods." Other amendments to this chapter include:

- Section 3.2.2 – states that the fish and wildlife habitat program shall be developed to achieve four performance objectives and two implementation objectives
- Several sections through the chapter – minor wording changes to incorporate references to fish and wildlife habitat and Nature in Neighborhoods Initiative

D. Chapter 4

This chapter focuses on water quality issues, but also specifically relates to fish and wildlife habitat protection. The chapter is currently named "Water Management," but is proposed to be renamed "Watershed Health and Water Quality" to more aptly describe the policies in the chapter. Section 4.18 would be renamed "Water Quality and Riparian Fish and Wildlife Habitat Corridors" and would describe how healthy fish and wildlife habitat and water quality are related. This language explicitly acknowledges as a matter of RFP policy the link between water quality and fish and wildlife habitat, enhancing future ties between Title 13 and federal water quality requirements.

E. RFP Policies and Implementation Recommendations or Requirements Table

Amendments to this table simply reference the appropriate Titles in the Functional Plan, and are purely technical in nature.

5. AMENDMENTS TO TITLES 3, 8, 10 AND 11 OF THE URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN

Implementing Title 13 of the Functional Plan has a cascading effect of simple amendments that are required to several other titles. These amendments are described below.

A. Title 3 – Water Quality and Flood Management

Title 3 addresses water quality and flood management, but also included direction to Metro to conduct planning that would protect fish and wildlife habitat. All references to fish and wildlife habitat have been removed, since these requirements are now placed in Title 13 of the Functional Plan. Two other amendments to Title 3 are included:

- Change to Section B(2)(d) requiring native vegetation to be planted in the Water Quality Resource Area. This amendment loosens the restriction by continuing to allow the removal of non-native or noxious vegetation but removing the requirement to replace it with native vegetation. The amendment encourages the planting of native vegetation but only requires replacement if native vegetation is removed.
- Repeal the variances section, since it applied only to fish and wildlife habitat areas and those provisions are now in Title 13.

B. Title 8 – Compliance with the Functional Plan

Title 8 describes how cities and counties must comply with the Functional Plan. Cities and counties will have to have amended their comprehensive plans and land use regulations to comply with Title 13 within two years of its acknowledgement by LCDC, and will have to make land use decisions compliant with Title 13 at that time (rather than one year after acknowledgement, with is the limit of Metro's authority under state law). In addition, beginning one year after acknowledgement, any other amendments that cities and counties make to other parts of their comprehensive plans or other land use regulations will have to be consistent with Title 13.

C. Title 10 – Definitions

This title provides the definitions critical for effective implementation of the Functional Plan. Several definitions have been added to further clarify the intent of Title 13. The most important changes, already discussed above, are to the definitions of "Development," and "Practicable."

D. Title 11 – Planning for New Urban Areas

This title describes the key items to consider when developing plans for new urban areas. It has been amended to consider Habitat Conservation Areas when developing such plans, and to make efforts to minimize conflicts between protecting Habitat Conservation Areas and urban development of new urban areas.

ANALYSIS/INFORMATION

1. **Known Opposition.** No known opposition to the specific elements in the proposed ordinance, however there has been a substantial public process throughout the course of this project. It is projected that there will be opposition from both sides of the spectrum during the public comment period for this ordinance. Some parties are likely to assert the difficulty of introducing new regulations after the passage of Measure 37, stating the uncertain legal climate and general political environment leading to the measure's success. Other parties will likely convey disappointment in a regulatory program that does not completely protect any regionally significant habitat and has been reduced in geographic scope by half from the time the Council made a preliminary ESEE determination in May 2004.

2. **Legal Antecedents.** Statewide Planning Goal 5, OAR 660-015-0000(5), and the Goal 5 Rule, OAR 660-023, and specifically OAR 660-023-0080. ORS chapter 197, and specifically ORS 197.274. ORS chapter 268, and specifically ORS 268.380, ORS 268.390, and ORS 268.393. The Metro Charter, Regional Framework Plan, and Metro Code sections 3.07.310 to 3.07.370. Metro Resolutions Nos. 02-3176, 02-3177A, 02-3195, 02-3218A, 03-3332, 03-3376B, 04-3440A, 04-3488, 04-3489A, 04-3506A, 05-3574 and 05-3577.

3. **Anticipated Effects.** Approval of this ordinance will allow Metro to complete the three-step process for complying with Statewide Land Use Planning Goal 5 by amending portions of the Regional Framework Plan and Urban Growth Management Functional Plan. This allows Metro to submit a complete package to the Department of Land Conservation and Development for acknowledgement review pursuant to ORS 197.274. Cities and counties would then be required to bring comprehensive plans and implementing ordinances in compliance with Metro's Functional Plan within two years.

4. **Budget Impacts.** Adoption of this ordinance commits Metro to the long-term monitoring and reporting of regional progress in habitat protection and restoration. It also commits staff resources to providing technical assistance to cities and counties in the review of codes for barriers to habitat-friendly development practices. Staff resources will also be necessary to review city and county compliance reports after acknowledgement by DLCD. The Council President's proposed budget for FY 05-06 includes 2 FTE for monitoring and technical assistance.

RECOMMENDED ACTION

Staff requests that Metro Council adopt the proposed amendments to the Regional Framework Plan and Urban Growth Management Functional Plan to implement new development standards in regionally significant fish and wildlife habitat areas identified as Habitat Conservation Areas.

ATTACHMENTS TO THE STAFF REPORT

Attachment 1. Vision Statement.
Attachment 2. Habitat Protection Tools Summary.

Macintosh HD:Users:maluwilkinson:Desktop:Ord 05-1077 Staff Report v2.doc

Staff Report for Ordinance #05-1077
Attachment #1

Final DRAFT

October 4, 2000

Streamside CPR*
Program Outline

Purpose, Vision, Goal, Principles and Context

Metro Regional Services
600 NE Grand Avenue
Portland, OR 97232-2736
503-797-1726
contact: Paul Ketcham, Principal Regional Planner
ketcham@metro.dst.or.us

*CPR = Conserve, Protect and Restore

Purpose, Vision, Goal, Principles and Context

I. INTRODUCTION

A. PURPOSE

This document provides the organizational, definitional and policy approach that will apply to the creation and implementation of Metro's Goal 5 – Fish and Wildlife Program decision. This Purpose, Vision, Goal and Principles document is intended to guide, inform, and be the philosophical underpinnings of the Goal 5 Streamside CPR program. It is not a regulatory document.

The purpose is to develop a streamside conservation, protection and restoration program that balances the goals of:

- building livable, Region 2040 communities and implementing the Regional Urban Growth Goals and Objectives (RUGGO);
- protecting and enhancing fish and wildlife habitat as required by the Metro Urban Growth Management Function Plan;[1]
- supporting a strong economy;
- meeting State Land Use Planning Goal 5 standards and procedures;
- addressing Federal Endangered Species Act (ESA) requirements;
- adding to the progress already made by the implementation of Title 3, regional water quality and flood protection requirements; and
- providing the organizational, definitional and policy approach that will apply to the creation and implementation of Metro's Goal 5 – Streamside Fish and Wildlife Program decision.

Cities and counties, as general-purpose governments, are responsible for comprehensive planning including completion of a generalized coordinated land use map and policy statements that interrelate all functional and natural systems and activities relating to the use of land. Cities and counties also are responsible for implementing ordinances, especially zoning ordinances, to regulate land uses. Metro, a regional government, is responsible for addressing issues of metropolitan concern and the Metro Council may determine such issues and adopt regulations directing local governments to change their comprehensive plans and implementing ordinances to address identified regional issues. The Vision Statement, Regional Goal and Program Principles contained in this document provide overall direction to preparation and implementation of the regional safe harbor, local discretionary and riparian district plan option approaches to Metro Goal 5 compliance that will be available to local governments.

B. VISION STATEMENT

Our region places a high priority on the protection of its streams, wetlands and floodplains to maintain access to nature; sustain and enhance native fish and wildlife species and their habitats; mitigate high storm flows and maintain adequate summer flows; provide clean water; and create communities that fully integrate the built and natural environment. As ribbons of green, stream and river corridors maintain connections with adjacent upland habitats, form an interconnected mosaic of urban forest and other fish and wildlife habitat, and contribute significantly to our region's livability.

The RUGGO state that the region should "Manage watersheds to protect and ensure to the maximum extent practicable the integrity of streams, wetlands and floodplains, and their multiple biological, physical, and social values," as well as that "A region-wide system of linked significant wildlife habitats should be developed. This system should be preserved, restored where appropriate, and managed to

maintain the region's biodiversity." The streamside program will contribute to these objectives by balancing, economic, social, environmental and energy considerations as will future efforts to address watershed and upland habitats.

C. OVERALL GOAL

The overall goal is to conserve, protect and restore a continuous ecologically viable streamside corridor system, from the streams' headwaters to their confluence with others streams and rivers, and with their floodplains in a manner that is integrated with the surrounding urban landscape. This system will be achieved through conservation, protection and appropriate restoration of streamside corridors through time.

D. PROGRAM PRINCIPLES

The program will be designed to achieve the following future conditions:

Areas of existing forest cover or areas where it is appropriate to restore forest cover. Conserve, protect and restore the biological, physical and social values of streams, wetlands, riparian areas and floodplains, by encouraging the growth and management of mature forest conditions composed of native forest tree species, appropriate for specific site conditions, mixed with native shrubs and herbaceous species, and containing ample standing snags and downed woody debris. Forest conditions will be managed, where appropriate to address public safety concerns.

Areas where forest cover did not exist historically or where non-forest cover is appropriate, based on a natural resources plan. Conserve, protect and restore the biological, physical and social values of streams, wetlands, riparian areas and floodplains through management of native vegetation appropriate to non-forested conditions.

Developed 2040 Centers and areas where floodplain function is artificially controlled. Contribute to the conservation, protection and restoration of the biological, physical and social values of streams, wetlands, riparian areas and floodplains.

The program will be designed to achieve these future conditions using the following principles:

1. ***Ecological Function.*** The ecological function of the streamside corridor system will be restored and maintained to the maximum extent practicable given the opportunities and constraints of the urban landscape.

2. ***Economically Sound.*** Economic vitality and a healthy natural environment are necessary components of sustainable development in the metropolitan area. Investments in protection and restoration of our natural areas contribute significantly to the region's economic health.

3. ***Protection and Restoration.***[2] Given the currently degraded condition of a majority of urban streams, wetlands, riparian areas and floodplains, protection and restoration are of equal importance in order to achieve the region's goals. Both protection and restoration are important in moving toward recovery of threatened and endangered salmonids, and avoiding future endangered or threatened listings of both aquatic and terrestrial species.

4. ***Flexible Regulatory Approaches.*** Protective regulations shall be based on the best available natural science balanced with economic, environmental, social and energy considerations, and shall provide local governments with flexibility in meeting the overall goals of this program. This

program is also intended to help local governments address the Federal ESA by preventing the need for additional ESA listings and avoiding legal restrictions that may result from current and potential future listings. Implementation of the Federal ESA program for endangered salmonids will need a wide range of actions to be taken by local, state and Federal agencies to recover the species. Metro's requirements are not intended to meet all ESA regulations, but are intended to address recovery obstacles within and along stream corridors. The objective is to obtain Federal approval of this program, so that local governments can use it if they choose. The program is not intended to be the exclusive means available to local governments in the region to address ESA requirements. Local governments can independently seek certification as an alternative.

5. ***Incentives Education and Acquisition.*** Regulatory efforts to conserve, protect and restore natural resources are most effective when combined with incentives, education and acquisition programs that encourage full community participation, therefore, such programs will be an element of the overall program.

6. ***Stewardship Responsibilities.*** All landowners and land users throughout each watershed have an important stewardship responsibility to contribute to the protection and restoration of streams, wetlands, riparian areas and floodplains.

7. ***Urban Form.*** Realization of the region's 2040 Growth Concept requires a compact urban form while protecting natural resources and water quality. This is accomplished in three primary ways:

    a. Protecting natural areas outside the Urban Growth Boundary (UGB). Accommodate compact development within the UGB in order to minimize land extensive expansion that adversely impacts farm and forest lands and natural areas outside the boundary;
    b. Accommodating urban growth in a compact form while protecting and enhancing key fish and wildlife habitat, natural areas, and water quality and quantity within the current UGB;
    c. Protecting and restoring urban stream corridors to provide people with an effective means to access nature, providing ecological linkage to other important fish and wildlife habitats, and compact urban form through integration of the built and natural environments.[3]

8. ***Measure and Monitor.*** A measuring and monitoring system should be established and should include:
    - Assessment of existing conditions;
    - Use of "properly functioning conditions"[4] as the description of desired future conditions; and
    - Assessment and regular monitoring over time of streamside conditions to determine progress in achieving the goals of properly functioning conditions.

9. ***Coordination and Cooperation.*** Effective management of the regional streamside resource cannot be achieved without a collaborative approach throughout the region. The Streamside CPR Program will provide local jurisdictions with the flexibility to pursue alternative collaborative management approaches that meet the standards of this programs, such as watershed planning, and will emphasize efforts that ensure coordination and cooperation between and among the region's partners including local governments, business, nonprofits and citizens.

E. CONTEXT

The preamble of Metro's voter-approved 1992 Charter declares that Metro's most important service is to "preserve and enhance the quality of life and the environment for ourselves and future generations."[5] Through its Charter-mandated responsibilities, Metro Council has provided leadership in addressing growth management issues by working with citizens, elected officials and diverse interest groups to

craft a vision of how the region will grow. Through adoption of policies to achieve that vision, Metro Council has identified the need to balance natural resource protection with urban development while the region grows.

How this balancing will take place, and in what form it will be expressed across the urban landscape, is a key question addressed in various documents. For example, the region's 2040 Growth Concept map includes an environmental greenway along streams in the region to ensure connectivity throughout the urban landscape.[6] The goal of the Greenspaces Master Plan is to create a cooperative regional system of natural areas, open space, trails and greenways for wildlife and people in the four-county metropolitan area.[7] Other planning documents which speak to urban natural areas and water resources include the Future Vision[8], the RUGGO, the Regional Framework Plan[9], and the Urban Growth Management Functional Plan. A unifying feature of all of these documents is to achieve compact urban form and efficient delivery of urban services while at the same time preserving citizen access to nature and community livability.

A cornerstone of these regional policies is protection of natural systems—regionally significant fish and wildlife habitat, streams, rivers, wetlands and floodplains—because their protection and restoration is essential to maintaining and improving the region's livability, economic well-being and environmental health.

In addition to the regionwide policies, there are State and Federal policies which are also important considerations. The purpose of the State's Land Use Planning Goal 5 is "To protect natural resources and conserve scenic and historic areas and open spaces".[10] At the Federal level, for a large part of the Pacific Northwest Coast and associated inland rivers and streams, the National Marine Fisheries Service (NMFS), is acting under the requirements of the Federal ESA. At this time, NMFS has designated four species of Steelhead and eight other species of salmon as either threatened or endangered in the Columbia River Basin. Local governments, through their comprehensive plans, will be implementing requirements to address natural resource protection. In order to address this status, our region will need to take actions that are consistent with the recovery needs of these species. In doing so, the region, its local government partners and the citizens of the metropolitan area can help ensure that one of the defining symbols of our region once again thrives.

To accomplish the planning work described in these policies, Metro is pursuing adoption and implementation of programs to:

- protect the beneficial uses associated with the region's streams and rivers, including water quality and protect life and property from dangers associated with flooding[11]
- Protect, conserve and enhance fish and wildlife habitat within regionally significant riparian corridors under Statewide Planning Goal 5[12]
- Protect, conserve and enhance regionally significant upland wildlife habitat under Statewide Planning Goal 5;[13] and
- Implement the Greenspaces Master Plan.

All of these programs, taken in concert and with full implementation by local governments, will realize the vision for growth enunciated in Metro's Charter, Future Vision and subsequent planning documents described above.

To complete this work effort Metro shall:

1. Establish criteria to define and identify regionally significant fish and wildlife habitat areas;
2. Examine existing Goal 5 data;
3. Identify inadequate or inconsistent data;
4. After considering items 1-3, and after holding public hearings, adopt a map of regionally significant fish and wildlife areas.

II. PROGRAM DESCRIPTIONS (TO BE ADDED)

I:\gm\long_range_planning\projects\Goal 5\Goal 5 Report REVISION\Vision\10 25 Metro Goal 5 Vision.doc

---

[1] The focus of the Purpose, Vision, Goal, Principles and Context Statement is on native species of fish and wildlife whose historic ranges include the metropolitan area and whose habitats are or can be provided for in urban streamside corridors. The Purpose Statement does not intend to include native species such as bear, cougar, lynx and deer, which may be conducive in specific areas such as Portland's Forest Park, but may not be conducive in urban stream corridors elsewhere in the metropolitan area.

[2] Proposed definition of restoration:

Restoration, in the context of the streamside CPR program, means action taken to return natural riparian functions and values for fish and wildlife. Restoration would be applied where riparian functions are in a degraded condition and are intended to return the riparian functions to good or excellent condition. While there may be instances where restoration to pre-development, natural conditions is possible, in general, restoration should not mean the end-state of re-establishing a totally pristine condition. It should address the improvements or re-introduction of functional values.

Conditions Under Which Restoration Would Occur:

Conditions under which restoration will occur will be established when the program is defined. The current draft of the Goal 5 program does not contemplate that homeowners and other property owners would be required to undertake restoration unless there was a development activity that required a permit for new development, significant modifications to structures, or redevelopment. In the absence of a development permit it is assumed that restoration would be achieved through incentive-based, voluntary, and community-based restoration and enhancement activities. Public education and the promotion of voluntary naturescaping and restoration would be part of the regionwide cooperative effort to improve the existing degraded conditions of our urban waterways.

[3] "to provide people with an effective means to access nature" means to help people enjoy, approach or be near to nature. It is not intended to imply the right of any person to enter or make use of private property unless the property owner grants that right of public access.

[4] Defined by Federal natural resource programs.

[5] The preamble of Metro's Charter states the following: "We, the people of the Portland area metropolitan service district, [establish an elected regional government] that undertakes, as its most important service, planning and policy making to preserve and enhance the quality of life and the environment for ourselves and future generations." 1992 Metro Charter, page 1.

[6] The Metro 2040 Growth Concept, acknowledged by the Land Conservation and Development Commission in 1995, states the following: "The basic philosophy of the Growth Concept is: preserve access to nature and build better communities." December 8, 1994, Page 1.

[7] Other goals of the July 1992 Metropolitan Greenspaces Master Plan include preserving "diversity of plant and animal life in the urban environment, using watersheds as the basis for ecological planning." The Greenspaces Master Plan is guided by the following ecological principles: "Maintain biological diversity by restoring and enhancing a variety of habitats, including wetlands, riparian corridors, forests and agricultural lands." And " Protect, restore and recreate stream corridor vegetation by replacing riparian vegetation where it is lacking or dominated by exotic species and removing barriers, where possible, to maintain connections with adjacent upland habitats."

[8] The Future Vision states the following: "We value natural systems for their intrinsic value, and recognize our responsibility to be stewards of the region's natural resources." March 1995, page 1. In 2045, the region should be characterized by "Improved water quality, and increased biodiversity," and "restored ecosystems protected from future degradation and decline." Page 12. Specific actions identified: "Manage watersheds to protect, restore, and maintain the integrity of streams, wetlands and floodplains, and their multiple biological, physical, and social values." Page 12.

[9] Chapter 3 of the December 31, 1997 Regional Framework Plan establishes polices for parks, natural areas and open spaces, and identifies the important environmental benefits of maintaining and improving air and water resources, providing flood control, and protecting fish and wildlife habitat. It commits Metro to "develop a strategy and action plan to address inadequacies in the protection of regional Goal 5 resources. This plan will be carried out by Metro." Page 108, see also page 190.

[10] Goal 5 further states that "Local governments shall adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. These resources promote a healthy environment and natural landscape that contributes to Oregon's livability." Procedures and requirements for complying with Goal 5 call for an inventory, a determination of significance, an analysis of the economic, social, environmental and energy consequences of a decision that could allow, limit or prohibit a conflicting use.

[11] From Title 3, Sections 1-4 of the 1996 Urban Growth Management Functional Plan

[12] From Title 3, Sections 1, 2 and 5 of the 1996 Urban Growth Management Functional Plan.

[13] From Title 3, Sections 1, 2 and 5 of the 1996 Urban Growth Management Functional Plan.

I:\gm\long_range_planning\projects\Goal 5\Council Ord. 05-1077\Attch 1 Vision.doc

Staff Report for Ordinance #05-1077
Attachment #2

Fish and Wildlife Habitat Protection and Restoration Tools

Summary Descriptions and Recommended Best Management Practices

April 2005

Fish and Wildlife Habitat Protection and Restoration Tools

Tool Categories (See attached document for summary descriptions)		Program Objectives					
		Avoid				*Minimize*	*Mitigate*
		1: Streamside Connectivity	**2:** Large habitat patches	**3:** Wildlife Corridors	**4:** Habitat of Concern	**5:** Minimize Impacts	**6:** Mitigate & Restore
AVOID	1) Acquisition	●	●	●	●	○	○
	2) Tree protection standards	●	●	●	●	●	●
	3) Cluster development	●	●	●	●	●	○
	4) Transfer of development rights (TDRs)	●	●	●	●	●	○
	5) Riparian setbacks	●	○	○	●	○	○
MINIMIZE	6) Flexible site design	○	○	○	○	●	○
	7) Impervious surface reduction	○	○	○	○	●	○
	8) On-site stormwater management and erosion control	○	○	○	○	●	○
	9) Greenstreets standards	○	○	○	○	●	○

Tool Categories (See attached document for summary descriptions)		Program Objectives					
		Avoid				*Minimize*	*Mitigate*
		1: Streamside Connectivity	**2:** Large habitat patches	**3:** Wildlife Corridors	**4:** Habitat of Concern	**5:** Minimize Impacts	**6:** Mitigate & Restore
MINIMIZE (cont.)	10) Education and awareness	O	O	O	O	O	O
	11) Technical assistance	O	O	O	O	●	O
	12) Incentives	O	O	O	O	O	O
MITIGATE	13) Mitigation	O	O	O	O	●	●
	14) Restoration	●	●	●	●	O	●
	15) Ongoing monitoring	O	O	O	O	O	O

● = directly supports achieving goal; O = indirectly supports achieving goal; √ = area most applicable
SL = strictly limit; ML = moderately limit; LL = lightly limit

Summary Description of Tools

1. Acquisition and conservation easements

Acquisition programs are very effective in habitat protection and restoration and are usually applied to privately-owned lands. Land may be purchased outright or with a conservation easement from willing landowners. Land acquisition programs are used by a select set of organizations. The high cost of land limits the ability of many smaller organizations to purchase land. Primarily city governments, Metro, federal programs, and a few non-profit organizations utilize acquisition programs. Since 1995, all of the programs combined have succeeded in protecting approximately 11,000 acres of land in the Metro region that is explicitly managed for fish and wildlife habitat protection.

Issues to consider for implementation in Metro region

Opportunities	Constraints
Acquisition	
• Habitat that is acquired for purposes of conservation may be considered protected in perpetuity. • Land can be donated to non-profits or governments for habitat conservation, property owners receive a tax deduction. • Once acquired, land can be restored and maintained to provide better quality habitat.	• Cost of land in the urban area is very high and an acquisition program depends on willing sellers, limiting the potential for an expansive acquisition program. • Managing donated land is time and labor intensive. • Restoring and maintaining land is expensive. An endowment at the time of purchase can offset these expenses. • Difficult to achieve continuity of habitat.
Conservation Easements/Deed Restrictions	
• Conservation easements can be donated to non-profits or governments for habitat conservation; property owners receive a tax deduction. • Easements can be less expensive and allow private ownership of the land to continue.	• Working with landowners with conservation easements is time and labor intensive. • Long-term maintenance and management of habitat land with easements can be expensive and difficult to manage. • While the deed restriction continues when a property is sold, there may need to be education for the new owner.

RECOMMENDED BEST MANAGEMENT PRACTICES

Class I and II Riparian and other habitat:

Metro should consider using existing resources and a variety of additional funding sources to carry out some or all of the following activities:

a. Coordinate with non-profit agencies and others who are involved in acquisition to help identify prime fish and wildlife habitat for consideration of their acquisition programs.
b. Apply for grants that can lead to targeted acquisition for prime areas, such as opportunities in Damascus and other new urban area planning.
c. Use funds to leverage other purchases and target small areas for purchase outright or in easements.
d. Launch a major acquisition effort tied to the fish and wildlife habitat area preservation and restoration focusing on:
   - Parcels that are so valuable they should not be lost when volunteer efforts and local regulations are not able to protect habitat.

- Key connector habitat areas and other low quality areas that offer important restoration opportunities.

Local jurisdictions should consider acquiring habitat lands through the following programs:
a. Purchasing floodplains and/or other special habitats through SDC (system development charges) programs.
b. Applying for FEMA grants to purchase floodplains.

2. Forest canopy (tree) protection standards

Tree protection ordinances often stipulate tree and forest retention and/or reforestation standards, and require developers to obtain permits before certain trees or percentages of forest cover can be removed, encroached upon, or in some cases pruned. Tree ordinances can also govern the planting and removal of trees within public rights-of-way, and can resolve conflicts between property owners that result when trees block views or sunlight. Some jurisdictions limit the cutting of trees through site design standards (e.g., cluster development) in their environmental or sensitive area overlay zones. Types of tree ordinances[1] include:

- Street Tree Ordinances
- Tree Protection Ordinances
- Forest Conservation Ordinances
- View Ordinances

Of the ordinance types listed above, the most applicable for the creation and protection of habitat are tree protection and forest/woodland conservation ordinances. The former (tree protection) ordinances typically set protection standards for individual trees, whereas the latter (forest conservation) require the protection of forest patches and/or canopy.

