

M E M O R A N D U M

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



METRO

TO: Metro Council

FROM: Rod Park, Chair
Growth Management Committee *RP*

DATE: January 24, 2000

SUBJECT: Goal 5/ESA Briefing

Elaine Wilkerson and Mark Turpel have offered to brief Councilors on Metro's Fish and Wildlife Protection Plan (Goal 5) and the listing of Coho Salmon and Steelhead Trout under the Endangered Species Act (ESA). As many of you know, the Growth Management Committee is considering these issues. Public hearings are scheduled for May, and a vote on a Goal 5 Functional Plan recommendation by the full Council is anticipated in June.

I would like to encourage every member of the Council to take Elaine and Mark up on their offer. The issues surrounding the Fish and Wildlife Protection Plan and the ESA listings are extremely complicated and technical, and the time we have to sort through the details and determine policy is quite short. Our best hope is for everyone to become well-versed in the technicalities so that our limited committee and Council time can be spent discussing policy.

Thank you for your help.

M E M O R A N D U M

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METRO

TO: Councilor Susan McLain, Chair
Water Resources Policy Advisory Committee

FROM: Councilor Rod Park, Chair
Growth Management Committee

DATE: January 24, 2000

SUBJECT: Goal 5/ESA Briefing

I have given the attached memo to the Metro Council, encouraging them to request a briefing from Elaine Wilkerson or Mark Turpel on Goal 5 and ESA. As you know, we have a lot to accomplish in the next few months, and I'm hoping to get everyone up to speed as quickly as possible.

Obviously, you are well acquainted with the topic, as chair of WRPAC and past chair of the Growth Management Committee. Thank you for the hard work over the last year keeping everyone abreast of developments in Goal 5 and ESA. I would appreciate any help you may be able to give in the next few months as we work to make sure everyone on the Council is fully briefed and can come to meetings ready to talk policy.

A handwritten signature in dark ink, appearing to read 'Rod Park'. The signature is fluid and cursive, with a large, sweeping initial 'R'.

M E M O R A N D U M

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METRO

TO: Councilor Ed Washington
Councilor Rod Monroe

FROM: Councilor Rod Park, Chair *RDP*
Growth Management Committee

DATE: January 24, 2000

SUBJECT: Goal 5/ESA Briefing

Elaine Wilkerson and Mark Turpel have offered to brief Councilors on Metro's Fish and Wildlife Protection Plan (Goal 5) and the listing of Coho Salmon and Steelhead Trout under the Endangered Species Act (ESA). As you know, we will be spending considerable time on these issues at Growth Management Committee in the next few months. Public hearings are scheduled for May, and a vote on a Goal 5 Functional Plan recommendation by the full Council is anticipated in June.

I would like to encourage you to take Elaine and Mark up on their offer. The issues surrounding the Fish and Wildlife Protection Plan and the ESA listings are extremely complicated and technical, and the time we have to sort through the details and determine policy is quite short. Our best hope is for everyone to become well-versed in the technicalities so that our limited committee and Council time can be spent discussing policy.

Thank you for your help.



METRO

TO: Diana Ramirez

FROM: Rod Park, Chair
Growth Management Committee

DATE: March 6, 2000

SUBJECT: Metro Regional Government Smart Growth Goals

Below I have noted some of the ways in which Metro has pursued the five goals identified in your email, dated February 15, 2000. If you have any questions, or would like to discuss any of Metro's policies further, please do not hesitate to contact me by telephone (503-797-1547) or email (parkr@metro.dst.or.us).

Goal 1: To encourage compact growth development near transit to reduce land consumption.

- The Metro Council adopted the 2040 Growth Concept in December 1995. The Metro 2040 Growth Concept states the preferred form of regional growth and development adopted in the Region 2040 planning process including the 2040 Growth Concept map.
- The 2040 Growth Concept directs the cities in the region to increase density along transit corridors, main streets, regional and town centers and mixed-use centers, which are more easily served by transit. This allows a lower density in traditional single-family residence areas, while achieving an overall increase in density.

Goal 2: To preserve existing neighborhoods.