Issues to consider for implementation in Metro region

Opportunities:	Constraints:
• Tree protection and forest conservation ordinances can be an effective means for protecting fish and wildlife habitat. • Tree protection has additional benefits such as increase in property values, stormwater reduction, energy savings, air pollution reduction. • Many local jurisdictions already have some form of tree ordinances; effective local ordinances could serve as a model for jurisdictions that do not have them. • Undeveloped forest areas coming into the urban growth boundary (UGB) could be preserved.	• Tree ordinances can be administratively and financially cumbersome to developers and existing property owners. • Tree ordinances may require extended permit processing time. • There may be a perceived loss of developable land as a result of forest protection and other costs. • Non-enforcement of tree ordinances can lead to ineffective protection. • There is a potential high cost to landowners/ developers if in-lieu-of fee approach is used. • Preservation of individual trees may be costly and potentially dangerous; sometimes replacement may be more effective than retention of trees. • Forest management is an important concern (e.g., removing competing vegetation to preserve certain habitat types such as White Oak woodlands).

[1] See appendix for a summary of tree ordinances in the Tualatin Basin.

RECOMMENDED BEST MANAGEMENT PRACTICES

Class I and II Riparian:

Local jurisdictions should protect trees in Class I and II Riparian habitat by adopting tree ordinances or other tools that effectively protect trees. Some provisions of an effective tree ordinance include:

a. Prioritize tree canopy protection; e.g., natural stands or groups of trees given priority over individual specimens, largest trees with greatest environmental benefit.
b. Establish minimum standards for tree canopy retention and reforestation standards such as number of trees over 6" dbh per acre; percentage (e.g., 50%) of tree canopy retained; 1:1 replacement according to total DBH; tree planting on site, off site, or in lieu payment.
c. Promote retention of individual tree specimens within Habitats of Concern (such as white oak woodlands).
d. Maintain or enhance understory of shrub and herbaceous layers within forest canopy habitat; require planting of native species and removal of noxious plants.
e. Require a project arborist to oversee construction activities; protect critical root zone during all phases of construction including excavation around trees, grading and filling, placement of impervious surfaces, construction equipment and storage, etc.
f. Include costs for maintenance of trees, or allow developers to contribute to a fund for maintenance rather than replace trees.
g. Include provisions for enforcement of tree protection standards; incentive enforcement of tree code should be considered (see Appendix for description; city of Tigard).

Other habitat areas:

Local jurisdictions are encouraged to protect trees in other regionally significant habitat areas by adopting tree ordinances or other tools that effectively protect trees. In addition to the provisions listed above, effective tree ordinance for other habitat areas include:

a. Retain upland wildlife habitat in as large of units as possible; minimize activities that fragment forest canopy into small units (below 28 acres).
b. Maintain or enhance forest canopy connectivity between upland habitat patches and between riparian corridors and upland habitat.

3. Cluster development/on-site density transfer

Cluster development is a compact form of development that conserves land on one portion of a site in exchange for concentrated development on another portion of the site.[2] Typically, road frontages, lot sizes and setbacks are relaxed to allow the preservation of open space areas.

[2] See Appendix for an example of a proposed cluster development in SE Portland that preserves 17.5 aces of 26.9 acre site and achieves maximum allowed density (65 lots).

Issues to consider for implementation in Metro region

Opportunities	Constraints
• Cluster development is most likely to work well in habitat areas with a larger overall site size. • Reducing minimum lot sizes and densities in habitat areas could allow clustering to be more effective. Metro currently has an exemption for density requirements if natural resources are preserved. • Education to developers and public may increase use of clustering. • If the resource covers a small portion of a parcel clustering has more potential.	• Many habitat areas have high minimum densities in place. Clustering would not be possible in these areas without changing the housing type (e.g., from detached single family to attached single family or multi-family). Changing housing types in existing neighborhoods may change neighborhood character, which is contrary to Metro policy (Title 12of the Functional Plan, protection of residential neighborhoods). • Long-term management of habitat preserved through subdivision platting can be an issue.

RECOMMENDED BEST MANAGEMENT PRACTICES

High minimum required densities to meet 2040 goals may reduce the potential for cluster development in some habitat areas.

a. Metro should review and amend, if necessary, current density target exemptions for natural resource protection to ensure workability.

Class I and II Riparian:

Local jurisdictions are required to allow cluster development in Class I and II streamside areas to preserve habitat. Some or all of the following actions could be taken to promote cluster development:

a. Reduce minimum density requirements (zoning) in habitat areas to allow for clustering and larger lots that preserve habitat consistent with Metro direction.
b. Allow cluster development (on-site density transfer) in habitat areas as a by-right method of development, reducing the level of review necessary and therefore minimizing costs.
c. Allow for flexible lot design to reduce impervious cover and preserve the most amount of habitat.
d. Include legal requirements for the long-term maintenance and management of preserved habitat.

Other habitat areas:

Local jurisdictions are encouraged to allow cluster development in all regionally significant habitat areas to preserve habitat.

4. Transfer of Development Rights

Transfer of Development Rights (TDR) is a tool used in many communities to preserve natural features, farmland, and historic landmarks. TDRs encourage a voluntary shift of development from places a community wants to save (sending areas, e.g., Class I riparian corridors) to the places where growth is wanted (receiving areas – e.g., in centers). The owners of the sending areas receive compensation for protecting their land by selling their development rights to another party to be used in a receiving area. Developers in a receiving area may build to a certain extent without using a TDR, but more units or floor space may be allowed with the purchase of a TDR (some jurisdictions have base density, minimum density, and maximum density that can only be reached with the purchase of a TDR). Such a program preserves

important places, encourages growth where the community wants it, does not require a substantial public expenditure, and provides compensation to property owners.

Issues to consider for implementation in Metro region

Opportunities	Constraints
• A banking system could be developed for development rights, purchasing the rights from affected landowners who wish to sell and reserving them for sale until needed by jurisdictions for upzoning or in UGB expansion areas. This bank could function at the regional scale or within a specific jurisdiction or planning area, and could be managed by a government or a foundation. • TDRs are particularly useful in UGB expansion areas where a program could be put in place prior to upzoning. This allows all property owners to benefit more equally from inclusion in the UGB and also preserves significant habitat. (Pleasant Valley includes an approach.) • As an alternative to a more traditional TDR program, a density transfer charge imposes a fee any time a developer wishes to build more than allowed on a site, or for any upzoning. Allows for the collection of money to be spent to preserve habitat lands by purchasing them. May not be much application in built out communities, but could apply to growing areas.	• TDR programs have mostly been successful in areas without urban growth boundaries. In Oregon, development is restricted outside of the UGB, and in the Metro region densities have been increased substantially to achieve the 2040 Growth Concept and to focus development in centers. While it would be a relatively simple task to identify sending areas (Class I riparian, Class A upland for example), it is more difficult to identify receiving areas if a market for more density does not exist. • In the Metro region it may be difficult to implement a TDR program due to the existing high densities and the fact that many developers currently build at the minimum density. There does not appear to be much demand for increased densities to be transferred from habitat areas. • Portland has TDRs available for use to preserve habitat in two planning areas; however, they have never been used. • Expansion areas may not have a large capacity for density since there is a substantial amount of existing habitat.

RECOMMENDED BEST MANAGEMENT PRACTICES

a. Metro should explore the potential of requiring any future upzoning throughout the region to require the purchase of a TDR or a density transfer fee to be used for habitat protection.
b. Metro should work with local jurisdictions in urban growth boundary expansion areas to implement a TDR program prior to implementing urban zoning (e.g., in areas like Pleasant Valley and Damascus).
c. Local jurisdictions should consider implementing a transfer of development rights program to preserve habitat.

5. Riparian setbacks

Setbacks are protective corridors of land along shorelines, lakes, streams, and wetlands where development is limited or prohibited. Setbacks provide important ecological and water quality benefits by providing a transition between upland development and adjoining surface waters. In short, they serve as barriers between development and waterways, and are an important resource in themselves. The majority of the region's wildlife species depends on riparian areas. Setbacks can have either fixed or variable widths depending on a jurisdiction's needs and the intended purpose of the setback regulations.

Issues to consider for implementation in the Metro region

Opportunities	Constraints
• Riparian areas are critical to water quality, fish and wildlife, yet many streams lack setbacks of any kind. Providing even minimal setbacks on all streams can help protect the region's water quality and biological diversity. • Because of their ecological importance, riparian areas represent some of the region's best restoration opportunities. Setbacks and current conditions can help define the target areas for riparian restoration. • Setbacks can create clear and objective standards, which are relatively easy to administer and can minimize map error issues. • A strong nexus may be made between riparian setbacks and compliance with federal laws (CWA, ESA); setbacks may help local jurisdictions meet TMDL and ESA requirements.	• Limited benefit where riparian vegetation has already been replaced with development, but setback enhancements could be negotiated under redevelopment. • Setbacks may result in perceived or actual private property rights infringement; some development likely to occur within setback areas to avoid or minimize this issue. • Setbacks should be based on existing resources, which may require site-specific delineation such as those required by Clean Water Services. Site-specific delineation may be expensive.

RECOMMENDED BEST MANAGEMENT PRACTICES

Class I and II Riparian:

Local jurisdictions should expand the area to which Title 3 Water Quality Resource Area performance standards apply.

a. Extend Title 3 WQRA performance standards longitudinally to all inventoried streams, including those draining less than 50 acres. Apply the 15-50 foot standard to the smaller streams.
b. Extend Title 3 WQRA performance standards laterally to Class I and II streamside habitat, consistent with the ESEE treatments.

Local jurisdictions should also consider incorporating the following items in protection regulations for Class I and II habitat:

a. Maintain or enhance forest cover in setback areas to improve stormwater management, habitat protection, and other benefits.
b. Maintain or enhance native vegetation in setbacks areas to provide better wildlife habitat.
c. Minimize stream crossings to promote continuity of riparian corridors.
d. Delineate setback boundary so that it is visible before, during, and after site construction. Developers should be familiar with the limits of disturbance throughout construction.

6. Green development practices, or low impact development (LID) – impervious surface reduction and stormwater management

Low impact development (LID) is an innovative, ecosystem approach to site development and stormwater management. LID design requires careful evaluation of the physical and ecological characteristics of the site and consideration of how to minimize development impacts. LID design techniques typically serve to conserve native vegetation and soils, minimize impervious surfaces, slow down surface water runoff, detain and retain water on-site, maximize infiltration and remove pollutants in stormwater.

In urban and developing areas where impervious cover can be significant, the objective is to reduce imperviousness in the development process and increase natural areas. Reducing the amount of impervious surfaces reduces the amount of stormwater runoff generated in the first place. Conventional stormwater management practices collect and convey stormwater runoff in costly end-of-pipe facilities to one location. In contrast, LID addresses stormwater through small-scale landscape features located at the lot level. These landscape features, known as Integrated Management Practices (IMP), help to maintain natural flow patterns, filter pollutants and recreate or maintain the hydrology of a site.

Impervious surface reduction standards focus on some of the following areas:
- Native soils and soil amendments
- Driveway, street and sidewalk widths
- Flexible lot setbacks and shape standards
- Smaller building footprints
- Alternative foundations
- Permeable pavement options
- Reduced parking lot area
- Parking ratio requirements

Some of the practices used to manage stormwater include[3]:
- Bioretention/rain gardens
- Dry Wells
- Filter Strips
- Swales (wet and dry)
- Rain Barrels
- Infiltration Trenches
- Soil Amendments
- Greenroofs
- Greenstreets

[3] See appendix for examples of low impact development and other green development practices.

Issues to consider for implementation in Metro region

Opportunities:	Constraints:
• Careful site design and stormwater management can allow for urban economic growth while contributing to the protection of sensitive habitat areas. • With better site design, individual developments and road projects can reduce impervious cover and increase natural areas conserved. • Reducing effective impervious surfaces can significantly cut infrastructure costs that developers pay for the construction of roads, sidewalks and stormwater infrastructure. • Permeable pavement can easily be integrated into new construction where soil, slope and traffic conditions are suitable. • Reducing stormwater drainage infrastructure (e.g., pipes, ponds, other structures) can lower infrastructure costs. • Developers using LID practices can potentially increase developable land by reducing size requirements for stormwater ponds. • Using low impact development design techniques assists in meeting Clean Water Act requirements. LID practices have been found to improve hydrologic conditions in a watershed and to remove various urban pollutants from stormwater runoff. • Metro has developed greenstreet standards[4] to reduce impervious surfaces and manage stormwater that could be either required or encouraged throughout the region. • There are many more case studies in the region that provide working examples.	• Most local jurisdictions' development codes do not allow for many LID practices (e.g., narrower roads or open road sections without curbs and gutters).[5] • Many engineers and developers are not familiar with LID stormwater techniques and continue to rely on better known conventional practices. • Permeable pavement costs more (however, more materials are becoming available and prices are coming down). • The use of low impact stormwater management techniques is highly dependent on site conditions and is generally not applicable where soils are impermeable or where water soluble pollutants may contaminate an underlying aquifer. • Other barriers may include higher cost for development review, longer permitting process and additional permit requirements.

RECOMMENDED BEST MANAGEMENT PRACTICES

Class I and II Riparian and other habitats:

Metro should:

a. Help identify barriers to employing the practices listed below,
b. Determine an appropriate goal(s) for on-site stormwater retention for different sites throughout the region, and

---

[4] *Green Streets: Innovative Solutions for Stormwater and Stream Crossings* (Metro, June 2002).

[5] *Stormwater/Pavement Impact Reduction (SPIR) Project* (Audubon Society of Portland, November 2003) identifies barriers in existing codes for jurisdictions in Washington County. *Economic Growth and Fish & Wildlife Habitat Protection: The Promise of Low-Impact Stormwater Management in the Portland, Oregon Metropolitan Region* (J. Sherman, Master Thesis, University of Washington) analyzes benefits, costs, methods of LID implementation throughout the Northwest, and provides some recommendations and considerations for incorporating low impact development into a fish and wildlife habitat program.

c. Provide education and technical assistance to local jurisdictions and developers.

Class I and II Riparian:

Local jurisdictions should be required to reduce impervious surfaces in Class I and II habitat areas by removing barriers to allowing some or all of the following actions:

a. Minimize grading and lot disturbance; use erosion and sediment control practices to protect soil surface and to retain sediment on site.
b. Amend retained topsoil to regain some of the absorption, infiltration, retention and pollutant removal capabilities of the soil.
c. Relax residential lot sizes, setbacks and shape standard to minimize extent of impervious surfaces.
d. Encourage smaller building footprint through building design.
e. Encourage use of alternative foundations, such as pier, post or piling foundation, that reduce impacts on soils and trees (see Appendix for example of alternative foundation).
f. Use pervious paving materials in place of traditional impervious materials where appropriate.
g. 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.
h. Reduce width of residential streets, depending on traffic and parking needs.
i. Reduce street length, primarily in residential areas, by encouraging clustering and using curvilinear designs.
j. Reduce cul-de-sac radii and use pervious vegetated islands in center to minimize impervious effects.
k. 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.
l. 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.
m. Reduce parking ratios to limit excess parking space construction.

Local jurisdictions should be required to remove barriers in their development codes to allow for low impact development stormwater management in Class I and II habitat areas. Some or all of the following actions could be taken to manage stormwater on-site:

a. Amend retained topsoil to regain some of the absorption, infiltration, retention and pollutant removal capabilities of the soil.
b. Landscape with rain gardens to provide on-lot detention, filtering of rainwater, and groundwater recharge.
c. Disconnect downspouts from roofs and direct the flow to vegetated infiltration/filtration areas such as rain gardens.
d. Retain rooftop runoff in a rain barrel for later on-lot use in lawn and garden watering.
e. Combine the rain gardens with grassed swales to replace a curb-and-gutter system.
f. Use permeable pavers for walkways and parking areas.
g. Design roads to incorporate stormwater management in right-of-ways where appropriate.
h. Use multi-functional open drainage systems in lieu of more conventional curb-and-gutter systems.
i. Use bioretention cells as rain gardens in landscaped parking lot islands to reduce runoff volume and filter pollutants.

j. Use green roofs for runoff reduction, energy savings, improved air quality, and enhanced aesthetics.
k. Apply a treatment train approach to provide multiple opportunities for stormwater treatment and reduce the possibility of system failure.

Other habitats:
Local jurisdictions are encouraged to remove barriers to reducing effective impervious surface and allowing for low impact development stormwater management practices in other habitats and throughout their jurisdiction to address overall watershed health.

7. Design standards for fish passage and wildlife crossings

Design standards and best management practices can be used in road building and stream crossings that promote fish and wildlife continuity in the region. These include structural design provisions to allow wildlife to cross roads and better fish passage schemes at road crossing to aid in salmon and other fish migration.

Wildlife crossings:
- Bridges and overpasses – grade separation structures designed to allow wildlife to cross over an intersecting highway
- Culverts and underpasses – structures designed to convey wildlife under an existing roadway (bottomless culvert, arch culvert)
- Roadside escape structures – structures designed to allow an animal trapped on a roadway by a diversion fence to exit.

Fish passages
- Bridges (preferred over other structures)
- Culverts (bottomless arch culverts, embedded round culverts, concrete box culverts)

Issues to consider for implementation in Metro region

Opportunities:	Constraints:
• Use of wildlife crossing and fish passage facilities in the Metro region presents unique opportunity for promoting continuity of habitat and for minimizing loss of wildlife in urban areas. • Language in Regional Transportation Plan and local plans could be positive and proactive to minimize number of stream crossings. • Wildlife crossings can reduce property damage from accidents and reduced accident cleanup and disposal costs. • ODFW has detailed design specifications for stream crossings on fish bearing streams. • There are many existing culverts that need to be retrofitted to ensure safe fish and wildlife passage. • Local codes and transportation plan updates are opportunities to address conflicts with stream crossing objectives to minimize number of stream crossings.	• Bridges tend to be more expensive than culverts. • Lack of experience in Metro region with habitat-friendly structures could pose significant challenge to effective implementation. • Many fish passage culverts or structures need to be custom made, are expensive, and tend to be oversized. • Some jurisdictions' transportation plans have not been reconciled with natural resource concerns, and result in conflicts with stream crossing objectives.

RECOMMENDED BEST MANAGEMENT PRACTICES

Class I and II Riparian:

Metro should:

a. Maintain list of problem culverts and prioritize for retrofitting to ensure safe fish and wildlife passage.
b. Review language in Regional Transportation Plan and consider changing language to require stream crossing standards from a positive perspective, such as: "where streams must be crossed, space crossings at intervals of 1,200 feet where practicable."

Local jurisdictions should be required to incorporate fish and wildlife friendly passages in road design by addressing some of the following:

a. Minimize the number of stream crossings and place crossing perpendicular to stream channel if possible.
b. Use bridge crossings rather than culverts wherever possible.
c. Design stream crossings for fish passage with shelves and other design features to facilitate terrestrial wildlife passage.
d. Allow narrow street right-of-ways through stream corridors whenever possible to reduce adverse impacts of transportation corridors.
e. Consider using simple ways to help wildlife such as building rock ledges along one side of culverts for wildlife passage, plugging bridge-deck drains, using "lampshades" on bridge lights and creating small animal habitat from logs and brush.

Other habitats:

Local jurisdictions are encouraged to incorporate wildlife friendly passages in road design addressing some of the following:

a. Consider regional wildlife migration patterns for locating transportation facilities in upland areas.
b. Extend vegetative cover through the wildlife crossing in the migratory route, along with sheltering areas.
c. Carefully integrate fencing into the landscape to guide animals toward the crossings.
d. Consider using simple ways to help wildlife such as building rock ledges along one side of culverts for wildlife passage, plugging bridge-deck drains, using "lampshades" on bridge lights and creating small animal habitat from logs and brush.

8. Education and awareness

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

Metro currently has several education programs that help fish and wildlife habitat in the Parks and Greenspaces Department and the Solid Waste and Recycling Department. Many other organizations in the region also provide classes about the environment.

Issues to consider for implementation in Metro region

Opportunities	Constraints
• There are a number of strong education programs operated by Metro and other organizations that focus on fish and wildlife habitat protection and restoration. • Education oriented towards children may be most effective in long-term behavior change (e.g., recycling).	• Focusing efforts on education and awareness is expensive. • Results are long-term and are unlikely to immediately protect or restore habitat.

RECOMMENDED BEST MANAGEMENT PRACTICES

Class I and II Riparian and other habitats:

Metro should consider using existing resources and a variety of additional funding sources to carry out the following activities:

a. Coordinate fish and wildlife education messages into ongoing Metro program areas, including Parks and Open Spaces planning and outreach, Zoo exhibits such as a display on Metro urban fish and wildlife habitat and enhancement of Solid Waste and Recycling programs to target homeowners and developers of residential properties.
b. Develop seminars, recognition and speaker programs and other special efforts to increase awareness of green development practices.
c. Develop a list of all education programs in the region and determine which are most effective.
d. Coordinate regional messages on fish and wildlife habitat, watershed function, and water quality to encourage people to think on a more broad and time-sensitive scale. Encourage the placement of signs in habitat areas as an important component of an educational program.
e. Organize and prioritize a regional education campaign and provide a clearinghouse for education materials and referrals.

9. Technical assistance

Technical assistance programs are noted for being responsive to landowner or developer needs, providing practical information, and having knowledgeable resource staff. Such a program would not provide direct protection to resources, but would offer a means of improving stewardship and enhancement by private landowners. Technical assistance could help supplement cost-sharing programs, such as grants, to further protection and restoration efforts. Technical assistance could be focused on landowners, development practices, and/or local partners. Metro has provided technical assistance to local partners throughout the implementation of the Regional Framework Plan and the Regional Urban Growth Management Functional Plan. This has proved especially important in the implementation of Title 3 (stream and floodplain protection) and planning for 2040 centers.

Metro could work with local partners to develop technical assistance, incentives, recognition programs, and awards for development that helps protect fish and wildlife habitat. Metro, in conjunction with local partners, could develop regional low impact development standards and designs to reduce development impacts on fish and wildlife habitat. The Green Streets Handbook serves as a successful model of technical assistance for transportation infrastructure.

Issues to consider for implementation in Metro region

Opportunities:	Constraints:
• A technical assistance program can effectively change practices by working with interested parties • There are existing technical assistance programs (e.g., through soil and water conservation services, etc.) that could be supported and enhanced	• Technical assistance can be very labor intensive • Technical assistance can only reach willing participants

RECOMMENDED BEST MANAGEMENT PRACTICES
Class I and II Riparian and other habitats:
Metro should consider using existing resources and a variety of additional funding sources to carry out the following activities:

a. Provide technical assistance to jurisdictions to implement fish and wildlife habitat program recommendations, such as a Handbook of Green Development Practices. Also consider developing a certification process for city officials to help them integrate natural resource needs and development.
b. Work with local jurisdictions to identify barriers in codes that limit green development practices, for example, flexible site design and on-site stormwater management practices.
c. Provide technical assistance to the development community, primarily targeting new residential development to incorporate green development practices. For example, native landscaping, tree planting, and site design.

10. Incentives

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

A good stewardship agreement between a landowner and an organization interested in protecting or restoring habitat and monitoring success over time can be used to achieve some level of habitat protection. The Wetlands Conservancy uses stewardship agreements to enhance wetlands protected through their efforts. Such a program would recruit landowners to agree to voluntary stewardship agreements that allow residents to make a commitment to care for the land in a manner that promotes habitat value. A stewardship agreement program would be most effective when combined with other incentives such as education, technical assistance, and grants.

Landowner recognition programs on their own generally provide no permanent protection of resources because participation is voluntary. However, administrative costs may be relatively low compared to funding for programs such as acquisition that provide definitive permanent protection. This tool is most likely to be effective when integrated with other tools (e.g., grants and education) as part of an overall conservation strategy. Perhaps the greatest benefit is to provide publicity to developers and landowners, and thus encourage others to take similar actions.

Grants

Grants for restoration can provide the incentive for supportive landowners and other organizations to restore habitat on private and public lands. A small grant program, targeted to watershed councils, non-profit organizations, or local governments, could be created similar to Metro's recent grants for Regional and Town Center planning efforts. Small grants given in strategic places could build on existing work and encourage more efforts in targeted areas.

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

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

Incentives for green streets

The Metro Council could establish a priority for funding transportation projects based on their impacts to regionally significant fish and wildlife habitat. A criterion could be added to the MTIP funding priorities that focuses on habitat issues, such as culvert replacement or removal, wildlife crossing improvements, or implementation of Green Streets design standards. Alternatively, a separate category or bonus points could be assigned to projects that meet habitat criteria to allow for the funding of projects that improve transportation and habitat in the region.

Property tax reduction

There are two state programs that could be applicable within the urban area: the *Riparian Lands Tax Incentive Program* and the *Wildlife Habitat Conservation and Management Program*. Both programs would require county or city action to be implemented. The riparian tax incentive

program allows for a tax exemption for property within 100 feet of a stream provided the land is protected and managed for habitat value. The program is limited to 200 stream miles per county. The wildlife habitat program allows designated habitat land to be taxed at a special, reduced rate as long as it is protected and managed for habitat value. This program is not limited by acres and can be applied to riparian or upland habitat.

Habitat protection and restoration may be most effective ecologically if applied strategically, for example, in a specific stream reach or headwater area. This tool could serve as an important incentive to encourage landowners to work in a coordinated fashion to leverage ecological improvements in a specific area. If used on a "first-come, first-served" basis there may be a scattered approach and less ecological benefit overall. A downside to using property tax relief as a tool for habitat protection is that a landowner can leave the program at any time, the only penalty being payment of back taxes, similar to opting out of a farm or forest tax deferral program.

Issues to consider for implementation in Metro region

Opportunities	Constraints
• Incentives can provide the necessary encouragement for people who already want to protect and restore fish and wildlife habitat. • An incentive allows for more people to be reached, providing more opportunities for technical assistance and education. • Willing participants. • Incentives can be incorporated with regulations to achieve better results. • Can achieve restoration of degraded habitat.	• Incentives require an investment of both money and staff time. • Habitat is protected on a haphazard basis. • Voluntary protection can result in impermanent protection over time

RECOMMENDED BEST MANAGEMENT PRACTICES

Class I and II Riparian and other habitats:

Metro should consider using existing resources and a variety of additional funding sources to carry out the following activities:

a. Coordinate with Centers Program to offer financial incentives for specific building projects that incorporate green development practices, especially those improving habitat conditions.
b. Provide resources to watershed councils and friends organizations to increase their stability and productivity.
c. Seek interagency and non-profit support for increased federal and state grant funding directed at watershed-based restoration activities (such as National Fish and Wildlife Foundation, USFWS Conservation and Restoration funds, EPA Smart Growth funds, etc).
d. Develop an award program to foster and recognize green development practices, similar to the now defunct Stormwater Management Design Awards Program. Sponsor a yearly award ceremony, provide certificates, and encourage media coverage.
e. Develop a Regional Fish and Wildlife Habitat Stewardship program that recognizes landowners for restoring and protecting habitat on their land. Sponsor a yearly award ceremony, provide certificates, and encourage media coverage.

f. Develop signed voluntary stewardship agreements between a property owner and Metro or another sponsor for habitat protection. Most likely to be effective when used in conjunction with small grants and long-term monitoring.
g. Provide financial incentives for green development practices in habitat areas.
h. Encourage cities and counties to implement existing property tax incentive programs within the Metro region (WHCMP and RLTIP).

Local jurisdictions should get extra points if they incorporate incentive programs for protection and restoration of regionally significant habitat.

11. Mitigation

Mitigation is the attempt to offset potential adverse effects of human activity on the environment[6]. Mitigation can be divided into two general categories: resources for which the state and federal governments control mitigation (wetlands, waters of the state), and habitats where there is no existing state or federal requirement for mitigation.

Title 3 serves as a building block for mitigation for habitat loss in areas not covered by state or federal regulations. Title 3 defines mitigation requirements for development within Title 3 Water Quality Resource Areas (WQRA) and requires "balanced cut and fill" for floodplain areas. Title 3 WQRA extend 50 feet from many of the region's year-round streams, and can extend up to 200 feet in steep slope areas.

The Title 3 Model Ordinance contains a detailed description of mitigation requirements for development in WQRA depending on the existing condition of the vegetated corridor. These requirements could be extended to currently unprotected, high-value riparian habitat in Metro's inventory. Essentially, this would mean an enhanced Title 3 program.

Local government plans also contain mitigation requirements for areas covered in their local Goal 5 programs (City of Portland's E-zones, Wilsonville's Significant Resources Overlay Zone, Hillsboro's Sensitive Lands Overlay District, etc.). Mitigation requirements under Metro's program would be most relevant for Class I and Class II riparian habitat not covered in local programs or where local programs lack mitigation requirements. However, local jurisdictions are encouraged to work closely with same-watershed jurisdictions to plan enhancement activities, and with Metro and other stakeholders to address upland habitat through voluntary measures.

[6] See appendix for local examples of habitat degradation and loss from urban development.

Issues to consider for implementation in the Metro region

Opportunities	Constraints
• Mitigation can help offset the impacts of development on water quality, fish and wildlife by requiring compensatory enhancement of riparian habitat. • Mitigation can help maintain ecosystem services. • Title 3 provides a baseline of regulatory mitigation, has already been implemented by local jurisdictions, and contains specific mitigation instructions. • In the urban area, where habitats may be altered or degraded, out-of-kind mitigation (replacing one resource type with a different type) provides an opportunity to replace low-value riparian habitat with higher-value habitat.	• Existing constraints limit the extent of new regulations (takings issues). • The urban growth boundary is space-limited. Setting high mitigation ratios would limit development opportunities in the UGB, and would create the need for mitigation lands when onsite mitigation is not an option. • The success of mitigation over time and space is uncertain. • Monitoring and enforcement are keys to success, but are often overlooked in mitigation programs. • Mitigation requirements would add to development costs.

RECOMMENDED BEST MANAGEMENT PRACTICES

Class I and II Riparian habitat:

Metro should:

a. Use mitigation efforts to support watershed plans, regional restoration program and performance measures, and create a regional tracking system.
b. Develop a regional restoration program that can support mitigation efforts locally.
c. Continue to explore potential role for regional parklands as mitigation recipients.

Local jurisdictions should be required to preserve and enhance habitat by requiring developers or others disturbing the habitat to:

a. Use strong avoid-minimize-mitigate principle, as in Title 3.
b. When mitigation is necessary, mitigate for all habitat loss/damage where Allow-Limit-Prohibit (ALP) decision is other than Allow.
c. Establish higher mitigation ratios for higher degrees of limit. Set realistic mitigation ratios (e.g., 0.5:1 for lightly limit, 1.5:1 for strictly limit) designed to offset damage from new activities.
d. Discount stormwater fees or offer other incentives to encourage onsite retention of existing riparian habitat.
e. Direct mitigation actions to strategize efforts that enhance ecological functions in habitat areas, create new habitat in strategic locations (connective habitat), restore habitat in redevelopment areas, and to preserve/restore Habitats of Concern or rare biological communities located on the site. Rare habitats may, in some cases, be offered for permanent conservation in lieu of enhancing existing habitat.
f. Permanently protect mitigated lands.
g. Include code language that facilitates restoration and removal of non-native or invasive vegetation.
h. Typically, onsite mitigation is preferred when possible. However, off-site mitigation may be encouraged when appropriate – for example, when offsite mitigation would clearly provide a stronger benefit for fish or wildlife than onsite. Except in special cases, mitigate in the same watershed where the impacts occur.

i. Allow out-of-kind enhancement/replacement when appropriate, but focus on healthy riparian systems and near-stream shade provided by Class I and Class II habitat.
j. Ensure mitigation program includes long-term monitoring (≥5 years) and an adaptive management strategy that provides remedies if monitoring reveals mitigation efforts fail.
k. Coordinate with Metro to document restoration sites, activities and success.
l. To mitigate for riparian impacts, mitigation activities will need to stay primarily within existing or newly created Class I and Class II riparian.

12. Restoration

The Society for Ecological Restoration (SER) defines ecological restoration as the process of assisting the recovery and management of ecological integrity. In the urban region, where restoration of true native conditions may not be possible, the term "enhancement" is often used and is used interchangeably here with restoration.

Restoration of degraded habitat is an important component of a fish and wildlife habitat protection program. Restoration generally involves habitat improvement beyond that required through regulations to offset development impacts (mitigation). Restoration can assist the recovery of functions necessary for watershed health; in turn, healthy watersheds can support people, fish and wildlife. Efforts to protect and restore habitat can, in many instances, also benefit humans by reducing flood damage and protecting water quality[7].

Metro is a logical choice for coordinating regional watershed planning. The impacts of urbanization cannot be realistically addressed through site-specific or small-scale restoration approaches; virtually all recent restoration literature suggests that watersheds are the *minimum* spatial unit for which restoration master planning should occur. Impacts in one watershed may influence adjacent or downstream watersheds, thus all watersheds within the urban area, plus all adjacent watersheds, should be considered in a master restoration plan. NOAA Fisheries (formerly the National Marine Fisheries Service) commented on the importance of considering restoration projects in a large-scale context (2000):

> Projects planned and carried out based on at least a watershed-scale analysis and conservation plan and, where practicable, a sub-basin or basin-scale analysis and plan, are likely to be the most beneficial. NMFS strongly encourages those involved in watershed restoration to conduct assessments that identify the factors impairing watershed function, and to plan watershed restoration and conservation activities based on those assessments. Without the overview a watershed-level approach provides, habitat efforts are likely to focus on "fixes" that may prove short-lived (or even detrimental) because the underlying processes causing a particular problem may not be addressed.

Successful restoration depends on addressing the causes of environmental degradation, rather than the symptoms. Goodwin et al. (1997) suggest asking several questions related to the causes of degradation: Is the disturbance local to the riparian area or does it originate outside in the adjacent upland or watershed? Is the disturbance ongoing, and if so, can it be eliminated? And finally, will recovery occur naturally if the disturbance is removed? The answers to these questions can help guide a restoration plan.

[7] See Appendix for examples of Port of Portland restoration projects.

Issues to consider for implementation in the Metro region

Opportunities	Constraints
• Restoration master planning is more effective than piecemeal efforts. • Restoration can help offset the impacts of development on water quality, fish and wildlife by improving degraded habitat, recovering ecological function(s), and building new habitat where none currently exists. • Regional and watershed-based master planning increases the spatial scale and therefore improves potential effectiveness of restoration planning. • Large-scale master planning builds partnerships, increasing knowledge and funding opportunities. • Potential for shared database of the region's watershed conditions and restoration activities could benefit many partners and increase effectiveness.	• Complete recovery of urban ecosystems is not likely possible. • The success of in- and near-stream restoration activities can be impacted by watershed conditions – for example, imperviousness, forest cover and altered hydrologic conditions. Restoration planning will need to take such factors into account. • Restoration is expensive and funding sources need to be identified. • Monitoring restoration success is critical and will require funding.

RECOMMENDED BEST MANAGEMENT PRACTICES

Class I and II Riparian and other habitats:

Metro should:

a. Convene the experts:
   - form a multi-disciplinary group to support watershed-based restoration activities and identify technical, financial, and institutional barriers to restoration efforts
   - coordinate with Soil and Water Conservation Districts, watershed councils, local, state and federal agencies

b. Develop a regional restoration plan:
   - based on past, current, and projected future conditions
   - consider effects to and from adjacent watersheds (e.g., hydrologic alterations)
   - define regional restoration targets by watershed
   - create a regional geographic information system database drawing on watershed action plans, existing mitigation and restoration sites, Metro's regional habitat inventory and other sources of information to help identify watershed restoration priorities and track implementation and success of restoration and mitigation projects over time
   - work with partners to develop regional plan for strategic, ongoing invasive species removal

c. Increase partnerships for funding and effectiveness:
   - provide resources to watershed councils and friends organizations to increase their stability and productivity
   - consider contributing funds directly to SOLV for specific restoration projects
   - increase funds available in the NFWF restoration bank and solicit corporate donations
   - support leveraged restoration projects with partnerships similar to Americorp Japanese Knotweed and Tualatin River Keepers Gotter's Bottom projects

- seek interagency and non-profit support for increased federal and state grant funding directed at watershed-based restoration activities (such as National Fish and Wildlife Foundation, EPA Smart Growth funds, etc).

d. Prepare for initiating and managing a bond measure program:
   - coordinate with non-profit groups, local governments, citizens and others to identify regional target areas
   - identify local share funds as part of the bond measure proposal
   - create a challenge grant program to local governments and non-profit organizations to leverage the use of public bond measure funds in acquisition and restoration efforts
   - create a short-term revolving fund to purchase land in targeted areas, implement conservation easements and use surplus funds (resale revenue) to create a funding source for land management purposes

Local jurisdictions should promote effective fish and wildlife habitat restoration by:

a. Removing barriers to common and effective restoration practices (e.g., no onerous permitting process for non-native blackberry removal).
b. Participating in watershed planning activities across jurisdictional boundaries.

13. On-going monitoring

Long-term monitoring is important to determine whether various tools are achieving the overall goals for habitat protection. If monitoring shows that goals are not being met, adaptive management strategies may be employed to correct the problem(s).

Monitoring should be based on sound science, and be structured to allow comparisons with other data and over time to determine whether biological goals are being achieved. Some common monitoring targets include vegetative growth, presence of invasive species, biological indicators such as macroinvertebrates, water quality, and ESA-listed species presence. Some monitoring, such as water quality and invasive species, must be conducted in the field. Other monitoring efforts can be conducted using Geographic Information Systems (GIS) – for example, mapping existing near-stream vegetation and monitoring changes over time.

There are many monitoring efforts going on around the region. Agencies such as DEQ, certain local jurisdictions, Oregon Department of Agriculture, ODFW, USGS, and others have collected a variety of data through a variety of methods. There is no comprehensive survey of regional data pertaining to watershed health.

Issues to consider for implementation in the Metro region

Opportunities	Constraints
• Long-term monitoring can help determine whether regional habitat goals are being met. • Helps identify key water quality issues as well as preservation, restoration and enhancement opportunities. • Substantial baseline data exists in the region and only needs to be gathered and mapped. • GIS can be used as a relatively inexpensive, but effective, monitoring tool.	• Funds will need to be located for field-based monitoring efforts. • Existing data may not be compatible/ consistent with Metro's data needs. • Methods will need to comply with other agencies' standards (e.g., DEQ). • Monitoring certain aspects of fish and wildlife habitat – for example, connectivity – may not be possible without best

• A regional monitoring program provides an excellent partnership opportunity. • Mitigation and restoration efforts can be mapped, adding important new information to the fish and wildlife habitat inventory and enabling broad effectiveness monitoring. • Regional monitoring framework can produce a consistent and rich dataset, and considers an ecologically appropriately spatial scale. • Helps lay scientific foundation for future natural resources work. • Provides key data to other agencies and organizations, at no cost to them. • Volunteers may be recruited for certain monitoring efforts, lowering costs and increasing public interest in natural resources.	professional judgment, and will need to be repeatable. • Certain GIS constraints must be considered; for example, when streams not previously mapped are added to the streams data layer, care must be taken not to confuse new information with improved ecological conditions. • Distinguishing cumulative effects (e.g., non-point source pollution) with site-specific effects may be difficult in the urban area. • As certain watersheds increase urban land cover, cumulative effects may obscure improvements from activities such as near-stream enhancement.

RECOMMENDED BEST MANAGEMENT PRACTICES

Class I and II Riparian and other habitats:

To establish and effective regional monitoring framework, Metro should:

a. Establish a watershed-based, ongoing monitoring program for habitat quality, including restoration and mitigation accomplishments.
b. Improve baseline data on existing habitat conditions to enable monitoring of the region's progress in achieving fish and wildlife habitat targets.
c. Use existing data when available and appropriate.
d. Coordinate with other departments and agencies collecting data to improve exchange of information and consistency.
e. Participate on state and local task forces to share information on restoration and monitoring methods and results.
f. Seek partnerships to monitor long-term health of mitigation and restoration projects.
g. Work with partners to gain additional grant funding to support monitoring programs.
h. Work with stakeholders to set watershed-based targets and a series of straightforward, ecologically relevant, repeatable measurements/indicators of success.
i. Use GIS tools to map and measure changes in habitat location, quality and quantity (e.g., changes in each habitat class; changes in near-stream or overall canopy cover). Include some field-based monitoring components, such as macroinvertebrate communities, basic water quality, and temperature. Base monitoring components on Metro's fish and wildlife habitat objectives, targets and indicators.
j. Include an adaptive management component that responds to regional monitoring findings. Adaptive management incorporates research into conservation action. Specifically, it is the integration of design, management, and monitoring to systematically test assumptions in order to adapt and learn.
k. Incorporate a citizen or student volunteer monitoring effort element (for example, temperature monitoring).
l. Require jurisdictions to update data layers (e.g., streams, wetlands) and provide the data to Metro's Data Resources Center in a standardized form.
m. Publish monitoring results reports and make data freely available to others.

Acknowledgement:

This report was developed with the advice and review of the Fish and Wildlife Habitat Implementation Work Group.

Chair:
Pam Wiley, Natural Resources Consultant

Members:
Heidi Berg, Clean Water Services
Tom Boullion, Port of Portland
Craig Brown, Matrix Development
Denny Egner, City of Lake Oswego
Mike Faha, Greenworks
John Frewing, Property Owner
Barbara Fryer, City of Beaverton
Thomasina Gabriele, Gabriele Development Services
Kevin Kohnstamm, Property Owner
Jim Labbe, Audubon Society of Portland
Rachel McCommach, City of Portland
Rick Michaelson, Inner City Properties
Kerry Rappold, City of Wilsonville
Martin Schott, Schott and Associates
Lainie Smith, ODOT
Greg Summers, Jones & Stokes
Von Summers, Northwest Natural Gas

I:\gm\long_range_planning\projects\Goal 5\Council Ord. 05-1077\Attch 2 Final Tools summary.doc

Agenda Item Number 6.1

Resolution No. 05-3597, Appointing Roger Vonderharr, Jennette Hamby and Jill Thorn to the Metro Boundary Appeals Commission..

Metro Council Meeting
Thursday, July 14, 2005
Council Chamber

BEFORE THE METRO COUNCIL

APPOINTING ROGER VONDERHARR, JEANNETTE HAMBY, AND JILL THORN TO THE METRO BOUNDARY APPEALS COMMISSION	)))))	RESOLUTION NO. 05-3597 Introduced by Metro Council President David Bragdon

WHEREAS, Metro Code Section 3.09.060 created the Metro Boundary Appeals Commission to decide contested cases regarding boundaries among local government jurisdictions and special districts within the metropolitan region; and

WHEREAS, on April 6, 2000, the Metro Council adopted Metro Resolution No. 00-2917A appointing the original members of Metro Boundary Appeals Commission; and

WHEREAS, the term of the original member of the Commission from Multnomah County expired on April 6, 2002, and the terms of the original members of the Commission from Washington County and Clackamas County both expired on April 6, 2004, and therefore the Metro Council is now required to appoint Commissioners to complete the required terms on the Commission; and

WHEREAS, Metro Code Section 3.09.060 provides that the governments of Multnomah, Washington, and Clackamas counties shall each provide a list of nominees to the Metro Council President for appointment by the Metro Council; and

WHEREAS, Roger Vonderharr was selected as a Multnomah County nominee; and

WHEREAS, Jeannette Hamby was selected as a Washington County nominee; and

WHEREAS, Jill Thorn was selected as a Clackamas County nominee; now, therefore,

BE IT RESOLVED that Roger Vonderharr is appointed to the Metro Boundary Appeals Commission for a term effective July 15, 2005 and expiring April 6, 2006; that Jeannette Hamby is appointed to the Metro Boundary Appeals Commission for a term effective July 15, 2005 and expiring April 6, 2008; and that Jill Thorn is appointed to the Metro Boundary Appeals Commission for a term effective July 15, 2005 and expiring April 6, 2008.

ADOPTED by the Metro Council this __ day of _____, 2005.

_____
David Bragdon, Council President

Approved as to form:

_____
Daniel B. Cooper, Metro Attorney

STAFF REPORT

CONSIDERATION OF RESOLUTION 05-3597 APPOINTING ROGER VONDERHARR, JEANNETTE HAMBY, AND JILL THORNE TO THE METRO BOUNDARY APPEALS COMMISSION.

July 14, 2005

BRIEF DESCRIPTION OF RESOLUTION

This resolution appoints Roger Vonderharr, Jeannette Hamby, and Jill Thorn to the Metro Boundary Appeals Commission.

EXISTING LAW & BACKGROUND

Metro Code Section 3.09.060 provides for the creation of the Metro Boundary Appeals Commission consisting of a member from each of three counties to decide contested cases of final boundary change decisions when such cases arise among local government and special districts within the metropolitan region. In 2000, the council appointed the original commission members, whose terms have all expired. Therefore the Metro Council is now required to appoint Commissioners to complete the current remaining terms on the Commission. The nominees selected are: Roger Vonderharr, Multnomah County; Jeannette Hamby, Washington County; and Jill Thorn, Clackamas County. A resume from each of the three nominees is attached.

BUDGET IMPACT

None

OUTSTANDING QUESTIONS

None

071405c-01

MINUTES OF THE METRO COUNCIL MEETING

Thursday, July 7, 2005
Metro Council Chamber

Councilors Present: David Bragdon (Council President), Susan McLain, Robert Liberty, Rex Burkholder, Carl Hosticka, Rod Park, Brian Newman

Councilors Absent:

Council President Bragdon convened the Regular Council Meeting at 2:01 p.m.

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

There were none.

3. CONSENT AGENDA

3.1 Consideration of minutes of the June 23, 2005 Regular Council Meetings.

Motion:	Councilor Park moved to adopt the meeting minutes of the June 23, 2005 Regular Metro Council.
Vote:	Councilors Burkholder, McLain, Liberty, Park, Newman, and Hosticka voted in support of the motion. The vote was 6 aye, the motion passed with Council President Bragdon absent from the vote.

4. ORDINANCES – SECOND READING

4.1 **Ordinance No. 04-1063A**, For the Purpose of Denying a Solid Waste Facility Franchise Application of Columbia Environmental, LLC to Operate a Local Transfer Station

Motion:	Councilor Hosticka moved to adopt Ordinance No. 04-1063A.
Seconded:	Councilor Park seconded the motion

Councilor Park thanked staff for their efforts in trying to sort through all of the issues. He felt the decision was dependent upon each person's perspective and where they saw things were today. He said this application process started several years ago. He spoke to the changes in the solid waste industry throughout that period of time and the effects of those changes. He felt they were judging Columbia Environmental under those changes in the Code even though they had begun their process prior to those changes. He spoke to issues of fairness. He hoped that they would vote the ordinance now and come back with a negotiated application. Councilor Liberty asked Mike Hoglund, Solid Waste and Recycling Director, about a Columbia Environmental proposal to make ratepayer whole. Mr. Hoglund responded that, the applicant suggested the proposal. It was not part of the decision in front of Council right now. If the Council was to support the application, that may be a component of the application. Councilor Liberty explained his no vote.

He would be in favor of approval contingent upon accepting the proposal concerning making ratepayers whole. He also spoke to public benefit and fairness issues in support of the application. He talked about impact on ratepayers. Councilor McLain said she was voting in favor of the staff recommendation. She felt competition was important and that small businesses be given a fair shake. She felt this was about service, equity and the other parts of our system. They were also dealing with a finite resource. She spoke to accessibility issues and the need for equity in the west. She noted what Vehicle Miles Traveled (VMT) decisions were dependent upon. She said the system and the formula did not work. She talked about changes in the Code and when those changes occurred. Accessibility and capacity were always part of the decision-making. She suggested looking at the finite resources, accessibility and services offered to the region.

Councilor Newman said he would be supporting the staff recommendation. He felt the applicants were a victim of timing. Now considering the circumstances, the applicant fell short. He explained why. He was concerned about the cost going up to the ratepayers and the current unknowns in the system. He talked about Columbia Environmental's offers after the initial application. He felt the door was closed today but not forever. Councilor Liberty asked Councilor Newman about the ratepayers' fixed costs and the integrity of the system. Councilor Newman said counter offers from Columbia Environmental was not assured.

Councilor Park reviewed the staff report of Ordinance No. 01-916C. He talked about the history of the waste shed.

Councilor Burkholder spoke to positive benefits and costs to the region. He supported the work of the staff. He felt the new application was a better deal for the region. The other side was, is this gamble worth it? He spoke to positives on the side of the applicant. He addressed efficiency versus fairness issues. He also noted the risks for the applicant. The new proposal got Metro close to the fact that the cost to the rest of regions ratepayer was getting close. He felt the gamble was worth the cost.

Council President Bragdon said he would be voting no on this ordinance. Councilor Hosticka questioned the process if the motion was defeated. Dan Cooper, Metro Attorney, said Council had until July 22nd to make a final decision. If Council didn't make any decision before that date, the application was deemed accepted. He explained further what happened if Council did not approve the ordinance, the Council could give direction on terms and conditions concerning new information, which wasn't fully developed. Councilor Hosticka said if the applicant does nothing between now and the 22nd, would the application be as stated? Mr. Cooper explained what could happen.

Councilor Liberty asked about staff timing. He wanted to make sure that there was enough time for staff to evaluate the new information. He felt several Councilors were making their decision on keeping ratepayers whole. Mr. Hoglund said a third option, if the ordinance was denied, they had some preliminary discussions with the applicant they would sit down and work out an agreement based upon what they heard today from Council. He said this would be the first transfer station that started from the ground up. The applicant was willing to extend the deadline as long as necessary to get approval.

Council President Bragdon said if they were to vote on this ordinance today, he would vote no. If there were an extension, he would ask staff to codify the additional proposals that Columbia Environmental had proposed. He spoke to competition and innovation in the industry. In terms of regulatory barriers to enter into the system, he felt we needed to be starting from scratch. He felt

we were defending a system rather than the public interest. He suggested that our system needed to change to allow for competition and variety of processes.

Councilor Park asked if Council was allowed to add extending the moratorium until Regional Solid Waste Management Plan and Disposal System was completed and put a moratorium on allocation of tons. Mr. Cooper said those items were separate actions. Councilor Park asked if they could express intent. Mr. Cooper said yes. He explained further if the applicant was willing to delay final votes to renegotiate, they had the liberty to do that.

Councilor Liberty asked Council President Bragdon about his no vote. He was trying to make sure that we weren't imposing higher costs to other participants in the system. Councilor McLain said if they denied the ordinance it was important to give staff clear direction. She suggested legal advise on what Metro could negotiate. She said they needed to be very specific about their guidance. She reminded that Metro was part of the system.

Councilor Hosticka said they were voting now on what was in front of Council not a hypothetical notion. He felt staff had done the analysis and looked at the regional impact. He urged that they should deny the application in front of them and come back in six months with another application.