- The 2040 Growth Concept directs the region's cities to not increase the housing densities in built-out, established neighborhoods. Instead, additional housing is funneled into transit corridors and mixed-use areas.
- The only increased density in existing neighborhoods is redevelopment of older structures and infill of empty lots and oversized lots.

Goal 3: Create a UGB and identify rural reserve areas that will not be added to it.

- In 1977, the Columbia Region Association of Governments (Metro's predecessor) engaged in a complete planning process and proposed an urban growth boundary for the region in 1977. When Metro was created in 1979, it inherited the boundary planning effort.
- Rural reserves are intended to assure that Metro and neighboring cities remain separate. The intended result is a compact urban form for the region coordinated with nearby cities to retain the region's sense of place.
- Rural reserves outside the UGB are achieved through voluntary agreements between Metro, the counties, neighboring cities, and the state. These agreements prohibit extending urban growth into the rural reserves and require that state agency actions are consistent with the rural reserve designation.
- New rural commercial or industrial development is restricted in rural reserves. Some areas have priority status as potential areas for parks and open space acquisition. Zoning is for resource protection on farm and forestry land, and very low-density residential (no greater average density than one unit per five acres) for exception (rural, non-resource) land.

Goal 4: To set goals for permanent open space within the UGB.

- In May 1995, the region's voters approved a \$135.6 million bond measure to purchase open space in target areas inside and near the existing UGB for future use as parks, trails, and fish and wildlife habitat.
- As of February 28, 2000, Metro has acquired over 5,670 acres in 179 property transactions. Metro's goal is to purchase 6,000 acres of natural areas, trail corridors and greenways.

Goal 5: To recognize the importance of the cooperation between neighboring cities to address common issues.

- Metro has created two committees comprised of local elected officials, citizens, and representatives of special districts to address common issues in growth management and transportation planning: the Metro Policy Advisory Committee, and the Joint Policy Advisory Committee on Transportation.
- Each committee meets monthly to give its recommendations to the Metro Council on regional policies. In addition, the Joint Policy Advisory Committee allocates federal transportation funding and helps coordinate agreements of "give and take" between jurisdictions, so that every area in the region receives its fair share.

TRANSACTION REPORT

P. 01

MAR-06-00 MON 02:05 PM

DATE	START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#	DP
MAR-06	02:03 PM	917043340109118	1' 39"	3	SEND	OK	096	

TOTAL : 1M 39S PAGES: 3

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METRO

Council Office Facsimile

Date: March 6, 2000

To: Diana Ramirez

Fax number: 704-334-0109

Company/Agency: OMNIArchitecture

From: Suzanne Myers, Council Assistant to Rod Park

Phone number: 503-797-1543

Total # of pages: 3 (including cover page)

Subject: Response to your email (dated 2/15/00) to Mark Turpel regarding Smart Growth.

Please give me a call if you have any questions.

Please notify immediately if not received properly.

From: "Ramirez, Diana" <DRamirez@omniarch.com>
To: "'turpelm@metro.dst.or.us'" <turpelm@metro.dst.or...>
Date: Tue, Feb 22, 2000 5:14 AM
Subject: FW: Smart Growth -ULI

*Deadline:
Mon/Tues.*

> -----Original Message-----

> From: Ramirez, Diana
> Sent: Tuesday, February 15, 2000 5:10 PM
> To: 'turpelm@metro.dst.or.us'
> Subject: Smart Growth -ULI

>
> Hello Mr. Turpel: My name is Diana Ramirez, I am an architect working with
> OmniArchitecture in Charlotte, North Carolina. Our firm is conducting
> research on Smart Growth policies and initiatives in several key issues
> across the country. I have been tasked in researching current and planned
> policies for Portland. I am in hope that you will be able to assist in
> this process by answering a few questions. This information is being
> compiled for a report which is underwritten by the ULI. A final report
> will be sent to each of those participating in the query. (There will be
> an article for a magazine which we will send to you).

>
> We have identified 5 mayor ideas adopted by Metro. Can you identify pros
> and cons for each one of these? (In other words, have these worked or
> not?)

> * To encourage compact growth development near transit to reduce land
> consumption.
> * To preserve existing neighborhoods.
> * Create an UGB and identify rural reserve areas that will not be
> added to it.
> * To set goals for permanent open space within the UGB.
> * To recognize the importance of the cooperation between neighboring
> cities to address common issues.

>
> Can you give us a name for someone that is against Growth Management
> policies and somebody that is in favor of it? Our intention is to learn
> from previous experiences like yours. ✓

> Thanks for all you time, we appreciate it very much,

>
> Diana Ramirez
> Design Manager
> OMNIArchitecture
> Ph (704) 334-5383
> Fax (704) 334-0109

>
>

*Bullet pt.
short answers*

COUNCILOR ROD PARK

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METRO

March 8, 2000

John Aguirre, Executive Director
Oregon Association of Nurserymen, Inc.
(503) 653-8733/(800) 342-6401

Dear John,

I would be pleased as we discussed to address the OAN legislative committee on the issue of a possible strategy for the long term protection of agricultural land in the Portland/Metro region. As you, I and Scot Ashcom discussed, it is a very complex problem.

I'll see if I can give a little history and summarize possible outcomes.

Metro was charged in the 1995 by the Oregon Legislature through HB 2709 to establish and maintain a perpetual 20 land supply for residential development inside the urban growth boundary. In addition, the Legislature through HB 2493 required Metro to institute the expansion, if needed, half by the end of 1998 and the other half by the end of 1999. In 1998, the Metro Council before my term began, expanded the boundary approximately 3,500 or half of the projected 7,000 acres of need to comply with HB2709. Without going into the details, a lack of information with regards to protecting environmentally sensitive areas within the current UGB clouded the amount of land available for housing. This caused the current Council to seek an extension to complete the other half of the expansion. The extension granted by LCDC will expire on October 31, 2000 by which time Metro should have completed it's work.

What is important to note is that this process will be repeated every five years as required by state law. Since this process began in 1997, the next round of the expansion process will begin again in 2002. This will allow another opportunity for those wishing to continue to develop agricultural lands another "bite at the apple". Recent court cases have continued to rule for the protection of farmland but as we know, rules and legislation can and have changed. The so called "rule" to protect farmland in HB2709

was the compromise the agricultural groups accepted knowing something was going to pass they were going to like even less.

Currently because of the recent Court of Appeals case ruling Metro's Urban Reserves as completely flawed and the make up of the Metro Council, we have a variety of options available. It is those options I would like to discuss with the committee.

In summary the options I am is considering is the following:

I will preface this with the following caveat that Metro will enter into periodic review with LCDC. There is a complicated legal reason which I can explain later.

1. Expand the UGB as little as possible in the exception areas and start the process in 2 years again.
2. Expand the UGB beyond the mandatory 20 years in the exception areas where a new city would be possible.
3. Expand the UGB as in number 2 above and some limited farmland in the Hillsboro area.
4. Expand the UGB as in 2 and 3 above and have LCDC enact a new rule and/or new statutory legislation which would protect prime and high value farmland to a much higher degree than presently.

All of the above options have certain advantages and disadvantages as we can discuss.

I look forward to your response.

A handwritten signature in black ink, appearing to read "Rod", written in a cursive style.

Rod Park
Metro Councilor, Growth Management Chair

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METRO

TO: Metro Council

FROM: Rod Park, Chair *Rod*
Growth Management Committee

DATE: March 27, 2000

SUBJECT: WRPAC and MPAC discussion of Goal 5

As you may know, the Growth Management Committee has been focusing on Metro's Goal 5 (Fish and Wildlife Habitat Protection) regulations for the past few months, with the goal of adopting regulations in June 2000. Due to the abundance of quality input from our local partners, however, staff has requested that the Growth Management Committee and Council delay final action on Goal 5 until sometime later this summer. This will not affect our deadline of making the UGB decision, consistent with our extension from LCDC.