Council President Bragdon laid out the three options that Council had today. Councilor Burkholder asked for clarification, did the application include the $2.00 a ton issue. Mr. Hoglund said it was not included. Councilor Burkholder felt it was a critical piece and needed to be part of the application for him to support the application. Councilor Liberty understood the frustration about the changing application. He said the $2.00 fee was just a part of making the ratepayers whole. He was still voting no but explained how his vote would change. Councilor Newman reminded the Council that if Metro didn't do anything in the course of two weeks, the application would be as it stands. He was concerned about the additional conditions that had been put in front of Council. He suggested voting yes, and having the applicant bring a new application to Council in six months.

Councilor Park asked about a motion to continue. Mr. Cooper said unless they had a written agreement between Chief Operating Officer and the applicant extending the deadline, the application was as it stood.

Motion to continue:	Councilor Park moved to continue the ordinance until July 21, 2005.
Seconded:	Councilor Burkholder seconded the motion

Councilor McLain explained why she couldn't support the continuation. Councilor Liberty expressed concerned about the minimal amount of time. Councilor Hosticka asked about procedure. This motion was on an application before Council. Mr. Cooper said the original application came in July 24, 2004. Then the applicant provided a modification to the application. He explained further what processes could occur. Councilor Hosticka said the effect would be to give the applicant opportunity to modify the application. Council President Bragdon explained his yes vote. Councilor Park agreed that we needed to get it taken care of by July 21st or let it go another six months.

Vote:	Councilors Park, Hosticka, Burkholder, Liberty and Council President Bragdon voted in support of the motion. The vote was 5 aye/2 nay, the motion passed Councilors McLain and Newman voting no.

Councilor McLain said her direction to staff was that Council was not willing to accept an application that would make part of the region pay more for the service. Second, recycling was important. She suggested they nail down the specifics of their recycling. They needed to do more. Councilor Hosticka said he didn't think they gave direction to staff at all, they gave direction to the applicant. The onus was on the applicant to give Metro a new application with the expressed intent of changes noted by the Council. He suggested putting criteria around how they would support the application. They had not directed to staff to do anything. Councilor Park closed by suggesting Council study the staff reports.

Motion to reconsider the motion to continue:	Councilor Hosticka moved to reconsider the vote to continue the ordinance until July 21, 2005.
Seconded:	Councilor McLain seconded the motion

Councilor Hosticka explained his request to reconsider the vote. Council President Bragdon explained why he would be voting against this reconsideration. Councilor Newman would be voting yes to reconsider. Councilor McLain said she would also vote yes on the reconsideration. She said they had only one thing to vote on today, which was the application before Council. Councilor Liberty said he would vote no and explained the timeline. He felt they had given some direction to staff.

Vote:	Councilors Park, Burkholder, Liberty and Council President Bragdon voted against the motion. The vote was 3 aye/4 nay, the motion failed with Councilors Hosticka, Newman and McLain voting yes.

Council President Bragdon talked about the changing solid waste system. Councilor Newman took issue with Council President Bragdon comments. The Council voted unanimously for a moratorium and explained the need to understand this changing system. They were trying to avoid an ad hoc system. He felt it was better to set up a system that they thought achieved that public good. Councilor Hosticka took issue with the comments made and explained why. Councilor McLain expressed her concerns about managing the system. She spoke to the philosophical debate today and the need to review the application.

5. OREGON LEGISLATIVE UPDATE

Mr. Cooper said the legislature was waning. There hadn't been a lot of movement on the bills that we were interested in.

6. CHIEF OPERATING OFFICER COMMUNICATION

Michael Jordon, COO, had nothing to say.

7. COUNCILOR COMMUNICATION

Councilor McLain talked about the architecture of Disneyland Main Street. Mr. Disney was ahead of his time as far as transit.

Mr. Cooper said he was in northern Arizona at the Grand Canyon and saw condors flying in the wild.

Councilor Burkholder reminded Council about the bridge pedal event August 14th. They wanted to celebrate the 10 greatest things that had occurred in the region over the last 10 years. They would be celebrated the open spaces bond measure as one of those 10 greatest things. He urged Council's participation.

Council President Bragdon said the Minister of Infrastructure and Urban Affairs from Canada would be at Metro on July 20th in the morning.

Councilor Liberty said he had the opportunity to ride the new sky train in Vancouver, Canada. He talked about high-density urban development. He talked about the pattern of development. He noted the high capacity transit system.

Council President Bragdon talked about history of the boundary commission. They had two cases before Metro. They had to reestablish a commission. He recruited individuals who were available to serve on the commission: Roger Vonderharr, Jill Thorn and Jeannette Hamby.

8. ADJOURN

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 3:20 p.m.

Prepared by

Chris Billington
Clerk of the Council

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF JULY 7, 2005

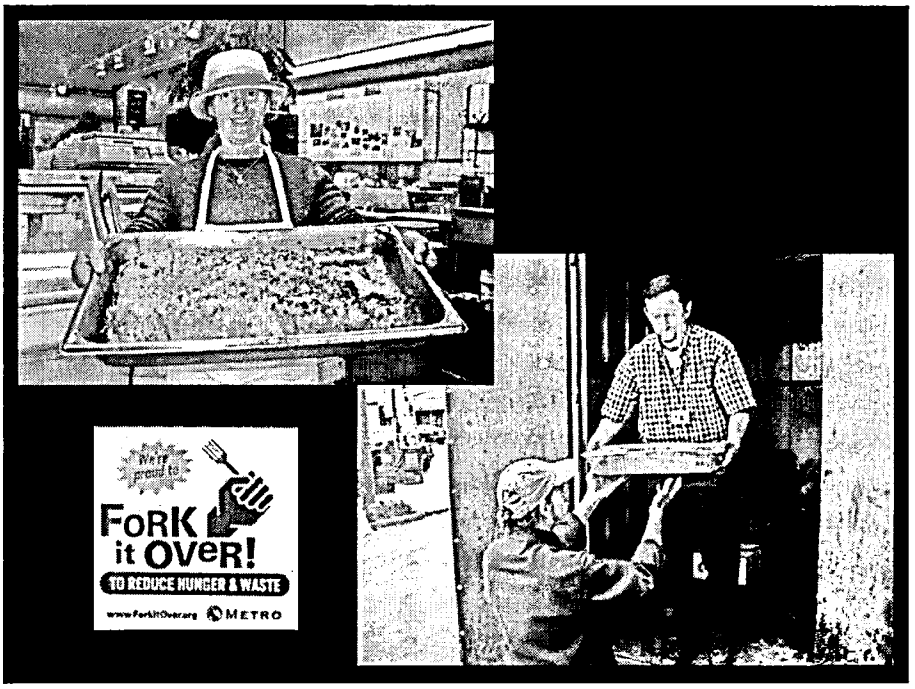
Item	Topic	Doc Date	Document Description	Doc. Number
3.1	Minutes	6/23/05	Metro Council Meeting Minutes of June 23, 2005	070705c-01

071405c-02

Organic Waste Management Plan

Phase 1: Food Donation Initiatives

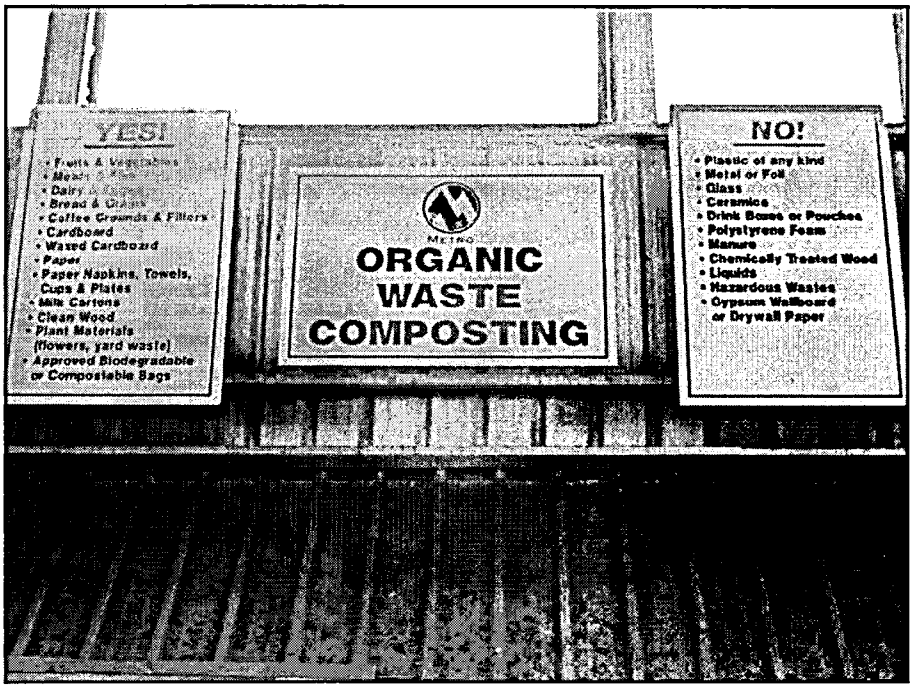
- Infrastructure grants
- *Fork it Over!* Program

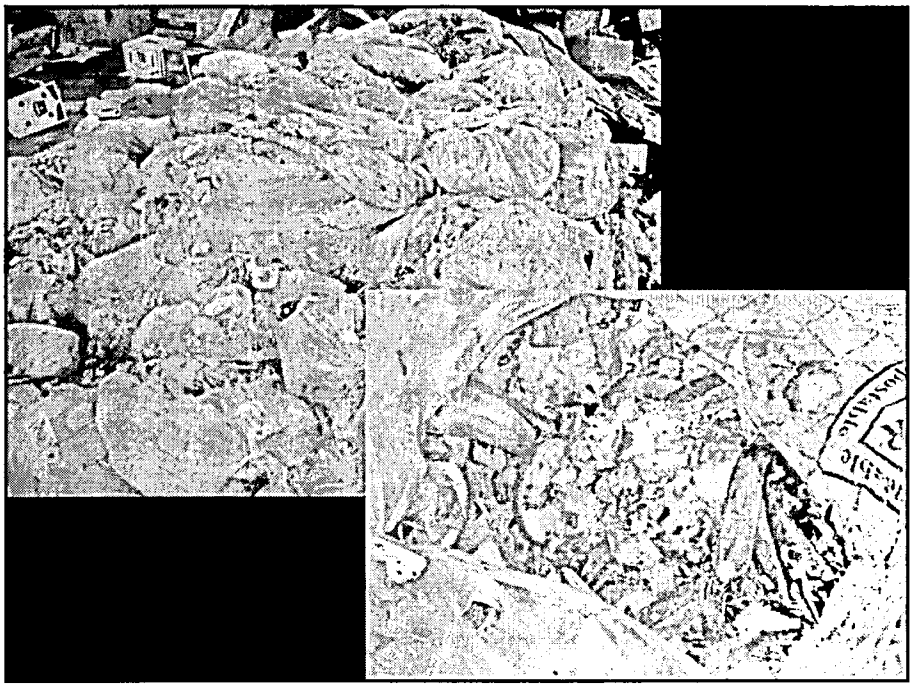


Organic Waste Management Plan

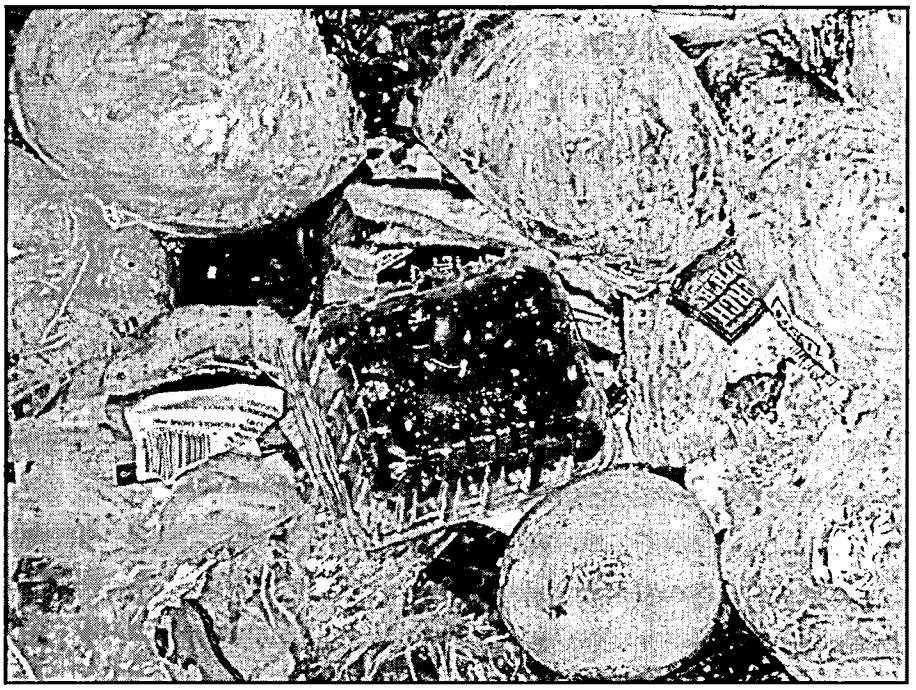
Phase 2: Composting

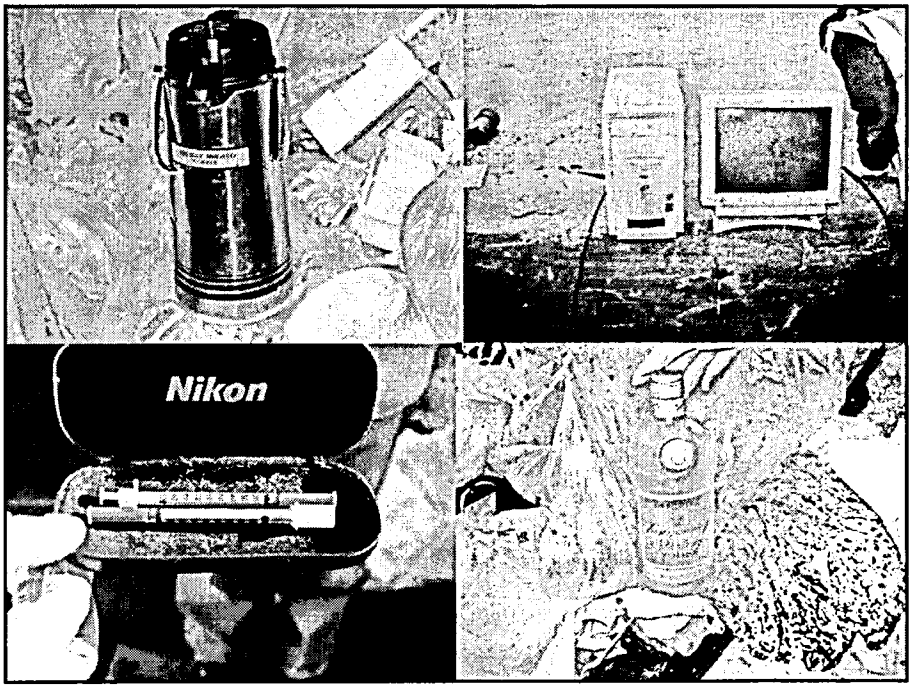
- Secure services contract
- Assist with roll out of collection programs
- Expand region-wide

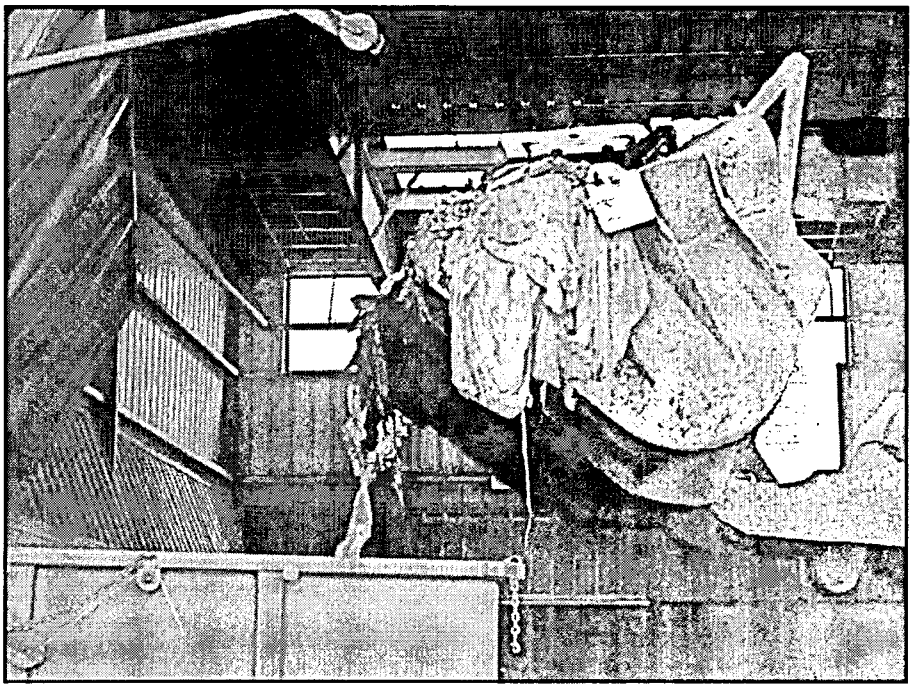


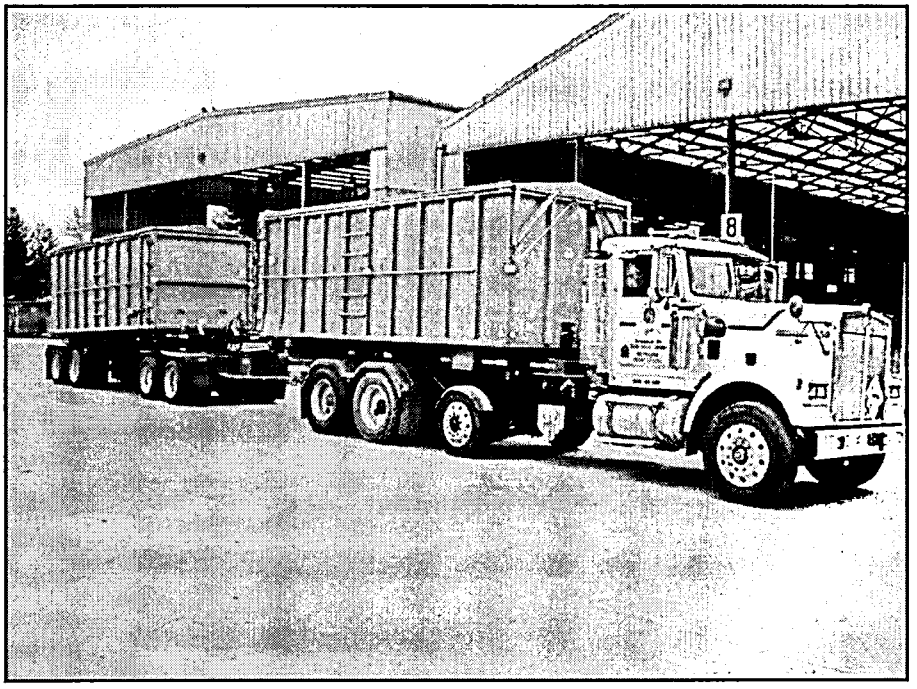


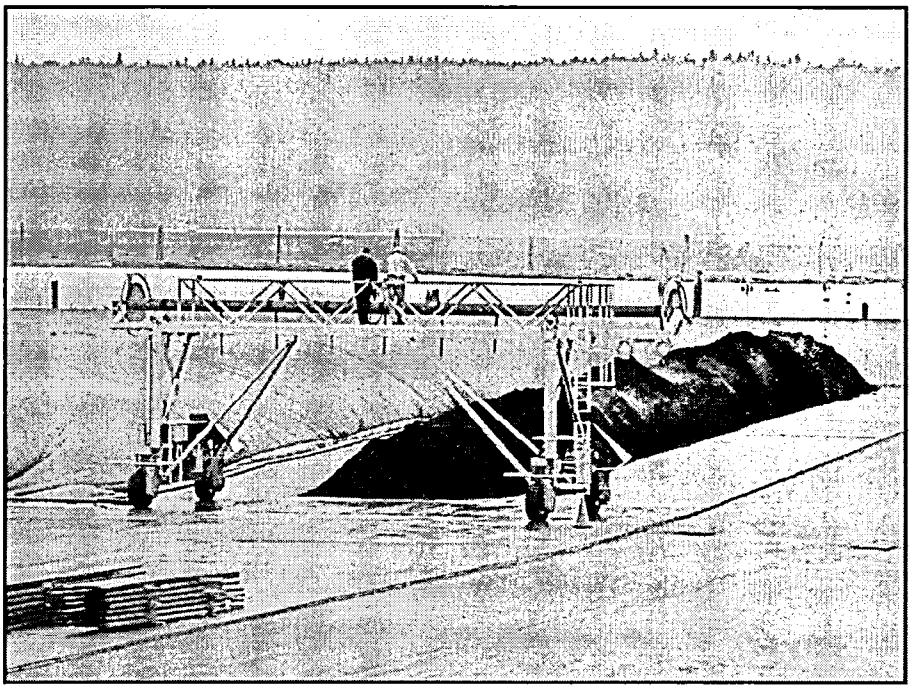

COLUMBIA EMPIRE

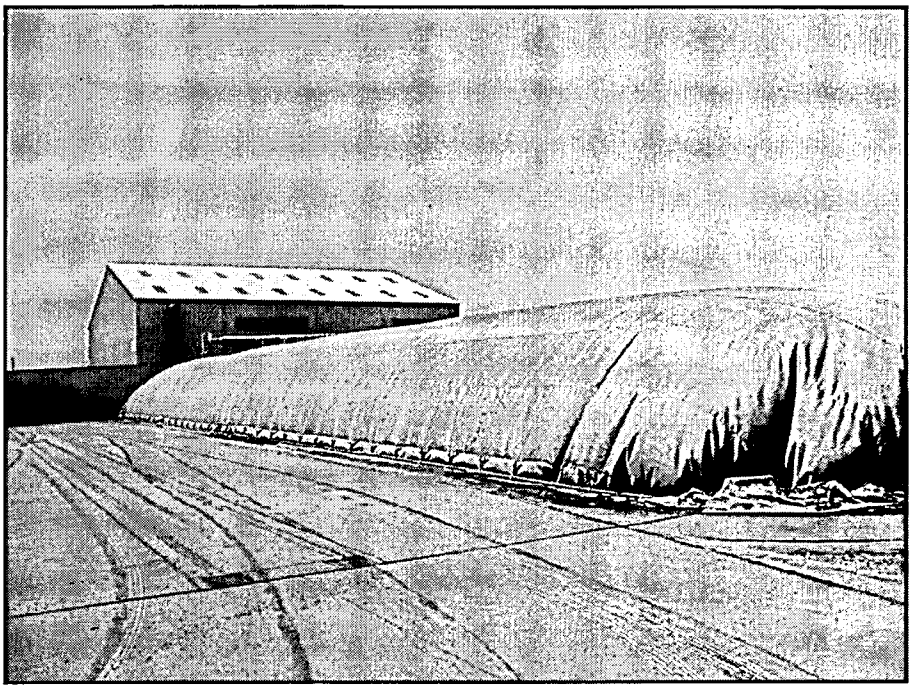


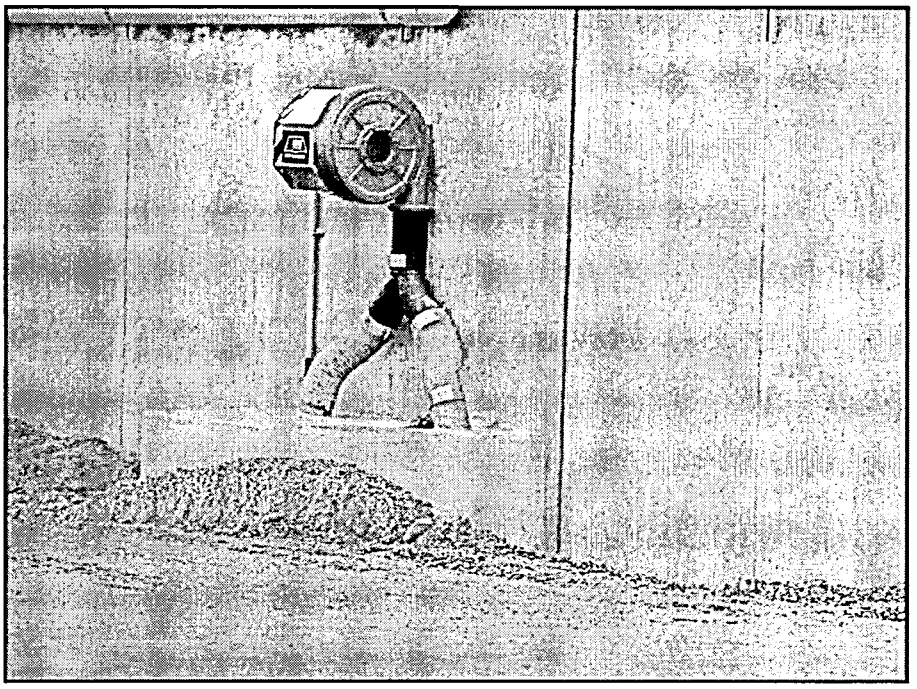

Nikon

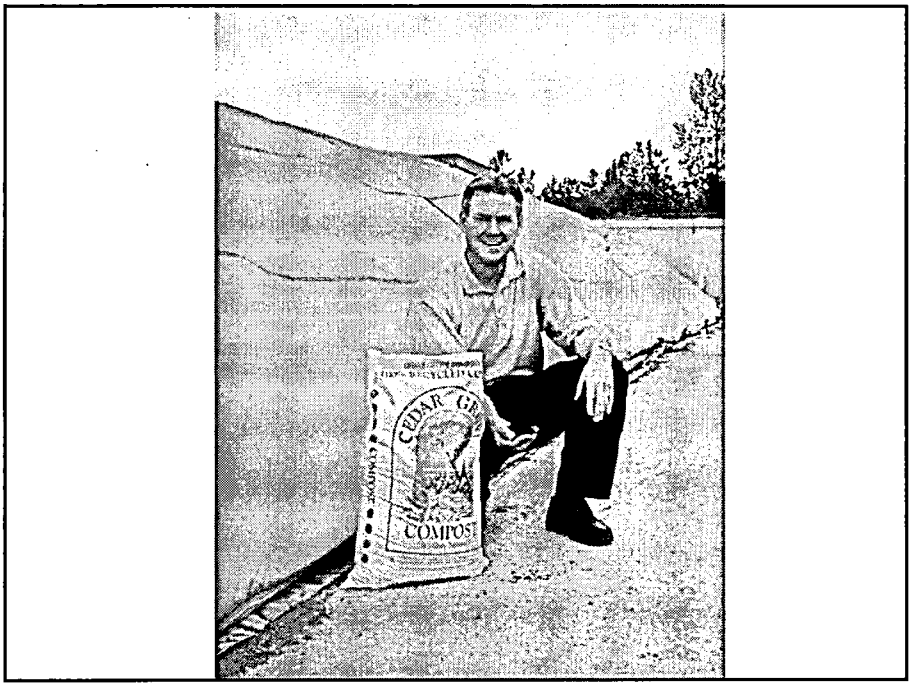











COMPOST

Progress to Date

- February: 25 tons
- March: 96 tons
- April: 170 tons
- May: 397 tons
- June: 725 tons
- July: 800+ tons (estimate)

Next Steps

- Cedar Grove siting local facility
- Capital grant program
- New jurisdictions testing programs

071405c-03

Date: July 7, 2005
To: David Bragdon – President, Metro Council
From: Property owners, UGB Area 93
Cc: Metro Councilors, Michael Jordan, Richard Brenner, Letter signatories
Subject: UGB Area 93 – Request for initiation of enforcement proceedings

We, the undersigned property owners of UGB Area 93, request that the Metro Council immediately initiate enforcement proceedings, under Title 8, Section 3.07.870 of the Metro Code, to bring Multnomah County into compliance with the functional plan.

Area 93 was a part of the December, 2002 UGB expansion. In accordance with the Metro Code, local planning entities were given 24 months, ending, March 5, 2005, to complete the comprehensive planning for their respective areas.

Multnomah County, the planning agency for Area 93, has not met this responsibility and, to our knowledge, has made no effort to comply. This non-responsive conduct is the epitome of, in the language of Title 8, "engaging in a pattern or a practice of decision-making that is inconsistent with the functional plan", and demonstrates "good cause" for initiating the enforcement proceedings. In the 18th month of the two year planning period Multnomah County notified the Metro Council, in writing, that it was not interested in developing Area 93. In a December 9, 2004 meeting with the Multnomah County Commissioners, Metro Councilor Rod Monroe proposed a cooperative effort of the two Agencies to move the planning process forward. During the discussion, one of the County commissioners suggested removing Area 93 from the UGB as a solution. To our knowledge, there has been no positive response from the County to Metro's proposal.

We are four months past the March 5, 2005 planning deadline and, even with Metros foreknowledge that Multnomah County was doing nothing to comply with the deadline, no enforcement action has been taken. We have lost over two years in this process plus the time it will take to complete the enforcement procedure, plus any delays an uncooperative agency, forced to comply, may choose to impose.

Metro's New Area Planning spreadsheet, dated September 28, 2004, listed twenty eight UGB planning projects. Sixteen of those projects had planning deadlines of March 5, 2005 and it was noted on the spreadsheet that twelve of the sixteen (75%) were not expected to complete on time. And according to recent information they did not. This is a discouraging breakdown of the planning process. More discouraging is the fact that no leadership is emerging with a plan of action to put the system back on track.

Evidently, there is no agency that has the over-sight responsibilities and authority to manage the process for a timely implementation. It seems there are a number of jurisdictions that are politically, philosophically or fiscally disinclined to implement the process, and apparently, are not too concerned about the consequences.

The breakdown of this planning procedure has had significant impact on landowners and developers and has disrupted property sale agreements. Land agreements cannot be entered into without reasonable completion dates for final payment.

UGB 93 is Exempt land adjacent to prime farm land covered by large developments. Many Area 93 property owners are eligible to file under Measure 37 and there are others who own one to five acre lots that are zoned for a house. If there are not some hopeful signs of resolving these problems in Area 93 soon, the make up of this area could change significantly.

Signature Sheets

Date: July 7, 2005
To: David Bragdon – President, Metro Council
From: Property owners, UGB Area 93
Subject: UGB Area 93 – Request for initiation of enforcement proceedings

UGB Area 93 property owner signatories:

NAME	ADDRESS*	SIGNATURE
LOE McGRATH	12227 NW HILLER LANE	LOE McGRATH
Sandra McGrath	" " "	Sandra McGrath
Virgil L. McGrath	12121 N.W. Hiller Lane	Virgil L. McGrath
Patricia McGrath	12121 N.W. Hiller Ln. Portland 97229	Patricia McGrath
Doug Reed	12445 NW Hiller Ln. Port. 97229	D-R
Sharon Jones	11835 NW Laidlaw Rd Portland	Mrs. Jones

* All street addresses are in Portland, OR 97229

Signature Sheets

Date: July 7, 2005
To: David Bragdon – President, Metro Council
From: Property owners, UGB Area 93
Subject: UGB Area 93 – Request for initiation of enforcement proceedings

UGB Area 93 property owner signatories:

NAME	ADDRESS*	SIGNATURE
TIMOTHY W. STEWART	12215 NW Laidlaw Portland	
Laurie D. Stewart	12215 NW Laidlaw Rd, Ptld, OR 97229	Laurie D. Stewart
DIANNE ROWE	11804 NW LAIDLAW, PTLD 97229	
Conrad H. Rowe	" " " " "	Conrad H. Rowe
Tommye Jo Reese	12301 NW Laidlaw Rd	Tommye Jo Reese
RICHARD M REESE	12301 NW LAIDLAW RD	Richard M. Reese

* All street addresses are in Portland, OR 97229

Signature Sheets

Date: July 7, 2005
To: David Bragdon – President, Metro Council
From: Property owners, UGB Area 93
Subject: UGB Area 93 – Request for initiation of enforcement proceedings

UGB Area 93 property owner signatories:

NAME	ADDRESS*	SIGNATURE
John Cooper	12003 NW. LAIDLAW RD.	John Cooper
James E. Goddard	12222 NW LAIDLAW RD	James E. Goddard
Robert F. SCHALLBERGER	12050 N.W. LAIDLAW Rd	Robert F. Schallberger
JACQUALINE SCHALLBERGER	12050 N.W. LAIDLAW ROAD	Jacqualine Schallberger
TINA MARIE Higgins	12440 N.W. LAIDLAW Rd	
		SIGNATURE SHEET WILL FOLLOW

* All street addresses are in Portland, OR 97229

Signature Sheets

Date: July 7, 2005
To: David Bragdon – President, Metro Council
From: Property owners, UGB Area 93
Subject: UGB Area 93 – Request for initiation of enforcement proceedings

UGB Area 93 property owner signatories:

NAME	ADDRESS*	SIGNATURE
Gerald S. Harris	12020 N.W. Laidlaw Rd.	
Sarah F. Harris	12020 N.W. Laidlaw Road	
Steve E Thompson	11830 NW Laidlaw Rd	
Marjorie Thompson	11830 N.W. Laidlaw Rd	
Roy Christiansen	11735 N.W Laidlaw Rd	
Marcie Christiansen	11735 N.W Laidlaw Rd	

* All street addresses are in Portland, OR 97229

Signature Sheets

Date: July 7, 2005
To: David Bragdon – President, Metro Council
From: Property owners, UGB Area 93
Subject: UGB Area 93 – Request for initiation of enforcement proceedings

UGB Area 93 property owner signatories:

NAME	ADDRESS*	SIGNATURE
Everett Weaver	11536 N.W Laidlaw	

* All street addresses are in Portland, OR 97229

071405c-04

AMENDMENTS TO ORDINANCE NO. 05-1077A

TO REVISE EXHIBIT E AND MAKE CONFORMING AND TECHNICAL AMENDMENTS TO EXHIBIT C

PART 1. The provisions of Exhibit E to Ordinance No. 05-1077A shall be deleted in their entirety and replaced with the provisions described in Attachment 1 to this amendment.

PART 2(a). Subsection 3(B)(1) of Exhibit C to Ordinance No. 05-1077A shall be amended as follows:

Amend its comprehensive plan and implementing ordinances to adopt the Title 13 Model Ordinance and the Metro Habitat Conservation Areas Map, and demonstrate compliance with the provisions of (a) subsection 4(A)(5) of this title, related to enhanced fish and wildlife protection and management of publicly-owned parks and open spaces that have been designated as natural areas and are not intended for future urban development, and (b) subsection 4(A)(8) of this title, related to the restoration of Habitat Conservation Areas when developed property is undergoing significant redevelopment; or

PART 2(b). Subsection 4(A)(8) of Exhibit C to Ordinance No. 05-1077A shall be amended as follows:

Notwithstanding subsection 4(A)(67) of this title, when a city or county exercises its discretion to approve zoning changes to allow a developed property that contains a Habitat Conservation Area to (1) change from an industrial or heavy commercial zoning designation to a residential or mixed-use/residential designation, or (2) increase the type or density and intensity of development in any area, then the city or county shall apply the provisions of this Section 4 of this title, or provisions that will achieve substantially comparable habitat protection and restoration as do the provisions of this Section 4 of this title. This provision will help to insure that, when developed areas are redeveloped in new ways to further local and regional urban and economic development goals, property owners should restore regionally significant fish and wildlife habitat as part of such redevelopment.

PART 3. Subsection 3(E)(1)(b) of Exhibit C to Ordinance No. 05-1077A shall be amended as follows:

Adopt amendments to the city's or county's comprehensive plan and implementing ordinances to remove the barriers identified pursuant to subsection 3(E)(1)(a) of this title, and shall remove such barriers so that such practices may be used, where practicable, in all regionally significant fish and wildlife habitat; provided, however that such practices shall not be permitted if their use is prohibited by an applicable and required State or Federal permit issued to a unit of local government having jurisdiction in the area, such as a permit required under the Clean Water Act, 33 U.S.C. §§1251 et seq., or the Safe Drinking Water Act, 42 U.S.C. §§300f et seq., and including conditions or plans required by such permit.

PART 4. Subsection 3(G)(1) of Exhibit C to Ordinance No. 05-1077A shall be amended as follows:

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~~ the time~~, whether or not the property owner has submitted a specific request for a development permit~~ of a request for a building permit, grading permit, tree removal permit, land division approval, or some other land use decision;

PART 5. Subsection 3(G)(4) of Exhibit C to Ordinance No. 05-1077A shall be amended as follows:

Ensure that the process provides adequate opportunities for appeals and a fair and equitable dispute resolution process, consistent with state law.

PART 6. The first clause of subsection 4(A)(7) of Exhibit C to Ordinance No. 05-1077A shall be amended as follows:

Except as provided in subsection 4(A)(~~7~~8) of this title, routine repair, maintenance, alteration, rehabilitation, or replacement of existing structures, roadways, driveways, utilities, accessory uses, or other development within Habitat Conservation Areas may be allowed provided that . . .

PART 7. Subsection 4(A)(9) of Exhibit C to Ordinance No. 05-1077A shall be amended as follows:

Any activity within Habitat Conservation Areas that is required to implement a Federal Aviation Administration (FAA) - compliant Wildlife Hazard Management Plan (WHMP) on property owned by the Port of Portland within 10,000 feet of an Aircraft Operating Area, as defined by the FAA, shall be allowed provided that mitigation for any such projects is completed in compliance with mitigation requirements adopted pursuant to subsections 4(B)(1), 4(B)(2)(c), and 4(B)(3) of this title. In addition, habitat mitigation for any development within Habitat Conservation Areas on property owned by the Port of Portland within 10,000 feet of an Aircraft Operating Area, as defined by the FAA, shall be permitted at any property located within the same 6th Field Hydrologic Unit Code subwatershed as delineated by the Unites States Department of Agriculture's Natural Resources Conservation Service (NRCS) without having to demonstrate that on-site mitigation is not practicable, feasible, or appropriate.

PART 8. Subsection 4(A)(10) of Exhibit C to Ordinance No. 05-1077A shall be amended as follows:

Within Habitat Conservation Areas located in Multnomah County Drainage District No. 1, Peninsula Drainage District No. 1, Peninsula Drainage District No. 2, and the area managed by the Sandy Drainage Improvement Company, routine operations, repair, maintenance, reconfiguration, rehabilitation, or replacement of existing drainage~~,~~ and flood control facilities, and existing related facilities, including any structures, pump stations, water control structures, culverts, irrigation systems, roadways, utilities, accessory uses (such as off-load facilities that

facilitate water-based maintenance), erosion control projects, levees, soil and bank stabilization projects, dredging and ditch clearing within the hydraulic cross-section in existing storm water conveyance drainageways, or other water quality and flood storage projects applicable to existing facilities and required to be undertaken pursuant to ORS chapters 547 or 554 or Titles 33 or 44 of the Code of Federal Regulations, shall be allowed provided that:

a. The project is consistent with all other applicable local, state, and federal laws and regulations;

b. ~~Where practicable, t~~The project does not encroach closer to a surface stream or river, wetland, or other body of open water than existing operations and development; ~~and~~

c. ~~Where practicable, vegetation native to the Metro Area is maintained, enhanced and restored, if disturbed; other vegetation is replaced, if disturbed, with any vegetation other than invasive non-native or noxious vegetation;~~ Disturbed areas are replanted with vegetation and no bare soils remain after project completion; the planting of native vegetation and removal of invasive non- native or noxious vegetation is encouraged; and invasive non-native or noxious vegetation shall not be planted; and.

d. Each district submits an annual report, to all local permitting agencies in which the district operates, describing the projects the district completed in the previous year and how those projects complied with all applicable federal and state laws and requirements.

PART 9. Subsection 4(B)(1) of Exhibit C to Ordinance No. 05-1077A shall be amended as follows:

Clear and objective development approval standards consistent with subsection 3(C) of this title that protect Habitat Conservation Areas but which allow limited development within High Habitat Conservation Areas, slightly more development in Moderate Habitat Conservation Areas, and even more development in Low Habitat Conservation Areas. Such standards shall allow (a) property owners to consider reduced building footprints and the use of minimal excavation foundation systems (e.g., pier, post or piling foundation), and (b) the flexible application of local code requirements that may limit a property owner's ability to avoid development in Habitat Conservation Areas, such as setback and landscaping requirements or limits on clustering and the transfer of development rights on-site. The habitat-friendly development practices described in Table 3.07-13c, which are intended to minimize the magnitude of the impact of development in Habitat Conservation Areas, shall be allowed, encouraged, or required to the extent that cities and counties can develop clear and objective standards for their use, unless their use is prohibited by an applicable and required State or Federal permit issued to a unit of local government having jurisdiction in the area, such as a permit required under the Clean Water Act, 33 U.S.C. §§1251 et seq., or the Safe Drinking Water Act, 42 U.S.C. §§300f et seq., and including conditions or plans required by such permit. The clear and objective development standards required by this paragraph also shall require that all development in Habitat Conservation Areas be mitigated to restore the ecological functions that are lost or damaged as a result of the development.

Standards that meet the requirements of this subsection and subsection 3(C) of this title are provided in Section 7 of the Metro Title 13 Model Ordinance[4]; and

PART 10. Subsection 4(B)(2)(b)(iii) of Exhibit C to Ordinance No. 05-1077A shall be amended as follows:

The techniques described in subsection 4(B)(2)(a)(iii) shall be used to demonstrate that development within a Habitat Conservation Area has been minimized. In addition, the magnitude of the impact of development within Habitat Conservation Areas also shall be minimized, such as by use of the habitat-friendly development practices described in Table 3.07-13c, unless the use of such practices is prohibited by an applicable and required State or Federal permit issued to a unit of local government having jurisdiction in the area, such as a permit required under the Clean Water Act, 33 U.S.C. §§1251 et seq., or the Safe Drinking Water Act, 42 U.S.C. §§300f et seq., and including conditions or plans required by such permit; and

PART 11. Throughout Exhibit C to Ordinance No. 05-1077A, the word "vegetated" shall be deleted and replaced with the word "vegetative."

M:\attorney\confidential\07 Land Use\04 2040 Growth Concept\03 UGMFP\02 Stream Protection (Title 3)\02 Goal 5\02 Program\Ord 05-1077A\Ord 05-1077A Amendment revised model ord 071405.doc

[4] On file in the Metro Council office.

ATTACHMENT NO. 1 TO
AMENDMENTS TO ORDINANCE NO. 05-1077A

REVISED EXHIBIT E

METRO CODE CHAPTER 3.07
URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN

TITLE 13 MODEL ORDINANCE

Table of Contents

Section 1. Intent
The purpose of this ordinance is to comply with Section 4 of Title 13 of Metro's Urban Growth Management Functional Plan.

A. To protect and improve the following functions and values that contribute to fish and wildlife habitat in urban streamside areas:

   1. Microclimate and shade;

   2. Stream-flow moderation and water storage;

   3. Bank stabilization, sediment and pollution control;

   4. Large wood recruitment and retention and channel dynamics; and

   5. Organic material sources.

B. To protect and improve the following functions and values that contribute to upland wildlife habitat in new urban growth boundary expansion areas:

   1. Large habitat patches

   2. Interior habitat

   3. Connectivity and proximity to water; and

   4. Connectivity and proximity to other upland habitat areas

C. To establish High, Moderate, and Low Habitat Conservation Areas (HCA) to implement the performance standards of Title 13 of the Urban Growth Management Functional Plan.

D. To provide clear and objective standards and a discretionary review process, applicable to development in Habitat Conservation Areas, in accordance with Statewide Land Use Planning Goal 5.

E. To allow and encourage habitat-friendly development, while minimizing the impact on fish and wildlife habitat functions.

F. To provide mitigation standards for the replacement of ecological functions and values lost through development in Habitat Conservation Areas.

Section 2. Applicability

A. This ordinance applies to all properties containing mapped Habitat Conservation Areas (HCA).

B. All applicants must provide Construction Management Plans, in accordance with Section 5 of this ordinance.

C. Where applicants are proposing development entirely outside of the HCA, but within 100 feet of its boundary, applicants must verify this boundary through the procedures outlined in Section 9 of this ordinance.

D. Where applicants are proposing development within the HCA, they must comply with the Development Standards found in Section 6 and Section 7 of this ordinance, and the Map Verification procedures found in Section 9 of this ordinance. Conditioned Uses, and Activities that are exempt from these requirements, may be found in Section 3 of this ordinance.

E. Applicants proposing to partition or subdivide properties containing HCA must comply with the partition and subdivision standards found in Section 6(F) of this ordinance, or the Discretionary standards in Section 7 of this ordinance; as well as the Map Verification procedure in Section 9 of this ordinance.

F. The Development Standards found in Sections 6 and 7 of this ordinance do not apply to development that occurs entirely outside of any portion of the HCA.

G. The requirements of this ordinance apply in addition to other applicable local, state, regional, and federal development requirements, including those for Water Quality Resource Areas and Flood Management Areas; except that:

1. Applicants using the discretionary review process in Section 7 of this ordinance do not need to engage in any additional review process for Water Quality Resource Areas; and

2. This ordinance shall not impose any mitigation requirements for wetlands beyond those required by federal and state law.

H. "Development," "Partition," and "Subdivision" are defined in Section 11 of this ordinance.

Section 3. Exempt Uses and Conditioned Activities
The following uses and activities are exempt from the requirements of this chapter:

A. Change of ownership.

B. Where construction of a residence was completed before January 1, 2006, the owners or residents shall not be restricted from engaging in any development that was allowed prior to September 22, 2005; unless such development required obtaining a land use decision, or a building, erosion control, or grading permit.

C. A building permit for a phased development project for which the applicant has previously met the application requirements, so long as the site for new construction was identified on the original permit and no new portion of the HCA will be disturbed.

D. Where a property has been subdivided under subsection 6(F) of this ordinance, and the mitigation requirements of subsection 6(E) (and, if appropriate, subsections 7(B) and 7(C)) have been completed for the subdivision, development on the individual lots may proceed without further review under this ordinance. Similarly, where a property has been subdivided under subsection 7(D) of this ordinance, and the mitigation requirements of subsection 7(D) have been completed for the subdivision, development on the individual lots may proceed without further review under this ordinance.

E. Limited types of development, redevelopment, operations, and improvements, including the following:

1. Maintenance, alteration, expansion, repair and replacement of existing structures, provided that;

   a. The rebuilding of existing residential and non-residential structures damaged by fire or other natural hazards occurs within the same foundation lines ("building footprint"); and

   b. The alteration, expansion, or replacement of a structure will not intrude more than 500 sq. ft. into the HCA, and so long as the new intrusion is no closer to the protected water feature than the pre-existing structure or improvement.

2. Minor encroachments not to exceed 120 sq. ft. of impervious surface such as accessory buildings, eave overhangs, exterior building improvements for access and exiting requirements, or other similar features.

3. Temporary and minor clearing not to exceed 200 square feet for the purpose of site investigations and pits for preparing soil profiles, provided that such areas are restored to their original condition when the investigation is complete.

4. Up to 10% of vegetative cover within the original mapped HCA on a lot or parcel may be removed, provided that no more than 20,000 square feet is removed; and provided that if more than 10% has been removed at the time of a development application, the review process shall use the original mapped HCA, subject to map verification, as the basis for determining the Maximum Disturbance Area in Section 6(C) of this ordinance and Mitigation standards in Sections 6(E) and 7(B), 7(C), 7(D)(1)(b) and 7(D)(2)(d) of this ordinance.

5. Maintenance of existing gardens, pastures, lawns and landscape perimeters, including the installation of new irrigation systems within existing gardens, pastures, lawns, and landscape perimeters.

6. Removal of plants identified as nuisance or prohibited plants on the *Metro Native Plant List* and the planting or propagation of plants identified as native plants on the *Metro Native Plant List.* Handheld tools must be used to remove nuisance or prohibited plants, and after such removal all open soil areas greater than 25 square feet must be replanted.

7. Farming practices and farm uses on land within an exclusive farm use zone established under ORS 215.203, within an area designated as marginal land under ORS 197.247 (1991 Edition), or on other agricultural lands, except that this exemption does not apply to buildings associated with farm practices or farm uses. "Farming practice" as used in this subsection shall have the meaning set out in ORS 30.930. "Farm use" as used in this subsection shall have the meaning set out in ORS 215.203.

8. Forest practices on forestlands situated outside the Metro UGB, except as provided in ORS 527.722(2), (3), and (4). "Forest practices" and "forestlands" as used in this subsection shall have the meaning set out in ORS 30.930.

9. Maintenance, alteration, repair, and replacement of roads and utilities when no additional incursion into the HCA is proposed.

10. Maintenance and repair of existing streets, railroads, shipping terminals, and utilities within rights-of-way, easements, and access roads.

11. Existing water-dependent uses that can only be carried out on, in, or adjacent to water because they require access to the water for waterborne transportation or recreation.

12. Operation, maintenance, and repair of manmade water control facilities such as irrigation and drainage ditches, constructed ponds or lakes, wastewater facilities, and stormwater pretreatment facilities.

13. Projects with the sole purpose of restoring or enhancing wetlands, streams, or fish and wildlife habitat areas, provided that the project is part of an approved local, state, or federal restoration or enhancement plan.

14. Low-impact outdoor recreation facilities for public use, outside of Water Quality Resource Areas, including, but not limited to, multi-use paths, access ways, trails, picnic areas, or interpretive and educational displays and overlooks that include benches and outdoor furniture, provided that the facility meets the following requirements:

    a. It contains less than 500 sq. ft. of new impervious surface; and,

    b. Its trails shall be constructed using non-hazardous, pervious materials, with a maximum width of four feet.

F. Emergency procedures or activities undertaken which are necessary to remove or abate hazards and nuisances or for the protection of public health, safety and welfare; provided that such remedial or preventative action must take place within a timeframe too short to allow for compliance with the requirements of this ordinance. After the emergency, the person or agency undertaking the action shall fully restore any impacts to the HCA resulting from the emergency action. Hazards that may be removed or abated include those required to maintain aircraft safety.

G. Multnomah County Drainage District - Within Habitat Conservation Areas located in Multnomah County Drainage District No. 1, Peninsula Drainage District No. 1, Peninsula Drainage District No. 2, and the area managed by the Sandy Drainage Improvement Company, routine operations, repair, maintenance, reconfiguration, rehabilitation, or replacement of existing drainage and flood control facilities, and existing related facilities, including any structures, pump stations, water control structures, culverts, irrigation systems, roadways, utilities, accessory uses (such as off-load facilities that facilitate water-based maintenance), erosion control projects, levees, soil and bank stabilization projects, dredging and ditch clearing within the hydraulic cross-section in existing storm water conveyance drainageways, or other water quality and flood storage projects applicable to existing facilities and required to be undertaken pursuant to ORS chapters 547 or 554 or Titles 33 or 44 of the Code of Federal Regulations, shall be allowed, provided that:

    1. The project is consistent with all other applicable local, state, and federal laws and regulations;

    2. The project does not encroach closer to a surface stream or river, wetland, or other body of open water than existing operations and development;

3. Disturbed areas are replanted with vegetation and no bare soils remain after project completion; the planting of native vegetation and removal of invasive non-native or noxious vegetation is encouraged; invasive non-native or noxious vegetation shall not be planted; and,

4. Each district submits an annual report, to all local permitting agencies in which the district operates, describing the projects the district completed in the previous year and how those projects complied with all applicable federal and state laws and requirements.