I have attached the minutes from MPAC's March 8, meeting, and WRPAC's February 14, meeting, which include some of the concerns and suggestions that we have received from our advisory committees. I think it would be helpful to review their comments as we deliberate over the policy questions in Goal 5. Please let me know if you have any questions.

COUNCILOR ROD PARK

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METRO

March 28, 2000

Patrick Hearn, Executive Director
Oregon Government Standards & Practices Commission
100 High Street SE, Suite 220
Salem, Oregon 97310

Dear Mr. Hearn:

I am writing in my capacity as an elected member of the Metro Council, seeking an advisory opinion pursuant to ORS 244.280.

I am one of the seven elected members of the Metro Council. Metro is organized pursuant to a home rule charter adopted by the voters in 1992. It has authority, under its own Charter and ORS 268, to adopt requirements for the cities and three counties within its boundaries that apply to the comprehensive plans and land use regulations of those local governments.

Pursuant to that statutory and charter authority, the Metro Council is about to commence formal discussions and action on an ordinance that could require local governments to adopt limitations (not yet determined) on development in areas within proximity to streams and other bodies of water. These requirements would be adopted pursuant to state-wide land use Goal 5 and as a Metro response to the National Marine Fisheries Service's (NMFS) listing of various salmon species pursuant to the Endangered Species Act (ESA) for the Metro region.

Prior to being elected to the Metro Council, and for a considerable period of time beforehand, I and my family have owned and farmed approximately 60 acres in three parcels of undeveloped land located within the city limits of the City of Gresham. The parcels of land are located inside the jurisdictional boundary of Metro and within the urban growth boundary established by Metro. One of the three parcels consists of 22 acres and contains approximately 600 lineal feet of an intermittent stream that flows through the property. The adoption of Metro's Goal 5 regulations may have an impact on the value of the property I own. Depending on the regulation Metro requires the City of Gresham to adopt, and the choices made by the City of Gresham in carrying out Metro's directive, the development potential of my property may be limited to some extent.

Mr. Hearn, Executive Director
Oregon Government Standards & Practices Commission
March 28, 2000
Page 2

Prior to being elected to the Metro Council, I listed the property for sale with a real estate broker. We had entered into a sales contract to be finalized prior to my taking office, but circumstances surrounding the sale unfortunately dictated we nullify the sales contract. Since that time I have received several offers to purchase the property. I have entered into more than one earnest money agreement for the sale of the property but to date none of the earnest money agreements has resulted in a final sale of the property. At this time, the property is still up for sale and I have an offer pending.

Based on information supplied to me by Metro's Data Resource Center, I understand that the total area within the Metro boundary that would be subject to the proposed Goal 5 Regulations is 296,000 acres of land. Within the boundary are about 900 miles of streams. Within 200 feet of these streams (the most currently discussed protection zone for Goal 5 regulation) there are about approximately 44,000 acres of land. Of these 44,000 acres, about 25,000 are vacant and developable. There are over 15,000 tax lots located in these 25,000 vacant areas. The tax lots are owned by over 10,000 different individuals.

In addition to the 200 foot protection zone now being discussed by Metro, Goal 5 will also be addressing storm water runoff which will impact the 296,000 acres within the Metro boundary.

I seek a determination from the Commission as to whether I have an actual or potential conflict of interest related to the adoption of Goal 5 regulations by Metro. I understand that because so many other properties of similarly situated properties exist within the Metro boundary you may determine that I have no conflict of interest at all because I am a member of a class. I also understand that I may have no conflict if I vote to mandate an increased buffer along stream corridors, since the effect of such a vote would be to my family's pecuniary detriment, not its benefit, since it would reduce, not enhance, the development potential of this property.

I also seek a determination that in the event that I complete the transaction of selling the property, that any conflict of interest that I may have had prior to that time no longer exists. I also seek your advice as to whether or not the conflict of interest would cease to exist upon the time that I enter into a legally binding contract to sell the property to another individual at a firm price that may be subject to the buyer's performing certain due diligence matters related to the property.