H. Wildlife Hazard Management Areas - Any activity that is required to implement a Federal Aviation Administration (FAA)-compliant Wildlife Hazard Management Plan (WHMP) on property owned by the Port of Portland within 10,000 feet of an Aircraft Operating Area, as defined by the FAA, shall not have to comply with subsections 6(B-D), 7(D)(1)(a)(3) and (4), or 7(D)(2)(b), (c) and (e) of this ordinance. For disturbance within the HCA on property owned by the Port of Portland within 10,000 feet of an Aircraft Operating Area, as defined by the FAA, the applicant shall choose, at its sole discretion, between complying with subsection 6(E) of this ordinance or complying with subsection 7(C), or subsections 7(D)(1)(b) and 7(D)(2)(d) of this ordinance. Mitigation required pursuant to subsection 6(E) or 7(C), or 7(D)(1)(b) and 7(D)(2)(d) of this ordinance as part of any development within the HCA on property owned by the Port of Portland within 10,000 feet of an Aircraft Operating Area, as defined by the FAA, shall be permitted at any property located:

1. Within the same 6th Field Hydrologic Unit Code subwatershed as delineated by the United States Department of Agriculture's Natural Resources Conservation Service (NRCS) if on-site mitigation would conflict with FAA-compliant WHMP; or

2. Outside of the same 6th Field Hydrologic Unit Code subwatershed as delineated by the United States Department of Agriculture's Natural Resources Conservation Service (NRCS) only if the applicant follows the discretionary review process in section 7 of this ordinance.

Section 4. Prohibitions

A. The planting of any invasive non-native or noxious vegetation is prohibited within the HCA.

B. Outside storage of materials is prohibited within the HCA, unless such storage began before the effective date of this ordinance; or, unless such storage is approved during development review under either Section 6 or Section 7 of this ordinance.

Section 5. Construction Management Plans

In order to ensure that trees and vegetation within HCAs are not damaged during construction, all applicants, even those not developing within an HCA, shall provide a construction management plan that includes the following information:

A. Location of site access and egress that construction equipment will use;

B. Equipment and material staging and stockpile areas;

C. Erosion and sediment control measures; and

D. Measures to protect trees and other vegetation located within the HCA, but outside of the disturbance area approved under the provisions of section 6 or section 7 of this ordinance.

Section 6. Development Standards
The development standards described in this section apply to all development and redevelopment that occurs entirely, or partially, within Habitat Conservation Areas, unless such development is exempt under Section 3, or, unless the applicant chooses to follow the discretionary process in Section 7 of this ordinance. This section also applies to subdivisions and partitions of properties that contain HCAs.

Application for a land use, building, grading, land division, or other development permit through the clear and objective process may be an administrative decision. [*Insert city/county decision-type here.*]

A. **Application Requirements.** Applications for a building permit or development permit must provide a development plan and accompanying narrative explanation that includes the following information in addition to any other building permit or development permit requirements. All of the application requirements must be met prior to approval of a building or development permit.

1. Applicants must verify the HCA on their property as described in Section 9 of this ordinance.

2. For the entire subject property (HCA and non-HCA), applicants must submit a scale map of the property that includes:

   a. Location of all High, Moderate, and Low HCAs on the property;

   b. Outline of any existing disturbance area, including the location of existing adjacent streets and paved areas, utilities, culverts, stormwater management facilities, or bridges;

   c. Location of any wetlands or water bodies on the property, including a delineation of the Water Quality Resource Area;

   d. Location of 100 year floodplain and floodway boundary as defined by the Federal Emergency Management Agency (FEMA) and the area of the 1996 flood inundation; and

   e. Topography shown by contour lines of 2-ft. intervals for slopes less than 15% and by 10 ft. intervals for slopes 15% or greater. On properties that are two acres or larger, such a contour map is required only for the portion of the property to be developed.

3. Detailed site plan of proposed development outlining total disturbance area, including, proposed building footprints, site property improvements, utilities and landscaping.

4. The following additional information shall be provided about the HCA:

   a. For properties containing less than one acre of HCA, the location of all trees within the HCA that are greater than six inches diameter at breast height (DBH), shall be identified by size and species. For properties containing one acre or more of HCA, the applicant may approximate the number of trees and the diameter range, and provide a listing of the dominant species;

   b. For proposed disturbance areas containing less than one acre of HCA, all trees with a diameter of six inches or greater that will be removed shall be specifically identified as to diameter at breast height (DBH) and species. For proposed disturbance areas containing one acre or more of HCA an approximate of the number of trees, their diameters and the dominant species; and

c. If grading will occur within the HCA, a grading plan showing the proposed alteration of the ground at 1-ft. vertical contours in areas of slopes less than 5%, and 2-ft. vertical contours in areas of slopes 6-15%, and at 5-ft. vertical contours of slopes 15% or greater.

B. **Methods for avoiding Habitat Conservation Areas.** The following habitat-friendly development practices may be used to avoid or minimize development within HCAs by allowing flexible site design. [*Cities/counties shall allow the following methods to avoid, or minimize, development within HCAs*]:

1. ***Building setback flexibility*** to avoid, or minimize, development within HCAs. The minimum building setback of the base zone may be reduced to any distance between the base zone minimum and zero, unless this reduction conflicts with applicable fire or life safety requirements.

2. ***Flexible landscaping requirements*** to avoid, or minimize, development within HCAs.

   a. Landscaping requirements, apart from those required for parking lots or street berms, may be met by preserving the HCA.

   b. Facilities that infiltrate stormwater onsite, including the associated piping, may be placed within the HCA so long as the forest canopy and the areas within the driplines of the trees are not disturbed. Such facilities may include, but are not limited to, vegetated swales, rain gardens, vegetated filter strip, and vegetated infiltration basins. Only native vegetation may be planted in these facilities.

3. ***Flexible Site Design*** (On-site Density Transfer) to avoid or minimize development within HCAs.

   a. *Residential.* For residential development proposals on lands with a HCA, a transfer of density within the property site is permitted. [*Cities/counties may establish the appropriate percentage of density that may be transferred, provided that it is not less than 50% of the maximum density that would have been permitted in the portion of property within the HCA under the applicable zoning code requirements.]*

   b. In order to accommodate the transferred density, dimensional standards and lot sizes may be adjusted by no more than 30 percent. [*Cities/counties may set the percentage of the adjustment, provided that it is no lower than 20%.*]

   c. *Commercial and Industrial Zones.* For on-site density transfers in Commercial or Industrial zones, the transfer credit is 10,000 sq. ft floor area ratio (FAR) per acre of land within the HCA.

   d. *Mixed-Use Zones.* Within mixed-use zones the density transfer credit can be factored using either 3(a) or 3(c) above, depending on the type of development proposed.

   e. All remaining HCA shall be permanently restricted from development and maintained for habitat functions, such as by making a public dedication or executing a restrictive covenant.

4. ***Site Capacity Incentives.*** The following site capacity standards provide flexibility in the design of land divisions in order to allow ways to better protect HCAs.

a. Density bonus if HCA is protected. In multi-family residential zones, a 25 percent density bonus may be allowed for any development of four (4) or more dwelling units if 75 percent or more of the HCA on a site is permanently preserved, such as by making a public dedication or executing a restrictive covenant. The bonus density shall be in addition to the base density allowed in the applicable zoning district.

b. All area within a HCA, or any portion of it, may be subtracted from the calculations of net size for purposes of determining minimum density provided that such area is protected, such as by making a public dedication or executing a restrictive covenant. This provision may only be applied to properties that were inside the Metro UGB on January 1, 2002.

5. *[Cities/Counties may allow the following tools for avoiding or minimizing development in HCAs]:*

Transfer of development rights (off-site) in residential zones. Transfer of development rights preserves development opportunities and reduces development pressure on environmentally-sensitive properties. The regulations described below allow development rights to be transferred from properties with HCAs to off-site areas that can accommodate the additional density without environmental conflict. Transfer of development rights between properties is allowed as follows. "Development rights" are the number of potential dwelling units that would be allowed on the property by the base zone.

a. Sending properties. Properties where at least 50 percent of the property is within a HCA may transfer development rights.

b. Receiving Properties.

Option 1: All properties in 2040 Mixed-Use areas may receive development rights from sending properties except:

i. Where any portion of the receiving property is within an HCA; or

ii. Where any portion of the receiving property is in the undeveloped 100-year floodplain as currently defined by the Federal Emergency Management Agency (FEMA).

Option 2: City or county may identify receiving properties upon adoption of this ordinance to be selected using the criteria in Option 1. The resulting map or criteria to identify receiving properties may include fewer properties than Option 1.

a. Maximum density. The density of the receiving property may not exceed 200 percent of the allowable density of the receiving property.

b. In order to accommodate the transferred density, dimensional standards and lot sizes may be adjusted by no more than 30 percent.

c, Transfer procedure. Transfer of development rights is allowed as follows:

i. Covenant required. The owner of the sending property must execute a covenant with the authorizing authority that reflects the reduced development potential on the sending property. The covenant must be recorded before approval of the final plan. Density

transfers shall be recorded on the title of the sending lot in the HCA and on the title of the transfer (receiving) property.

ii. Sending property included. The sending property must be a part of the application for development on the receiving property. A copy of the covenant for the sending property must be included with the application.

iii. City or county may purchase development rights from sending properties to place in a development rights bank for later sale to developers to use on receiving properties.

C. **Development within HCAs.** The following development standards apply to all development that occurs within the HCA except for exempt uses and conditioned activities addressed in Section 3 of this ordinance and utility facilities addressed in subsection 6(D) of this ordinance. If all development occurs outside of an HCA on a property, these standards do not apply. These standards also do not apply to development that occurs pursuant to the standards established by the alternative discretionary development standards in Section 7 of this ordinance. (Note: Applicants seeking to develop within a Water Quality Resource Area must utilize either the discretionary standards located in Section 7 of this ordinance or the review standards for Metro's Title 3 Water Quality Resource Areas).

1. ***Disturbance area limitations*** to minimize impact to HCA.

a. *Single-family residential.* The maximum disturbance area (MDA) allowed within HCAs is determined by subtracting the area of the lot or parcel outside of the HCAs from the total disturbance area (TDA) calculated as described in Table 1 below.
(TDA – Area outside the HCA = MDA)

i. Moderate and Low HCAs are subject to the same disturbance area limitations.

ii. Calculation of maximum disturbance area. If a lot or parcel includes both High and Moderate/Low HCAs then:

(A) If there is more High HCA than Moderate/Low HCA on the lot or parcel, then the MDA shall be calculated as if all of the Moderate/Low and High HCA were High, per Table 1 below; or

(B) If there is more Moderate/Low HCA than High HCA on the lot or parcel, then the MDA shall be calculated as if all of the Moderate/Low and High HCA were Moderate/Low, per Table 1 below.

iii. Location of MDA. If a lot or parcel includes different types of HCAs, then:

(A) The amount of development that may occur within the High HCA is equal to the total disturbance area minus the area of the lot or parcel outside of the High HCA (TDA – non-High HCA = MDA). If the area of the lot or parcel outside the High HCA is greater than the total disturbance area, then development shall not occur within the High HCA:

(Area outside High HCA > TDA = no development in High HCA);

(B) The amount of development that may occur within the Moderate HCA is equal to the total disturbance area minus the area of the lot or parcel outside of the High and Moderate HCA (TDA – (Low HCA + non-HCA) = MDA). If the area of the lot or parcel outside the Moderate HCA is greater than the total disturbance area, then development shall not occur within the Moderate HCA:

(Area outside Moderate HCA > TDA = no development in Moderate HCA);

and

(C) The amount of development that may occur within the Low HCA is equal to the total disturbance area minus the area of the lot or parcel outside of the High, Moderate and Low HCA (TDA – non-HCA = MDA). If the area of the lot or parcel outside the Low HCA is greater than the total disturbance area, then development shall not occur within the Low HCA:

(Area outside Low HCA > TDA = no development in Low HCA).

Table 1. HCA Total Disturbance Area Limitations for SFR.

HCA type	Total Disturbance Area
High	50 percent of the lot area, up to maximum of 5,000 sq. ft.
Moderate/Low	65 percent of the lot area, up to maximum of 6,000 sq. ft.

b. *All other zones.* The maximum disturbance area (MDA) allowed by right within Low, Moderate and High HCAs in these zones is found in Table 2 below; this MDA is subject to the mitigation requirements described in subsection 6(E) of this ordinance.

Table 2. HCA Disturbance Area Limitations for all zones other than SFR.

HCA type	Maximum Disturbance Area
High	10 percent of HCA on site
Moderate	15 percent of HCA on site
Low	50 percent of HCA on site

c. Development within an HCA in accordance with the provisions of this ordinance shall not result in a change of the HCA status of such developed areas on a property. In the case of a later development request seeking to develop within previously undisturbed HCAs on a property where a prior development request was subject to the provisions of this ordinance, the calculation of the MDA allowed on the property shall be based on the location of the HCA, notwithstanding the location of any authorized development within the HCA.

2. ***Protection of habitat during site development.*** During development of any site containing a HCA, the following standards apply:

a. Work areas shall be marked to reduce potential damage to the HCA.

b. Trees in HCAs shall not be used as anchors for stabilizing construction equipment.

c. Native soils disturbed during development shall be conserved on the property.

d. An erosion and sediment control plan is required and shall be prepared in compliance with requirements set forth in the [*locally adopted Title 3 erosion control regulations*];

e. Prior to construction, the HCA that is to remain undeveloped shall be flagged, fenced, or otherwise marked and shall remain undisturbed.

f. All work on the property shall conform to the Construction Management Plan described in Section 5 of this ordinance.

D. **Utility facility standards.** The following disturbance area limitations apply to new utilities, private connections to existing or new utility lines, and upgrade

a. The disturbance area for utility facility connections to utility facilities is no greater than 10 feet wide.

b. The disturbance area for the upgrade of existing utility facilities is no greater than 15 feet wide.

c. The disturbance area for new underground utility facilities is no greater than 25 feet wide and disturbs no more than 200 linear feet of Water Quality Resource Area, within any 1,000 linear foot stretch of Water Quality Resource Area; provided that this disturbance area shall be restored with the exception of necessary access points to the utility facility.

d. No fill or excavation is allowed within the ordinary high water mark of a stream, unless a permit is obtained from the US Army Corps of Engineers through the Standard Local Operating Procedures for Endangered Species (SLOPES) process.

e. Mitigation is required as described in subsection E below.

E. **Mitigation requirements for disturbance in HCAs.** In order to achieve the goal of reestablishing forested canopy that meets the ecological values and functions described in section 1(A) of this ordinance, tree replacement and vegetation planting are required when development intrudes into a HCA according to the following standards, except for wetlands mitigation requirements imposed by state and federal law.

1. ***Required plants and plant densities.*** All trees, shrubs and ground cover must be native plants selected from the *Metro Native Plant List.* An applicant must meet Mitigation Option 1 or 2, whichever results in more tree plantings; except that where the disturbance area is one acre or more, the applicant shall comply with Mitigation Option 2:

a. *Mitigation Option 1.* In this option, the mitigation requirement is calculated based on the number and size of trees that are removed from the site. Trees that are removed from the site must be replaced as shown in Table 3. Conifers must be replaced with conifers. Bare ground must be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

///

Table 3. Tree Replacement

Size of tree to be removed (inches in diameter)	Number of trees and shrubs to be planted
6 to 12	2 trees and 3 shrubs
13 to 18	3 trees and 6 shrubs
19 to 24	5 trees and 12 shrubs
25 to 30	7 trees and 18 shrubs
over 30	10 trees and 30 shrubs

b. *Mitigation Option 2.* In this option, the mitigation requirement is calculated based on the size of the disturbance area within a HCA. Native trees and shrubs are required to be planted at a rate of five (5) trees and twenty-five (25) shrubs per every 500 square feet of disturbance area (calculated by dividing the number of square feet of disturbance area by 500, and then multiplying that result times five trees and 25 shrubs, and rounding all fractions to the nearest whole number of trees and shrubs; for example, if there will be 330 square feet of disturbance area, then 330 divided by 500 equals .66, and .66 times five equals 3.3, so three trees must be planted, and .66 times 25 equals 16.5, so 17 shrubs must be planted). Bare ground must be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

2. ***Plant size.*** Replacement trees must be at least one-half inch in caliper, measured at 6 inches above the ground level for field grown trees or above the soil line for container grown trees (the one-half inch minimum size may be an average caliper measure, recognizing that trees are not uniformly round), unless they are oak or madrone which may be one gallon size. Shrubs must be in at least a 1-gallon container or the equivalent in ball and burlap and must be at least 12 inches in height.

3. ***Plant spacing.*** Trees shall be planted between 8 and 12 feet on-center and shrubs shall be planted between 4 and 5 feet on center, or clustered in single species groups of no more than four (4) plants, with each cluster planted between 8 and 10 feet on center. When planting near existing trees, the dripline of the existing tree shall be the starting point for plant spacing measurements.

4. ***Plant diversity.*** Shrubs must consist of at least two (2) different species. If 10 trees or more are planted, then no more than 50% of the trees may be of the same genus.

5. ***Location of mitigation area.*** All vegetation must be planted on the applicant's site within the HCA or in an area contiguous to the HCA; provided, however, that if the vegetation is planted outside of the HCA then the applicant shall preserve the contiguous area by executing a deed restriction, such as a restrictive covenant. *(Note: an off-site mitigation option is provided in a streamlined discretionary review process).*

6. ***Invasive vegetation.*** Invasive non-native or noxious vegetation must be removed within the mitigation area prior to planting.

7. ***Tree and shrub survival.*** A minimum of 80% of the trees and shrubs planted shall remain alive on the fifth anniversary of the date that the mitigation planting is completed.

8. ***Monitoring and reporting.*** Monitoring of the mitigation site is the ongoing responsibility of the property owner. Plants that die must be replaced in kind. For a period of five years, the property

owner must submit an annual report to (list appropriate city or county department) documenting the survival of the trees and shrubs on the mitigation site. *[Optional: the city or county may require the property owner to post a performance bond in the amount sufficient to cover costs of plant material and labor associated with site preparation, planting, and maintenance in lieu of the monitoring and reporting requirement.]*

9. To enhance survival of the mitigation plantings, the following practices are required:

   a. Mulching. Mulch new plantings a minimum of three inches in depth and 18 inches in diameter to retain moisture and discourage weed growth.

   b. Irrigation. Water new plantings one inch per week between June 15th to October 15th, for the three years following planting.

   c. Weed control. Remove, or control, non-native or noxious vegetation throughout maintenance period.

10. To enhance survival of tree replacement and vegetation plantings, the following practices are recommended:

   a. Planting season. Plant bare root trees between December 1st and February 28th, and potted plants between October 15th and April 30th.

   b. Wildlife protection. Use plant sleeves or fencing to protect trees and shrubs against wildlife browsing and resulting damage to plants.

F. **Standards for Partitions and Subdivisions.** The purpose of this section is to allow for partitions in a manner that limits the total amount of allowable development within HCAs on the partitioned parcels; and to require that new subdivision plats delineate and show the Moderate and High HCAs as a separate unbuildable tract.

1. ***Standards for Partitions containing HCAs*:**

   a. When partitioning a property into parcels, an applicant shall verify the boundaries of the HCA on the property according to Section 9 of this ordinance.

   b. Applicants who are partitioning, but are not simultaneously developing their property, do not need to comply with Section 5 of this ordinance.

   c. When partitioning a property into parcels there shall be no more than a 30% percentage point difference in the percentage of HCA on the parcels; for example, a partition that produces two parcels, one that is 55% HCA and the other that is 35% HCA is permissible; whereas a partition that produces two parcels, one that is 75% HCA and the other that is 30% HCA is not permissible. However, an applicant may partition a property such that at least 90% of the original property's High HCA and 80% of its moderate HCA is on a separate unbuildable parcel, protected by a restrictive covenant or a public dedication.

   d. Subsequent development on any parcels containing HCAs shall comply with Section 5, and the development standards of either section 6 or section 7 of this ordinance.

2. ***Standards for Subdivisions containing HCAs:***

a. Applicants who are subdividing, but not developing, must verify the location of the HCA boundary according to Section 9 of this ordinance, and comply with this subsection 6(F); such applicants do not need to comply with Section 5 of this ordinance. Applicants who are subdividing, but not developing, property may:

i. Complete the mitigation requirements of subsection 6(E) of this ordinance (and, if appropriate, subsections 7(B) and 7(C)) and thereby exempt all subsequent development on lots containing HCA from further review under this ordinance; or

ii. Not complete the mitigation requirements of subsections 6(E), 7(B), or 7(C) of this ordinance, thus requiring that any subsequent development within an HCA be subject to this ordinance.

b. Applicants who are subdividing and developing properties must comply with Sections 5, 6, and 9 of this ordinance.

c. When a property containing any HCA is subdivided, this ordinance requires that new subdivision plats delineate and show the Moderate and High HCA as a separate unbuildable tract according to the following process:

i. The applicant must place at least 90% of the High HCA and 80% of the Moderate HCA in a separate tract.

(A) If over 50% of the HCA on a property is of a High designation, the entire calculation is for High (i.e., 90% of the HCA must be placed within a separate tract).

(B) If over 50% of the HCA on a property is of a Moderate designation, the entire calculation is for Moderate (i.e., 80% of the HCA must be placed within a separate tract).

ii. If the tract is adjacent to the backyard for residences, the minimum backyard requirement is reduced to 10 ft.

iii. The standards for subdivisions in Moderate and High HCAs shall apply in addition to the requirements of the city/county land division ordinance and zoning ordinance.

iv. Prior to preliminary plat approval, the Moderate and/or High HCA shall be shown as a separate tract, which shall not be a part of any lot used for construction of a dwelling unit.

v. Prior to final plat approval, ownership of the HCA tract shall be identified to distinguish it from lots intended for sale. The tract may be identified as any one of the following:

(A) Private natural area held by the owner or homeowners association by a restrictive covenant; or

(B) For residential subdivisions, private natural area subject to an easement conveying storm and surface water management rights to the city/county and preventing the

owner of the tract from activities and uses inconsistent with the purpose of this ordinance; or

(C) At the owner's option, public natural area where the tract has been dedicated to the city/county or other governmental unit, or a private non-profit with the mission of land conservation.

Section 7. Alternative Discretionary Development Standards

Applicants may choose to use the alternative discretionary development standards provided in this section rather than the development standards provided in section 6 of this ordinance. There are four discretionary review processes provided in this section: subsection A provides discretionary review for an applicant seeking only to partition a property; subsection B provides discretionary review for an applicant who will comply with the development standards in section 6 of this ordinance, except that the applicant seeks to meet the mitigation requirements of that section on a different property from the property on which a HCA will be disturbed; subsection C provides discretionary review for an applicant who will comply with the development standards in section 6 of this ordinance, except that the applicant seeks to meet the mitigation requirements of that section by proportionally varying the number and size of plants required to be planted; and subsection D provides general discretionary review standards applicable to an applicant seeking some other type of discretionary approval of development that will disturb an HCA.

A. **Discretionary Review for Partitions.** An applicant seeking to partition land in ways that do not accord with the standards established in Section 6(F)(1) may seek review under this subsection 7(A).

1. The applicant shall verify the boundaries of the HCAs on the property according to Section 9 of this ordinance.

2. The applicant shall submit the following application materials:

   a. A scale map of the entire property that includes:

      i. Location of all High, Moderate, and Low HCA on the property;

      ii. Location of any wetlands or water bodies on the property, including a delineation of the Water Quality Resource Area;

      iii. Location of 100 year floodplain and floodway boundary as defined by the Federal Emergency Management Agency (FEMA) and the area of the 1996 flood inundation; and

      iv. A delineation of the proposed partition.

   b. A written and documented explanation of how and why the proposed partition satisfies the approval criteria in subsection 7(A)(3). Such written documentation shall include an alternatives analysis of different possible partition plans, based on the characteristics and zoning of the property.

3. Approval Criteria. A partition shall be approved under this subsection 7(A) provided that the applicant demonstrates that it is not practicable to comply with the partition standards in Section 6(F)(1) of this ordinance, and that the applicant's partition plan will result in the smallest

practicable percentage point difference in the percentage of HCA on the parcels created by the partition (this will minimize the amount of allowable disturbance areas within HCAs on the parcels, assuming that the development standards in this Section 6 were applied to future development on such parcels).

4. Subsequent development on any parcels created by the partition and containing HCAs shall comply with all provisions of this ordinance, except that the map verification completed and approved as part of the partition may be used to satisfy the requirements of section 9 of this ordinance for any such development.

B. **Discretionary Review To Approve Off-Site Mitigation.** An applicant seeking discretionary approval only for off-site mitigation within the same subwatershed (6th Field Hydrologic Unit Code), but who will comply with all other provisions of Section 6 of this ordinance, may seek review under this subsection 7(B). (An applicant who seeks to conduct the mitigation in a different subwatershed may apply for such approval under subsection 7(D) of this ordinance.)

1. The applicant shall submit:

   a. A calculation of the number of trees and shrubs the applicant is required to plant under Section 6(E) of this ordinance; and

   b. A map and accompanying narrative that details the following:

      i. The number of trees and shrubs that can be planted on-site;

      ii. The on-site location where those trees and shrubs can be planted;

      iii. An explanation of why it is not practicable for the remainder of the mitigation to occur on-site; and

      iv. The proposed location for off-site mitigation and documentation that the applicant can carry out and ensure the success of the mitigation, including documentation that the applicant possesses legal authority to conduct and maintain the mitigation, such as having a sufficient ownership interest in the mitigation site, and, if the mitigation is not within a HCA, documentation that the mitigation site will be protected after the monitoring period expires, such as through the use of a restrictive covenant.

2. Approval Criteria. Off-site mitigation shall be approved under this subsection 7(B) provided that the applicant has demonstrated that it is not practicable to complete the mitigation on-site and that the applicant has documented that it can carry out and ensure the success of the off-site mitigation on a property within the same subwatershed (6th Field Hydrologic Unit Code) as the related disturbed HCA.

3. Mitigation approved under this subsection 7(B) of this ordinance shall be subject to all of the requirements of subsection 6(E) of this ordinance, except for the requirements of subsection 6(E)(5) of this ordinance.

C. **Discretionary Review To Approve Mitigation That Varies the Number and Size of Trees and Shrubs.** An applicant seeking discretionary approval only to proportionally vary the number and size of trees and shrubs required to be planted under subsection 6(E), for example to plant fewer larger

trees and shrubs or to plant more smaller trees and shrubs, but who will comply with all other provisions of Section 6 of this ordinance, may seek review under this subsection 7(C).

1. The applicant shall submit:

   a. A calculation of the number of trees and shrubs the applicant would be required to plant under Section 6(E) of this ordinance;

   b. The numbers and sizes of trees and shrubs that the applicant proposes to plant;

   c. An explanation of why the numbers and sizes of trees and shrubs that the applicant proposes to plant will achieve, at the end of the fifth year after initial planting, comparable or better mitigation results as the results that would be achieved if the applicant complied with all of the requirements of subsection 6(E) of this ordinance. Such explanation shall be prepared and signed by a knowledgeable and qualified natural resources professional or a certified landscape architect and shall include discussion of site preparation including soil additives and removal of invasive and noxious vegetation, plant diversity, plant spacing, planting season, and immediate post-planting care including mulching, irrigation, wildlife protection, and weed control; and

   d. The applicant's mitigation site monitoring and reporting plan.

2. Approval Criteria. A request to vary the numbers and sizes of trees and shrubs to be planted shall be approved if the applicant demonstrates that the proposed planting will achieve, at the end of the fifth year after initial planting, comparable or better mitigation results as the results that would be achieved if the applicant complied with all of the requirements of subsection 6(E) of this ordinance. Such determination shall take into consideration all of the information required to be submitted under subsection 7(C)(1) of this ordinance.

3. Mitigation approved under this subsection 7(C) of this ordinance shall be subject to the requirements of subsections 6(E)(4) through 6(E)(9) of this ordinance, and it is recommended that such mitigation also follow the practices recommended in subsection 6(E)(10) of this ordinance.

D. **Discretionary Review.** An applicant seeking discretionary approval to undertake any development activity within a HCA that does not comply with subsection 6 of this ordinance and is not described in subsections 7(A), (B), or (C) of this ordinance may file an application under this section 7(D) of this ordinance.

1. **Application Requirements.** The applicant shall provide all items described in subsection 6(A) of this ordinance, except that, for utility projects undertaken by public utilities across property that is not owned by the utility, the utility shall not be required to map or provide any information about the property except for the area within 300 feet of the location of the proposed disturbance area of the utility's project, and the applicant shall also provide all of the following:

   a. ***Impact Evaluation and Alternatives Analysis.*** An impact evaluation and alternatives analysis is required to determine compliance with the approval criteria and to evaluate development alternatives for a particular property. The alternatives must be evaluated on the basis of their impact on the HCA, the ecological functions provided by the HCA on the property, and off-site impacts within the subwatershed (6th Field Hydrologic Unit Code) where the property is located. The impact evaluation shall include all of the following items:

i. Identification of the ecological functions of riparian habitat found on the property as described in Table 4 of this ordinance and the habitat connectivity ecological functions described in subsection 7(D)(1)(a)(ii)(C) and (D) of this ordinance.

ii. For upland habitat in areas to be added to the Metro urban growth boundary areas after October 1, 2005, identification of the impact the proposed development would have on the following ecological functions provided by upland wildlife habitat:

(A) Habitat patch size;

(B) Interior habitat;

(C) Connectivity of the habitat to water; and

(D) Connectivity of the habitat to other habitat areas.

Table 4. Ecological functional values of riparian corridors.

Ecological function	Landscape features providing functional values
Microclimate and shade	Forest canopy or woody vegetation within **100 feet** of a stream; a wetland[1]; or a flood area[2].
Streamflow moderation and water storage	A wetland or other water body[3] with a hydrologic connection to a stream; or a flood area[2].
Bank stabilization, sediment and pollution control	All sites within **50 feet** of a surface stream; Forest canopy, woody vegetation, or low structure vegetation/open soils within **100 feet** of a stream or a wetland; or forest canopy, woody vegetation, or low structure vegetation/open soils within a flood area; and, Forest canopy, woody vegetation, or low structure vegetation/open soils within **100-200 feet** of a stream if the slope is greater than 25%.
Large wood and channel dynamics	Forest canopy within **150 feet** of a stream or wetland; or within a flood area; and The channel migration zone is defined by the floodplain, but where there is no mapped floodplain a default of **50 feet** is established to allow for the channel migration zone.
Organic material sources	Forest canopy or woody vegetation within **100 feet** of a stream or wetland; or within a flood area.

[1]Refers to "hydrologically-connected wetlands," which are located partially or wholly within ¼ mile of a surface stream or flood area.
[2]Developed floodplains are not identified as HCAs because they do not provide primary ecological functional value.
[3]"Other water body" could include lakes, ponds, reservoirs, or manmade water feature that is not a water quality facility or farm pond.

iii. Evaluation of alternative locations, design modifications, or alternative methods of development to determine which options reduce the significant detrimental impacts on the HCAs and the ecological functions provided on the property. At a minimum, the following approaches must be considered:

(A) The techniques described in subsection 6(B) of this ordinance;

(B) Multi-story construction;

(C) Minimizing building and development footprint;

(D) Maximizing the use of native landscaping materials; and

(E) Minimal excavation foundation systems (e.g., pier, post or piling foundation).

iv. Determination of the alternative that best meets the applicable approval criteria and identification of significant detrimental impacts that are unavoidable.

b. ***Mitigation Plan.*** The purpose of a mitigation plan is to compensate for unavoidable significant detrimental impacts to ecological functions that result from the chosen development alternative as identified in the impact evaluation. However, when development occurs within delineated wetlands, then the mitigation required under subsection 7(D)(2)(d) shall not require any additional mitigation than the mitigation required by state and federal law for the fill or removal of such wetlands.

i. An applicant may choose to develop a mitigation plan consistent with the requirements of subsection 6(E) of this ordinance. If an applicant so chooses, then the applicant shall submit a mitigation plan demonstrating such compliance.

ii. If an applicant chooses to develop an alternative mitigation plan that would not comply with the requirements of subsection 6(E) of this ordinance, including, for example, a proposal to create an alternative plant community type such as an oak savannah or a low-structure plant community, or where an applicant demonstrates that a portion of identified HCA on its property provides only impaired ecological functions, then the applicant shall submit a mitigation plan that includes all of the following:

(A) An explanation of how the proposed mitigation will adequately compensate for the impacts to ecological functions described in the impact evaluation required by subsection 7(D)(1)(a). The applicant may use the mitigation that would be required under subsection 6(E) of this ordinance as the baseline mitigation required to compensate for disturbance to a HCA that provides an average level of ecological functions. Such explanation shall include:

(1) If the applicant uses the mitigation that would be required under subsection 6(E) of this ordinance as the baseline mitigation required to compensate for disturbance to a HCA, then the applicant shall submit a calculation of the number of trees and shrubs the applicant would be required to plant under subsection 6(E) of this ordinance;

(2) A site plan showing where the specific mitigation activities will occur and the numbers and sizes of trees and shrubs that the applicant proposes to plant; and

(3) A discussion of site preparation including soil additives and removal of invasive and noxious vegetation, plant diversity, plant spacing, planting season, and immediate post-planting care including mulching, irrigation, wildlife protection, and weed control.

(B) Documentation of coordination with appropriate local, regional, special district, state, and federal regulatory agencies.

(C) A list of all parties responsible for implementing and monitoring the mitigation plan and, if mitigation will occur off-site, the names of the owners of property where mitigation plantings will occur.

(D) The applicant's mitigation site monitoring and reporting plan.

(E) If the proposed mitigation will not be conducted on-site, the applicant shall submit a map and accompanying narrative that details the following:

(1) The number of trees and shrubs that can be planted on-site;

(2) The on-site location where those trees and shrubs can be planted;

(3) An explanation of why it is not practicable for the remainder of the mitigation to occur on-site; and

(4) The proposed location for off-site mitigation and documentation that the applicant can carry out and ensure the success of the mitigation, including documentation that the applicant possesses legal authority to conduct and maintain the mitigation, such as having a sufficient ownership interest in the mitigation site, and, if the mitigation is not within a HCA, documentation that the mitigation site will be protected after the monitoring period expires, such as through the use of a restrictive covenant.

(F) If the mitigation area is off-site and not within the same subwatershed (6^{th} Field Hydrologic Unit Code) as the related disturbed HCA, the applicant shall submit an explanation of why it is not practicable to conduct the mitigation within the same subwatershed and of why and how, considering the purpose of the mitigation, the mitigation will provide more ecological functional value if implemented outside of the subwatershed.

(G) An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting and a contingency plan. If the applicant is proposing any in-stream work in fish-bearing streams as part of the mitigation project, then the applicant shall submit documentation that such work will be done in accordance with the Oregon Department of Fish and Wildlife in-stream work timing schedule.

c. The Impact Evaluation and Alternatives Analysis required by subsection 7(D)(1)(a) and the Mitigation Plan required by subsection 7(D)(1)(b) shall be prepared and signed by either (1) a knowledgeable and qualified natural resource professional, such as a wildlife biologist, botanist, or hydrologist, or (2) a civil or environmental engineer registered in Oregon to

design public sanitary or storm systems, storm water facilities, or other similar facilities. The application shall include a description of the qualifications and experience of all persons that contributed to the Impact Evaluation and Alternatives Analysis and to the Mitigation Plan, and, for each person that contributed, a description of the elements of such reports to which the person contributed.

2. **Approval Criteria.**

   a. All application requirements in subsection 7(D)(1) shall be met.

   b. ***Avoid.*** An applicant shall first avoid the intrusion of development into the HCA to the extent practicable. The development that is proposed must have less detrimental impact to HCAs than other practicable alternatives, including significantly different practicable alternatives that propose less development within HCAs. If there is more than one type of HCA on a property then the applicant shall first avoid the intrusion of development into the higher-valued HCA, to the extent practicable, and the development that is proposed must have less detrimental impact to the higher-valued HCAs than other practicable alternatives. To avoid development in HCAs, and to the extent practicable, applicants shall use the approaches described in subsection 7(D)(1)(a)(iii).

   c. ***Minimize.*** If the applicant demonstrates that there is no practicable alternative that will not avoid disturbance of the HCA, then the development proposed by the applicant within the HCA shall minimize detrimental impacts to the extent practicable. If there is more than one type of HCA on a property then the development within higher-valued HCAs shall be considered more detrimental than development within lower-valued HCAs.

      i. Development must minimize detrimental impacts to ecological functions and loss of habitat consistent with uses allowed by right under the base zone, to the extent practicable;

      ii. To the extent practicable within the HCA, the proposed development shall be designed, located, and constructed to:

         (A) Minimize grading, removal of native vegetation, and disturbance and removal of native soils by using the approaches described in subsection 6(C)(2), reducing building footprints, and using minimal excavation foundation systems (e.g., pier, post or piling foundation);

         (B) Minimize adverse hydrological impacts on water resources such as by using the techniques described in Part (a) of Table 5, unless their use is prohibited by an applicable and required State or Federal permit issued to a unit of local government having jurisdiction in the area, such as a permit required under the federal Clean Water Act, 33 U.S.C. §§1251 et seq., or the federal Safe Drinking Water Act, 42 U.S.C. §§300f et seq., and including conditions or plans required by such permit;

         (C) Minimize impacts on wildlife corridors and fish passage such as by using the techniques described in Part (b) of Table 5; and

         (D) Consider using the techniques described in Part (c) of Table 5 to further minimize the impacts of development in the HCA.

Table 5. Habitat-friendly development practices.[1]

Part (a): Design and Construction Practices to Minimize Hydrologic Impacts

1. Amend disturbed soils to original or higher level of porosity to regain infiltration and stormwater storage capacity.
2. Use pervious paving materials for residential driveways, parking lots, walkways, and within centers of cul-de-sacs.
3. Incorporate stormwater management in road right-of-ways.
4. Landscape with rain gardens to provide on-lot detention, filtering of rainwater, and groundwater recharge.
5. Use green roofs for runoff reduction, energy savings, improved air quality, and enhanced aesthetics.
6. Disconnect downspouts from roofs and direct the flow to vegetated infiltration/filtration areas such as rain gardens.
7. Retain rooftop runoff in a rain barrel for later on-lot use in lawn and garden watering.
8. Use multi-functional open drainage systems in lieu of more conventional curb-and-gutter systems.
9. Use bioretention cells as rain gardens in landscaped parking lot islands to reduce runoff volume and filter pollutants.
10. Apply a treatment train approach to provide multiple opportunities for storm water treatment and reduce the possibility of system failure.
11. Reduce sidewalk width and grade them such that they drain to the front yard of a residential lot or retention area.
12. Reduce impervious impacts of residential driveways by narrowing widths and moving access to the rear of the site.
13. Use shared driveways.
14. Reduce width of residential streets, depending on traffic and parking needs.
15. Reduce street length, primarily in residential areas, by encouraging clustering and using curvilinear designs.
16. Reduce cul-de-sac radii and use pervious vegetated islands in center to minimize impervious effects, and allow them to be utilized for truck maneuvering/loading to reduce need for wide loading areas on site.
17. Eliminate redundant non-ADA sidewalks within a site (i.e., sidewalk to all entryways and/or to truck loading areas may be unnecessary for industrial developments).
18. Minimize car spaces and stall dimensions, reduce parking ratios, and use shared parking facilities and structured parking.
19. Minimize the number of stream crossings and place crossing perpendicular to stream channel if possible.
20. Allow narrow street right-of-ways through stream corridors whenever possible to reduce adverse impacts of transportation corridors.

Part (b): Design and Construction Practices to Minimize Impacts on Wildlife Corridors and Fish Passage

1. Carefully integrate fencing into the landscape to guide animals toward animal crossings under, over, or around transportation corridors.
2. Use bridge crossings rather than culverts wherever possible.
3. If culverts are utilized, install slab, arch or box type culverts, preferably using bottomless designs that more closely mimic stream bottom habitat.
4. Design stream crossings for fish passage with shelves and other design features to facilitate terrestrial wildlife passage.
5. Extend vegetative cover through the wildlife crossing in the migratory route, along with sheltering areas.

[1] These development practices represent the state of scientific knowledge at the time of this ordinance's enactment, if more effective habitat-friendly practices become available, they should be used.

Part (c): Miscellaneous Other Habitat-Friendly Design and Construction Practices

1. Use native plants throughout the development (not just in HCA).
2. Locate landscaping (required by other sections of the code) adjacent to HCA.
3. Reduce light spill-off into HCAs from development.

d. ***Mitigate.*** If the applicant demonstrates that there is no practicable alternative that will not avoid disturbance of the HCA, then development must mitigate for adverse impacts to the HCA. All proposed mitigation plans must meet the following standards.

i. The mitigation plan shall demonstrate that it compensates for detrimental impacts to ecological functions provided by HCAs, after taking into consideration the applicant's efforts to minimize such detrimental impacts through the use of the techniques described in Table 5 and through any additional or innovative techniques. A mitigation plan that requires the amount of planting that would be required under subsection 6(E) of this ordinance based on the amount of proposed disturbance area within the HCA, and that otherwise complies with all of the mitigation requirements in subsection 6(E) of this ordinance, shall be considered to have satisfied the requirements of this subsection 7(D)(2)(d) of this ordinance.

ii. Mitigation shall occur on the site of the disturbance, to the extent practicable. Off-site mitigation shall be approved if the applicant has demonstrated that it is not practicable to complete the mitigation on-site and that the applicant has documented that it can carry out and ensure the success of the off-site mitigation, as described in subsection 7(B)(1)(b)(iv) of this ordinance. In addition, if the off-site mitigation area is not within the same subwatershed (6^{th} Field Hydrologic Unit Code) as the related disturbed HCA, the applicant shall demonstrate that it is not practicable to complete the mitigation within the same subwatershed and that, considering the purpose of the mitigation, the mitigation will provide more ecological functional value if implemented outside of the subwatershed. Mitigation shall not be allowed outside of the Metro jurisdictional boundary.

iii. All re-vegetation plantings shall be with native plants listed on the *Metro Native Plant List.*

iv. All in-stream work in fish-bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife in-stream work-timing schedule.

v. A mitigation maintenance plan shall be included and shall be sufficient to ensure the success of the planting, and compliance with the plan shall be a condition of development approval.

e. ***Municipal Water Utility Facilities Standards.*** Except as provided within this subsection, in addition to all other requirements of subsection 7(D)(2) of this ordinance, municipal potable water, storm water (drainage) and wastewater utility facilities may be built, expanded, repaired, maintained, reconfigured, rehabilitated, replaced or upsized if not exempted in Section 3 of this ordinance. These facilities may include but are not limited to water

treatment plants, wastewater treatment plants, raw water intakes, pump stations, transmission mains, conduits or service lines, terminal storage reservoirs, and outfall devices provided that:

i. Such projects shall not have to comply with the requirements of subsection 7(D)(2)(b) of this ordinance, provided that, where practicable, the project does not encroach closer to a water feature than existing operations and development, or for new projects where there are no existing operations or development, that the project does not encroach closer to a water feature than practicable;

ii. Best management practices will be employed that accomplish the following:

(A) Account for watershed assessment information in project design;

(B) Minimize the trench area and tree removal within the HCA;

(C) Utilize and maintain erosion controls until other site stabilization measures are established, post-construction;

(D) Replant immediately after backfilling or as soon as effective;

(E) Preserve wetland soils and retain soil profiles;

(F) Minimize compactions and the duration of the work within the HCA;

(G) Complete in-water construction during appropriate seasons, or as approved within requisite Federal or State permits;

(H) Monitor water quality during the construction phases, if applicable; and

(I) Implement a full inspection and monitoring program during and after project completion, if applicable.

Section 8. Variances

A. The purpose of this Section is to ensure that compliance with this ordinance does not cause unreasonable hardship. To avoid such instances, the requirements of this ordinance may be varied. Variances are also allowed when strict application of this ordinance would deprive an owner of all economically viable use of land.

B. This Section applies in addition to the standards governing proposals to vary the requirements of the base zone.

C. Notice of variance applications shall be provided:

1. Upon receiving an application to vary the requirements of this ordinance, the notice shall be provided to all property owners within *[insert appropriate distance consistent with state law and other local notice provisions]* of the subject property inside the urban growth boundary, and within [*insert appropriate distance consistent with state law and other local notice provisions*] feet of the subject property outside the urban growth boundary, to Metro, to any neighborhood or community planning organization recognized by the [*city/county*] and whose boundaries include

the property, and to any watershed council recognized by the Oregon Watershed Enhancement Board and whose boundaries include the property.

2. Within seven (7) days of a decision on the variance, notice of the decision shall be provided to Metro, to any neighborhood or community planning organization recognized by the [*city/county*] and whose boundaries include the property, to any watershed council recognized by the Oregon Watershed Enhancement Board and whose boundaries include the property, and to any other person required to receive notice of such a decision under state law.

D. **Hardship Variance.** Variances to avoid unreasonable hardship caused by the strict application of this ordinance are permitted subject to the criteria set forth in this section. To vary from the requirements of this ordinance, the applicant must demonstrate the following:

1. The variance is the minimum necessary to allow the proposed use or activity;

2. Unless the proposed variance is from mitigation under Section 6(E) or mitigation under Section 7(B), (C), or (D)(1)(b) and D(2)(d), the proposed use will comply with those standards, as applicable; and

3. The proposed use complies with the standards of the base zone.

E. **Buildable Lot Variance.** A variance to avoid the loss of all economically viable use of a lot that is partially inside a HCA is permitted. Applicants must demonstrate the following:

1. Without the proposed variance, the applicant would be denied economically viable use of the subject property. To meet this criterion, the applicant must show that:

a. The proposed use cannot meet the standards in Section 8(D) (hardship variance); and

b. No other application could result in permission for an economically viable use of the subject property. Evidence to meet this criterion shall include a list of uses allowed on the subject property.

2. The proposed variance is the minimum necessary to allow for the requested use;

3. The proposed variance will comply with Section 6(E) or 7(B), (C), or D(1)(b) and D(2)(d) (mitigation); and

4. The proposed use complies with the standards of the base zone.

F. **Variance Conditions.** Conditions may be imposed to limit any adverse impacts that may result from granting any variance.

Section 9. Map Administration and HCA Verification

A. **Exempt development.** Development that is outside of any HCA and no closer than 100 feet to the border of an HCA (including all impervious surfaces and landscaping), based on the HCA map, may proceed without having to comply with this section or any other portion of this ordinance except for Section 5, Construction Management Plan. *[Note: At the time a city or county adopts this model*

ordinance and its HCA map, such city or county may decrease the 100 feet "safe harbor" distance provided in this section to no fewer than 25 feet provided that it conducts additional analysis to correct any misalignment errors of the type described in section 9(E)(2) of this ordinance and adopts sufficient findings of fact to justify such corrections.]

B. Verification of the location of HCAs as described in this section shall not be considered a comprehensive plan amendment. [*Note: Adjustment of the mapped HCA shall only proceed as provided in this ordinance.]*

C. Map verification is available to correct for mistakes in the location of HCAs on properties. Map verification shall not be used to dispute whether identified HCAs provide the ecological functions that they are assumed to provide based on the ecological criteria used to identify them. If an applicant believes that a properly identified HCA does not provide the ecological functions that it has been identified as providing, then the applicant may use the discretionary review process to decrease the amount of mitigation required for disturbing such an area.

D. The map verification requirements described in this section 9 of this ordinance shall be met at the time an applicant requests a building permit, grading permit, tree removal permit, land division approval, or some other land use decision. A property owner, or another person with the property owner's consent, may request to verify the location of HCAs on a real property lot or parcel pursuant to this Section 9 of this ordinance at other times, but whether the *[city/county]* processes such request shall be at the Planning Director's sole discretion, based on staff availability, funding resources, and policy priorities. If a person receives a verification separate from a simultaneous request for a building permit, grading permit, tree removal permit, land division approval, or some other land use decision, then the person may use the verification to satisfy the requirements of this section at any time up until five years after the date the verification was issued.

E. Notwithstanding any other provisions of this Section 9 of this ordinance, for utility projects undertaken by public utilities across property that is not owned by the utility, the utility shall not be required to map or provide any information about the property except for the area within 300 feet of the location of the proposed disturbance area of the utility's project.

F. **Basic Verification Approaches.** The basic verification approaches described in subsections 9(F)(1) through (3) of this ordinance are available for applicants who believe either (1) that the HCA map is accurate, (2) that there is a simple incongruity between the HCA map and the boundary lot lines of a property, or (3) that the property was developed prior to *[insert date—either the effective date of this ordinance or two years after acknowledgement of the regional program, whichever is earlier]*.

1. ***Applicant Believes HCA Map is Accurate.*** An applicant who believes that the HCA map is accurate may comply with this subsection 9(F)(1) of this ordinance. The applicant shall submit the following information regarding the real property lot or parcel:

   a. A detailed property description;

   b. A copy of the applicable HCA map;

   c. A summer 2005 aerial photograph of the property, with lot lines shown, at a scale of at least 1 map inch equal to 50 feet for lots of 20,000 or fewer square feet, and a scale of 1 map inch equal to 100 feet for larger lots (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742);

d. The information required to be submitted under Section 6 or 7 of this ordinance if the applicant proposes development within any HCA under those provisions; and

e. Any other factual information that the applicant wishes to provide to support map verification.

2. ***Obvious Misalignment Between Mapped Habitat and Property Lot Lines.*** In some cases, the mapped vegetative cover layer in the GIS database might not align precisely with the tax lot layer that shows property lines, resulting in a HCA map that is also misaligned with tax lot lines. An applicant who believes that the HCA map is inaccurate based on such an obvious misalignment may comply with this subsection 9(F)(2) of this ordinance. The applicant shall submit the following information regarding the real property lot or parcel:

a. The information described in subsections 9(F)(1)(a) through (e) of this ordinance; and

b. A documented demonstration of the misalignment between the HCA map and the property's tax lot boundary lines. For example, an applicant could compare the boundary lot lines shown for roads within 500 feet of a property with the location of such roads as viewed on the aerial photograph of the area surrounding a property to provide evidence of the scale and amount of incongruity between the HCA maps and the property lot lines, and the amount of adjustment that would be appropriate to accurately depict habitat on the property.

3. ***Property Developed Between Summer 2002 and [Insert date of Approval of Regional Program].*** Where a property was developed between the summer of 2002 (when the aerial photo used to determine the regional habitat inventory was taken) and *[insert date that the regional program was approved]*, the applicant shall submit the following information regarding the real property lot or parcel:

a. The information described in subsection 9(F)(1)(a) through (e) of this ordinance;

b. A summer 2002 aerial photograph of the property, with lot lines shown, at a scale of at least 1 map inch equal to 50 feet for lots of 20,000 or fewer square feet, and a scale of 1 map inch equal to 100 feet for larger lots (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742);

c. Any approved building permits or other development plans and drawings related to the development of the property that took place between summer 2002 and *insert date that the regional program was approved]*; and

d. A clear explanation and documentation, such as supporting maps or drawings or an more recent aerial photograph, indicating the new development that has occurred and where previously identified habitat no longer exists because it is now part of a developed area.