Until such time as I receive an advisory opinion from you to the contrary, I have been advised by my private attorney to make the assumption that I do have an actual conflict of interest in this matter and will accordingly so publicly state at the first opportunity that this matter comes before the Metro Council for discussion, and I will abstain from any participation and discussion of the matter.

Mr. Hearn, Executive Director
Oregon Government Standards & Practices Commission
March 28, 2000
Page 3

I would request that the Commission give expedited treatment to this matter in that the Metro Council's involvement in ongoing policymaking regarding Goal 5 is of outmost importance to the region, and that I currently serve as Chair of the Metro Council's Growth Management Committee under whose purview the Goal 5 Regulations will be discussed and guided for final Council adoption.

Yours very truly,



Councilor Rod Park

TRANSACTION REPORT

P. 01

MAR-28-00 TUE 06:36 PM

DATE	START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#	DP
MAR-28	06:34 PM	915033731456109	1' 45"	3	SEND	OK	241	

TOTAL : 1M 45S PAGES: 3

COUNCILOR ROD PARK

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METRO

March 28, 2000

Patrick Hearn, Executive Director
Oregon Government Standards & Practices Commission
100 High Street SE, Suite 220
Salem, Oregon 97310

Dear Mr. Hearn:

I am writing in my capacity as an elected member of the Metro Council, seeking an advisory opinion pursuant to ORS 244.280.

I am one of the seven elected members of the Metro Council. Metro is organized pursuant to a home rule charter adopted by the voters in 1992. It has authority, under its own Charter and ORS 268, to adopt requirements for the cities and three counties within its boundaries that apply to the comprehensive plans and land use regulations of those local governments.

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METRO



TO: Councilor Rod Park

FROM: Susan McLain, Councilor
Chair, Budget & Finance and State & Federal Legislative Agenda Committees

CC: All Councilors

DATE: April 21, 2000

SUBJECT: Scheduling

I just want to take this opportunity to put into writing my thanks for a job well done on your management of time consuming growth issues this year. As I said at the last two Growth Management meetings, I appreciate your energy and commitment to the subject. As an active, involved Councilor for the last 10 years, I appreciate when a Chair is inclusive and accommodating to issues, complete information and conversation on important Council work.

At the last Growth Committee it became apparent that the detailed workplan from Mary Webber will entail many Committee and Council meetings in the near future. It will not be easy to do without a complete schedule soon.

I know you and the Presiding Officer will do an excellent job setting up a schedule to allow adequate citizen involvement, and good Council conversations and process. It would be really helpful for Councilors and the public if we could set the schedules for Goal 5, UGB Criteria and the Regional Transportation Plan so they build on each other in a way that shows this connection, and relationship to the policy choices on the table.

It would be helpful if we get this scheduling as soon as possible. We all have other professional and personal schedules to work with. Thank you again for your hard work.

COUNCILOR ROD PARK

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METRO

April 24, 2000

Susan McLain, Chair
Budget & Finance, State & Federal Legislative Agenda Committees
Metro Council
600 NE Grand Avenue
Portland, Oregon 97232

Re: Letter regarding scheduling

Dear Councilor McLain:

Thank you for your letter of April 18, 2000 recognizing my management skills of the Growth Management Committee. As you know, the measurement of any good chair is not the frequency of meetings but rather the overall efficiency and productivity of the committee. The draft of the periodic review schedule Mary Weber presented to the committee on April 19th reinforced the fact that the committee will be processing a great deal of information on a tight time line.

Consequently, this will require the committee to stay focused on that task and as chair, I will be resolute to insure a timely progression to the October 31, 2000, deadline for phase one of the periodic review process. Much of the work done under phase one will also be foundational to the phase two sub-regional needs portion of the current work plan.

Your anxiety on scheduling may be resolved upon your review of the Council approved Growth Management Committee work plan. After reexamination, you may recall that the public hearings for Goal 5/ESA and UGB have been in the work plan schedule since its inception. The schedule was developed around the public hearings, as they are a key element of the process. In addition, consideration was given for MPAC, MTAC, and all our advisory committees for their timely input into the process. Final touches on the schedule are now underway, as work plan items have solidified with the Council's resolution to enter into periodic review.