4. ***Decision Process.*** The Planning Director's map verification decision made pursuant to this subsection 9(F) of this ordinance may be an administrative decision. The Planning Director's decision shall be based on consideration of the information submitted by the applicant, any information collected during a site visit to the lot or parcel, any information generated by prior map verifications that have occurred on adjacent properties, and any other objective factual information that has been provided to the Planning Director.

G. **Detailed Verification Approach.** All applicants who believe that the HCA map is inaccurate for a reason other than as described in subsections 9(F)(2) and (3) may file a verification request consistent with this subsection 9(G) of this ordinance.

1. ***Application requirements.*** The applicant shall submit a report prepared and signed by either (1) a knowledgeable and qualified natural resource professional, such as a wildlife biologist, botanist, or hydrologist, or (2) a civil or environmental engineer registered in Oregon to design public sanitary or storm systems, storm water facilities, or other similar facilities. Such report shall include:

   a. A description of the qualifications and experience of all persons that contributed to the report, and, for each person that contributed, a description of the elements of the analysis to which the person contributed;

   b. The information described in subsections 9(F)(1)(a) through (e) of this ordinance;

   c. The information described in subsections 9(F)(2)(b) and 9(F)(3)(b) through (d) of this ordinance, if the applicant believes such information is relevant to the verification of habitat location on the subject lot or parcel;

   d. Additional aerial photographs if the applicant believes they provide better information regarding the property, including documentation of the date and process used to take the photos and an expert's interpretation of the additional information they provide;

   e. A map showing the topography of the property shown by contour lines of 2 foot intervals for slopes less than 15% and by 10 foot intervals for slopes 15% or greater; and

   f. Any additional information necessary to address each of the verification criteria in subsection 9(G)(4) of this ordinance, a description of where any HCAs are located on the property based on the application of the verification criteria in subsection 9(G)(4) of this ordinance, and factual documentation to support the analysis.

2. ***Notice requirements.*** Upon receipt of a completed application pursuant to this subsection 9(G) of this ordinance, the Planning Director shall provide notice of the map verification application to Metro, to the owners of record of property on the most recent property tax assessment roll where such property is located within 100 feet of the subject property, *[Note: A city or county may increase the 100 feet neighbor notification requirement if it so chooses]* to any neighborhood or community planning organization recognized by the governing body and whose boundaries include the property, and to any watershed council recognized by the Oregon Watershed Enhancement Board and whose boundaries include the property. The notice provided by the jurisdiction shall comply with the notice requirements of ORS 197.763. The Planning Director shall accept written public comments regarding the matter during a public comment period.

3. ***Decision process.*** The Planning Director shall apply the verification criteria in subsection 9(G)(4) of this ordinance to confirm the location of any HCAs based on the HCA map, the information submitted by the applicant, any information received during the public comment period, and any additional information readily available, including information collected during a site visit to the lot or parcel. The applicant and all persons that submitted written comments shall be provided with a written explanation of the Planning Director's decision.

4. *Verification Criteria.* The verification of the location of HCAs shall be according to the four-step process described in this subsection 9(G)(4) of this ordinance. A verification application shall not be considered complete and shall not be granted unless all the information required to be submitted with the verification application has been received.

   a. ***Step 1. Verifying boundaries of inventoried riparian habitat.*** Locating habitat and determining its riparian habitat class is a four-step process:

      i. Locate the Water Feature that is the basis for identifying riparian habitat.

         (A) Locate the top of bank of all streams, rivers, and open water within 200 feet of the property.

         (B) Locate all flood areas within 100 feet of the property.

         (C) Locate all wetlands within 150 feet of the property based on the Local Wetland Inventory map (if completed) and on the Metro 2002 Wetland Inventory Map (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742). Identified wetlands shall be further delineated consistent with methods currently accepted by the Oregon Division of State Lands and the U.S. Army Corps of Engineers.

      ii. Identify the vegetative cover status of all areas on the property that are within 200 feet of the top of bank of streams, rivers, and open water, are wetlands or are within 150 feet of wetlands, and are flood areas and within 100 feet of flood areas.

         (A) Vegetative cover status shall be as identified on the Metro Vegetative Cover Map (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742).

         (B) The vegetative cover status of a property may be adjusted only if (1) the property was developed prior to the time the regional program was approved (see subsection 9(F)(3) of this ordinance, above), or (2) an error was made at the time the vegetative cover status was determined. To assert the latter type of error, applicants shall submit an analysis of the vegetative cover on their property using summer 2002 aerial photographs and the definitions of the different vegetative cover types provided in Section 11 of this ordinance.

      iii. Determine whether the degree that the land slopes upward from all streams, rivers, and open water within 200 feet of the property is greater than or less than 25% (using the methodology as described in *[insert a reference to the city or county code section that describes the methodology used to identify Water Quality Resource Areas pursuant to Title 3 of the Urban Growth Management Functional Plan]*); and

      iv. Identify the riparian habitat classes applicable to all areas on the property using Table 6 and the data identified in subsections 9(G)(4)(a)(i) through (iii).

///

Table 6: Method for Locating Boundaries of Class I and II Riparian Areas.

Distance in feet from Water Feature	Development/Vegetation Status[1]			
	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)
Surface Streams				
0-50	Class II	Class I	Class I	Class I
50-100		Class II[2]	Class I	Class I
100-150		Class II[2] if slope>25%	Class II[2] if slope>25%	Class II[2]
150-200		Class II[2] if slope>25%	Class II[2] if slope>25%	Class II[2] if slope>25%
Wetlands (Wetland feature itself is a Class I Riparian Area)				
0-100		Class II[2]	Class I	Class I
100-150				Class II[2]
Flood Areas (Undeveloped portion of flood area is a Class I Riparian Area)				
0-100			Class II[2]	Class II[2]

[1]The vegetative cover type assigned to any particular area was based on two factors: the type of vegetation observed in aerial photographs and the size of the overall contiguous area of vegetative cover to which a particular piece of vegetation belonged. As an example of how the categories were assigned, in order to qualify as "forest canopy" the forested area had to be part of a larger patch of forest of at least one acre in size.

[2]Areas that have been identified as habitats of concern, as designated on the Metro Habitats of Concern Map (on file in the Metro Council office), shall be treated as Class I riparian habitat areas in all cases, subject to the provision of additional information that establishes that they do not meet the criteria used to identify habitats of concern as described in Metro's Technical Report for Fish and Wildlife. Examples of habitats of concern include: Oregon white oak woodlands, bottomland hardwood forests, wetlands, native grasslands, riverine islands or deltas, and important wildlife migration corridors.

---

b. ***Step 2. Verifying boundaries of inventoried upland habitat in future urban growth boundary expansion areas.*** Upland habitat was identified based on the existence of contiguous patches of forest canopy, with limited canopy openings. The "forest canopy" designation is made based on analysis of aerial photographs, as part of determining the vegetative cover status of land within the region. Upland habitat shall be as identified on the HCA map unless corrected as provided in this subsection.

i. Except as provided in subsection 9(G)(4)(b)(ii), vegetative cover status shall be as identified on the Metro Vegetative Cover Map used to inventory habitat at the time the area was brought within the urban growth boundary (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742).

ii. The only allowed corrections to the vegetative cover status of a property are as follows:

(A) To correct errors made when the vegetative status of an area was determined based on analysis of the aerial photographs used to inventory the habitat at the time the area was brought within the urban growth boundary. For example, an area may have been

identified as "forest canopy" when it can be shown that such area has less than 60% canopy crown closure, and therefore should not have been identified as "forest canopy." The perimeter of an area delineated as "forest canopy" on the Metro Vegetative Cover Map may be adjusted to more precisely indicate the dripline of the trees within the canopied area provided that no areas providing greater than 60% canopy crown closure are de-classified from the "forest canopy" designation. To assert such errors, applicants shall submit an analysis of the vegetative cover on their property using the aerial photographs that were used to inventory the habitat at the time the area was brought within the urban growth boundary and the definitions of the different vegetative cover types provided in Section 11 of this ordinance; and

(B) To remove tree orchards and Christmas tree farms from inventoried habitat; provided, however, that Christmas tree farms where the trees were planted prior to 1975 and have not been harvested for sale as Christmas trees shall not be removed from the habitat inventory.

iii. If the vegetative cover status of any area identified as upland habitat is corrected pursuant to subsection 9(G)(4)(b)(ii)(A) to change the status of an area originally identified as "forest canopy," then such area shall not be considered upland habitat unless it remains part of a forest canopy opening less than one acre in area completely surrounding by an area of contiguous forest canopy.

c. ***Step 3. 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 (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742).

i. A property's urban development value designation shall be adjusted upward if the Metro 2040 Design Type designation for the property lot or parcel has changed from a category designated as a lower urban development value category to one designated as a higher urban development value category. 2040 Design Type designations are identified on the Metro 2040 Applied Concept Map (also available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742).

ii. Properties in areas designated on the 2040 Applied Concept Map 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.

iii. As designated in Title 13 of Metro's Urban Growth Management Functional Plan, properties owned by a regionally significant educational or medical facility are designated as high urban development value.

d. ***Step 4. Cross-Reference 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 7 and 8.

Table 7: Method for Identifying Habitat Conservation Areas ("HCA")

Fish & wildlife habitat classification	High Urban development value[1]	Medium Urban development value[2]	Low Urban development value[3]	Other areas: Parks and Open Spaces, no design types outside UGB
Class I Riparian	Moderate HCA	High HCA	High HCA	High HCA / High HCA+[4]
Class II Riparian	Low HCA	Low HCA	Moderate HCA	Moderate HCA / High HCA+[4]
Class A Upland Wildlife	No HCA	No HCA	No HCA	No HCA / High HCA[5] / High HCA+[4]
Class B Upland Wildlife	No HCA	No HCA	No HCA	No HCA / High HCA[5] / High HCA+[4]

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 HCA adjustment.

[1]Primary 2040 design type: Regional Centers, Central City, Town Centers, and Regionally Significant Industrial Areas
[2]Secondary 2040 design type: Main Streets, Station Communities, Other Industrial areas, and Employment Centers
[3]Tertiary 2040 design type: Inner and outer neighborhoods, Corridors
[4]Cities and counties shall give Class I and II riparian habitat and Class A and B upland wildlife habitat in parks designated as natural areas even greater protection than that afforded to High Habitat Conservation Areas.
[5]All Class A and B upland wildlife habitat in publicly-owned parks and open spaces, except for parks and open spaces where the acquiring agency clearly identified that it was acquiring the property to develop it for active recreational uses, shall be considered High HCAs.

Table 8: Method for Identifying Habitat Conservation Areas ("HCA") in Future Urban Growth Boundary Expansion Areas

Fish & wildlife habitat classification	High Urban development value[1]	Medium Urban development value[2]	Low Urban development value[3]	Other areas: Parks and Open Spaces, no design types outside UGB
Class I Riparian	Moderate HCA	High HCA	High HCA	High HCA / High HCA+[4]
Class II Riparian	Low HCA	Low HCA	Moderate HCA	Moderate HCA / High HCA+[4]
Class A Upland Wildlife	Low HCA	Moderate HCA	Moderate HCA	High HCA / High HCA[5] / High HCA+[4]
Class B Upland Wildlife	Low HCA	Low HCA	Moderate HCA	Moderate HCA / High HCA[5] / High HCA+[4]

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 HCA adjustment.
[1]Primary 2040 design types: Regional Centers, Central City, Town Centers, and Regionally Significant Industrial Areas
[2]Secondary 2040 design types: Main Streets, Station Communities, Other Industrial areas, and Employment Centers
[3]Tertiary 2040 design types: Inner and outer neighborhoods, Corridors
[4]Cities and counties shall give Class I and II riparian habitat and Class A and B upland wildlife habitat in parks designated as natural areas even greater protection than that afforded to High Habitat Conservation Areas.
[5]All Class A and B upland wildlife habitat in publicly-owned parks and open spaces, except for parks and open spaces where the acquiring agency clearly identified that it was acquiring the property to develop it for active recreational uses, shall be considered High HCAs.

Section 10. Severability
The provisions of this ordinance are severable. If any section, clause, or phrase of this ordinance is adjudged to be invalid by a court of competent jurisdiction, the decision of that court shall not affect the validity of the remaining portions of this ordinance.

Section 11. Definitions
Unless specifically defined in this section, words or phrases used in this ordinance shall be interpreted to give them the same meaning as they have in common usage and to give this ordinance its most reasonable application.

Building site - The area on a lot or parcel that is designated to contain a structure, impervious surface, or non-native landscaping.

Building footprint - The area that is covered by buildings or other roofed structures. A roofed structure includes any structure more than 6 feet above grade at any point, and that provides an impervious cover over what is below. Building footprint also includes uncovered horizontal structures such as decks, stairways and entry bridges that are more than 6 feet above grade. Eaves are not included in building coverage. Underground facilities and structures are defined based on the foundation line.

Developed areas not providing vegetative cover - are areas that lack sufficient vegetative cover to meet the one-acre minimum mapping units of any other type of vegetative cover.

Developed floodplain - Any man-made change to improved or unimproved lands within a FEMA defined floodplain, including but not limited to buildings or other structures, dredging, filling, grading, paving, excavation, or storage of equipment and materials.

Development - Any man-made change defined as buildings or other structures, mining, dredging, paving, filling, or grading in amounts greater than ten (10) cubic yards on any lot or excavation. In addition, any other activity that results in the removal of more than: either 10 percent or 20,000 square feet of the vegetation in the Habitat Conservation Areas on the lot is defined as development. When individual trees are removed, the area contained within the tree's drip line shall be the basis for calculating the square footage of vegetation removed.

Development does not include the following: (a) Stream enhancement or restoration projects approved by cities and counties; or (b) Farming practices as defined in ORS 30.930 and farm use as defined in ORS 215.203, except that buildings associated with farm practices and farm uses are subject to the requirements of this ordinance.

Disturb - Man-made changes to the existing physical status of the land, which are made in connection with development. The following uses are excluded from the definition:

- enhancement or restoration of the Water Quality Resource Area;
- planting native cover identified in the Metro Native Plant List.

Disturbance Area - An area that contains all temporary and permanent development, exterior improvements, and staging and storage areas on the site. For new development the disturbance area must be contiguous. The disturbance area does not include agricultural and pasture lands or naturalized areas.

Dripline - The outermost edge of a tree's canopy; when delineating the drip line on the ground, it will appear as an irregularly shaped circle defining the canopy's perimeter.

Ecological functions - The primary biological and hydrologic characteristics of healthy fish and wildlife habitat. Riparian ecological functions include microclimate and shade, streamflow moderation and water storage, bank stabilization and sediment/pollution control, sources of large woody debris and natural channel dynamics, and organic material sources. Upland wildlife ecological functions include size of habitat area, amount of habitat with interior conditions, connectivity of habitat to water resources, connectivity to other habitat areas, and presence of unique habitat types.

Effective Impervious Area - A subset of total impervious area that is hydrologically connected via sheet flow or discrete conveyance to a drainage system or receiving body of water

Emergency - Any man-made or natural event or circumstance causing or threatening loss of life, injury to person or property, and includes, but is not limited to, fire, explosion, flood, severe weather, drought earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation disruptions, and disease.

Engineer - A registered professional engineer licensed by the State of Oregon.

Enhancement - The process of improving upon the natural functions and/or values of an area or feature that has been degraded by human activity. Enhancement activities may or may not return the site to a pre-disturbance condition, but create/recreate beneficial processes and features that occur naturally.

Erosion - Erosion is the movement of soil particles resulting from actions of water or wind.

Fill - Any material such as, but not limited to, sand, gravel, soil, rock or gravel that is placed in a wetland or floodplain for the purposes of development or redevelopment.

Floodplain - The land area identified and designated by the United States Army Corps of Engineers, the Oregon Division of State Lands, FEMA, or (identify name) county/city that has been or may be covered temporarily by water as a result of a storm event of identified frequency. It is usually the flat area of land adjacent to a stream or river formed by floods.

Floodway - The portion of a watercourse required for the passage or conveyance of a given storm event as identified and designated by the (identify name) city/county pursuant to this Ordinance. The floodway shall include the channel of the watercourse and the adjacent floodplain that must be reserved in an unobstructed condition in order to discharge the base flood without flood levels by more than one foot.

Flood Management Areas - All lands contained within the 100-year floodplain, flood area and floodway as shown on the Federal Emergency Management Agency Flood Insurance Maps and the area of inundation for the February 1996 flood. In addition, all lands which have documented evidence of flooding.

Flood areas - Those areas contained within the 100-year floodplain, flood area and floodway as shown on the Federal Emergency Management Agency Flood Insurance Maps and all lands that were inundated in the February 1996 flood (note that areas that were mapped as flood areas but were filled to a level above the base flood level prior to September 30, 2005, consistent with all applicable local, state, and federal laws shall no longer be considered habitat based on their status as flood areas).

Floor Area Ratio (FAR) - The amount of floor area in relation to the amount of site area, expressed in square feet. For example, a floor area ratio of 2 to 1 means two square feet of floor area for every one square foot of site area.

Forest canopy - Areas that are part of a contiguous grove of trees of 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.

Habitat Conservation Area or HCA - An area identified on the Habitat Conservation Areas Map and subject to the development standards.

Habitat-friendly development - A method of developing property that has less detrimental impact on fish and wildlife habitat than does traditional development methods. Examples include clustering development to avoid habitat, using alternative materials and designs such as pier, post, or piling foundations designed to minimize tree root disturbance, managing storm water on-site to help filter rainwater and recharge groundwater sources, collecting rooftop water in rain barrels for reuse in site landscaping and gardening, and reducing the amount of effective impervious surface created by development.

Invasive non-native or noxious vegetation - Plant species that are listed as nuisance plants or prohibited plants on the Metro Native Plant List as adopted by Metro Council resolution because they are plant species that have been introduced and, due to aggressive growth patterns and lack of natural enemies in the area where introduced, spread rapidly into native plant communities.

Lot - Lot means a single unit of land that is created by a subdivision of land. (ORS 92.010).

Low structure vegetation or open soils - Areas that are part of 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, orchards, Christmas tree farms, holly farms, 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).

Mitigation - The reduction of adverse effects of a proposed project by considering, in the order: a) avoiding the impact all together by not taking a certain action or parts of an action; b) minimizing impacts by limiting the degree or magnitude of the action and its implementation; c) rectifying the impact by repairing, rehabilitating or restoring the affected environment; d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and e) compensating for the impact by replacing or providing comparable substitute water quality resource areas or habitat conservation areas.

Native vegetation or native plant - Vegetation listed as a native plant on the Metro Native Plant List as adopted by Metro Council resolution and any other vegetation native to the Portland metropolitan area provided that it is not listed as a nuisance plant or a prohibited plant on the Metro Native Plant List.

Open space - Land that is undeveloped and that is planned to remain so indefinitely. The term encompasses parks, forests and farmland. It may also refer only to land zoned as being available to the public, including playgrounds, watershed preserves and parks.

Owner or property owner - The person who is the legal record owner of the land, or where there is a recorded land sale contract, the purchaser thereunder.

Parcel - Parcel means a single unit of land that is created by a partitioning of land. (ORS 92.010).

Partition - Partition means to divide land into two or three parcels of land within a calendar year. (ORS 92.010)

Phased development project - A phased development plan includes the following:

- A site plan showing the proposed final development of the site and phases, including the initial and interim phases.
- A written statement describing each phase, including the potential uses, and the approximate timeline for each phase of development.

Practicable - means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose and probable impact on ecological functions. The practicability of a development option shall include consideration of the type of HCA that will be affected by the proposed development. For example, High HCAs have been so designated because they are areas that have been identified as having lower urban development value and higher-valued habitat, so it should be more difficult to show that alternative development options that avoid the habitat are not practicable. On the other hand, Low HCAs have been so designated because they are areas that have been identified as having higher urban development value and lower-valued habitat, so it should be less difficult to show that alternative development options that avoid the habitat are not practicable.

Redevelopment – Development that occurs on sites that have previously been developed.

Restoration - The process of returning a disturbed or altered area or feature to a previously existing natural condition. Restoration activities reestablish the structure, function, and/or diversity to that which occurred prior to impacts caused by human activity.

Riparian - Those areas associated with streams, lakes and wetlands where vegetation communities are predominately influenced by their association with water.

Routine repair and maintenance - Activities directed at preserving an existing allowed use or facility, without expanding the development footprint or site use.

Set-back adjustment - The placement of a building a specified distance away from a road, property line or protected resource.

Significant negative impact - An impact that affects the natural environment, considered individually or cumulatively with other impacts on the HCA, to the point where existing fish and wildlife habitat functional values are degraded.

Statewide Land Use Planning Goal 5 - Oregon's statewide planning goal that addresses open space, scenic and historic areas, and natural resources. The purpose of the goal is to conserve open space and protect natural and scenic resources.

Steep slopes - Steep slopes are those slopes that are equal to or greater than 25%. Steep slopes have been removed from the "buildable lands" inventory and have not been used in calculations to determine the number of acres within the urban growth boundary that are available for development.

Stormwater pre-treatment facility - Any structure or drainage way that is designed, constructed, and maintained to collect and filter, retain, or detain surface water run-off during and after a storm event for the purpose of water quality improvement.

Stream - A body of running water moving over the earth's surface in a channel or bed, such as a creek, rivulet or river. It flows at least part of the year, including perennial and intermittent streams. Streams are dynamic in nature and their structure is maintained through build-up and loss of sediment.

Structure - A building or other major improvement that is built, constructed or installed, not including minor improvements, such as fences, utility poles, flagpoles or irrigation system components, that are not customarily regulated through zoning codes.

Subdivision - A Subdivision of land means to divide land into four or more lots within a calendar year. (ORS 92.010).

Top of Bank - The same as "bankful stage" defined in OAR 141-85-010.

Urban Development Value - The economic value of a property lot or parcel as determined by analyzing three separate variables: assessed land value, value as a property that could generate jobs ("employment value"), and the Metro 2040 design type designation of property. The urban development value of all properties containing regionally significant fish and wildlife habitat is depicted on the Metro Habitat Urban Development Value Map

Urban Growth Boundary or UGB - means an urban growth boundary adopted pursuant to ORS chapter 197.

Utility facilities - Buildings, structures or any constructed portion of a system which provides for the production, transmission, conveyance, delivery or furnishing of services including, but not limited to, heat, light, water, power, natural gas, sanitary sewer, stormwater, telephone and cable television. Utility facilities do not include stormwater pre-treatment facilities.

Variance - means a discretionary decision to permit modification of the terms of an implementing ordinance based on a demonstration of unusual hardship or exceptional circumstances unique to a specific property.

Water-dependent - A use which can be carried out only on, in, or adjacent to water because it requires access to the water for waterborne transportation or recreation. Water-dependent also includes development, which by its nature, can be built only on, in, or over water. Bridges supported by piers or pillars, as opposed to fill, are water-dependent development.

Water feature - All rivers, streams (regardless of whether they carry year-round flow, i.e., including intermittent streams), springs which feed streams and wetlands and have year-round flow, Flood Management Areas, wetlands, and all other bodies of open water.

Water Quality Resource Area - is an area identified by a city or county as a Water Quality Resource Area in order to comply with Title 3 of Metro's Urban Growth Management Functional Plan, Metro Code sections 3.07.310- 3.07.370.

Watershed - A watershed is a geographic unit defined by the flows of rainwater or snowmelt. All land in a watershed drains to a common outlet, such as a stream, lake or wetland.

Wetlands - Wetlands are those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support and under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands are those areas identified and delineated by a qualified wetland specialist as set forth in the 1987 Corps of Engineers Wetland Delineation Manual.

Woody vegetation - Areas that are part of 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.

M:\attorney\confidential\07 Land Use\04 2040 Growth Concept\03 UGMFP\02 Stream Protection (Title 3)\02 Goal 5\02 Program\Ord 05-1077A\071405 Revised Ex E Title 13 Model Ord.doc

071405c-05

Willamette Resources, Inc.
A waste management and recovery company

Metro Council Regular Meeting
July 14, 2005

CITIZEN COMMUNICATION (Non-agenda items) – Ray Phelps, Allied Waste Systems

1. Columbia Environmental Solid Waste Facility Application. This is to inform the Council that Allied Waste Systems has a contractual "first-right of refusal" with David Ross, Kirk Ross and Ty Ross should these persons sell a business in which they have a financial interest. Messrs. Ross are identified in an April 7, 2005 report filed with Metro by Winterbrook Planning as having made a 50 percent investment in Columbia Environmental's proposed facility.

   James L. Austin, Jr., a Washington attorney retained by Allied Waste Services, notified Marv Fjordbeck, Office of Metro Attorney, on June 28, 2005 of Allied's agreement with the Ross'.

2. RFP for Disposal System Planning Analysis. This is to inform the Council that operators of privately owned solid waste facilities performing waste recovery and the transfer and disposal of waste do not support Metro's proposed RFP to retain a System Consultant.

   Owners of private solid waste facilities in the metro region have a substantial investment in the region's disposal system. These investments are at least five to seven times greater than the investment Metro has in the two public solid waste facilities. These owners feel they should be equally involved in the selection of the consultant, development of the scope of work and all interactions with the consultant during the engagement.

10295 S.W. Ridder Road • Wilsonville, Oregon 97070
Telephone (503)570-0626 • Fax (503)570-0523