As such, please be advised that WRPAC's final report on the Goal 5 issues to GMC will be needed soon so its input may be considered along with our other advisory committees.

Sincerely,

Council Rod Park, Chair
Growth Management Committee

cc: Metro Council

COUNCILOR ROD PARK

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PORTLAND, OREGON 97232 2736
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METRO

April 25, 2000

Patrick Hearn, Executive Director
Oregon Government Standards & Practices Commission
100 High Street SE, Suite 220
Salem, Oregon 97310

Dear Mr. Hearn:

Thank you for your prompt response to my March 28, 2000, request for an advisory opinion on whether I had a potential or actual conflict of interest related to the adoption of Goal 5 regulations by Metro.

As I mentioned in my letter, the Metro Council and Council Growth Management Committee are currently developing Goal 5 policy. Your decision that I do not have a conflict of interest has greatly enabled my ability, as chair of the Growth Management Committee, to oversee Metro's timely completion of Goal 5 policy.

Thank you again for your immediate attention to my request. Your assistance will help ensure that Metro stays on schedule for completion of its 2000 work plan: completion of Goal 5, response to the National Marine Fisheries Service 4(d) rule on ESA listed fish species, LCDC periodic review, and subsequent possible movement of the urban growth boundary.

Sincerely,

Rod Park
Metro Councilor, District 1

M E M O R A N D U M

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METRO

TO: Metro Council

FROM: Councilor Rod Park *Rod*

DATE: May 11, 2000

SUBJECT: Goal 5 Timeline

Attached are two documents I distributed at MPAC last night: a memo from Ken Helm concerning the timeline for Goal 5 (Fish and Wildlife Habitat) and a matrix. The Growth Management Committee will discuss both documents at its meeting next Tuesday, and consider what options to present to MPAC.

I look forward to talking with you about this issue in the future. Please let me know if you have any questions.


M E M O R A N D U M

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METRO

TO: Councilor Rod Park

FROM: Dan Cooper, General Counsel 
Office of General Counsel

DATE: May 9, 2000

RE: Compliance Timeline for Goal 5 Regulations

I have asked Ken Helm to do a detailed analysis of a timeline for compliance by local governments with Goal 5 regulations being developed by Metro. That analysis is attached.

Metro's Goal 5 regulations are subject to LCDC acknowledgment before they can become effective. After acknowledgment, ORS 268.390 (5) establishes the minimum timeline for local government compliance. One (1) year after acknowledgment, local government land use decisions may be required to be consistent with the Goal 5 rules adopted by Metro. The minimum deadline for amendment of comprehensive plans and zoning regulations is two (2) years. Assuming acknowledgment by LCDC will take six (6) months, the minimum time for local government compliance will be two and one-half (2-1/2) years from the date Metro adopts its Goal 5 regulations.

DBC/sm
Attachment

M E M O R A N D U M

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
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METRO

DATE: May 8, 2000

TO: Dan Cooper
General Counsel

FROM: Ken Helm *KH*
Assistant Counsel

RE: Compliance Timeline - Fish and Wildlife Habitat Conservation Program

Introduction

You have asked for an analysis of the Land Conservation and Development Commission's ("LCDC") administrative rules and statutory requirements that control the timeline for implementation of Metro's Fish and Wildlife Habitat Conservation program after it is adopted by the Metro Council. This memorandum explains LCDC's procedural requirements for "acknowledgment of compliance" of local plans with the Statewide Planning Goals. The memorandum also calculates an estimate of the minimum time between Metro adoption of the Fish and Wildlife Habitat Conservation program and required compliance with the program by local governments.

Functional Plan Addressing Goal 5 Must Be Acknowledged

The Goal 5 rule requires Metro functional plans addressing Goal 5 resources to be acknowledged.¹ "Upon acknowledgment of Metro's regional resources functional plan, local governments within Metro's jurisdiction shall apply the requirements of the functional plan for regional resources" rather than the requirements of the Goal 5 rule. OAR 660-023-0080(3). This sets any functional plan Metro adopts related to Goal 5 apart from other functional plans because under state law functional plans are not subject to acknowledgment.

¹ Functional plans are not the only way for Metro to protect Goal 5 "regional resources." Metro has the option of adopting a map of significant Goal 5 resources for the region for which the local governments must complete the Goal 5 process by their next periodic review. OAR 660-023-0080(2). This approach does not require LCDC acknowledgment of Metro's maps.

As a component of Metro's Regional Framework Plan, Metro's Fish and Wildlife Habitat Conservation program is subject to LCDC acknowledgment under Section 5(2)(c) of the Metro Charter.² State statute makes the RFP subject to acknowledgment compliance "in the same manner" as local comprehensive plans. ORS 197.274(1)(a). Therefore, either as a stand alone functional plan or as a component of the RFP, Metro's Fish and Wildlife Habitat Conservation program must go to LCDC for acknowledgment.

Time Necessary for Acknowledgment

The Oregon Legislature appears to have anticipated LCDC acknowledgment to occur in a relatively short amount of time. State law requires, "[a] commission order granting, denying or continuing acknowledgment shall be entered within 90 days of the date of the request by the local government unless the commission finds" that extenuating circumstances require more than 90 days. ORS 197.251(1). However, for various reasons, the acknowledgment process may take longer than the 90 days set forth in the statute.

The local government initiates acknowledgment compliance by submitting a "request" to LCDC. The request is like an application package and must include all the necessary documentation before the Department of Land Conservation and Development ("DLCD") will process the request. OAR 660-003-0010(2). Upon receiving the request, DLCD has 14 days to determine whether the acknowledgment package is complete and inform the local government if the package is incomplete. OAR 660-003-0010(6). The time taken to get the acknowledgment package complete is not counted against the statutory 90 days. OAR 660-003-0010(7).

Once DLCD finds the acknowledgment package to be complete the department mails notice to affected parties. The date on which the notice is mailed begins a 45-day comment period which is part of the 90-day statutory period. OAR 660-003-0020(1). At least 21 days prior to the date set for LCDC review of the acknowledgment package, DLCD must send copies of its staff report to the local government and all parties that filed comments or objections to the acknowledgment package. OAR 660-003-0025(1). The local government and interested parties have 10 days to file written exceptions to the staff report. OAR 660-003-0025(2). At the time set for acknowledgment review, LCDC may take one of four actions: (1) grant the local government's request for acknowledgment, (2) deny the request, (3) continue the acknowledgment review, or (4) postpone the decision for extenuating circumstances. OAR 660-003-0025(7). This process and LCDC's final order must occur within the 90-day statutory period. As a final order of the commission interpreting its own rules, the Court of Appeals will concede a high degree of deference to LCDC's decision.

² The Urban Growth Management Functional Plan ("UGMFP") is Appendix A of the RFP. Metro has submitted the UGMFP, including Title 3 - "Water Quality and Flood Management" to LCDC for acknowledgment. The RFP has been pending before LCDC since December 1997.

In the acknowledgment context, an LCDC action to "continue" or "deny" a request have special meanings. A decision to continue the acknowledgment review represents a finding that part or all of the plan does not comply with one or more of the Statewide Planning Goals. An LCDC continuance order must specify "amendments or other actions that the local government must complete within a specified period for acknowledgment to occur." OAR 660-003-0005(7).³ An order denying acknowledgment indicates an LCDC ruling that the plan does not comply with one or more of the goals. However, a denial, unlike a continuance, does not include suggested amendments to the plan and states that LCDC concludes that improvements in the plan are likely to take a substantial period of time to complete. OAR 660-003-0005(8).⁴

The level of contention on Metro's Fish and Wildlife Habitat Conservation program could have a substantial impact on LCDC's decision to grant, deny or continue an acknowledgment request. LCDC has a great deal of latitude to interpret the goals and the administrative rules that implement the goals. Should LCDC decide to deny or continue Metro's request for acknowledgment of the Fish and Wildlife Habitat Conservation program, Metro would have limited options to legally contest such a decision.

After Acknowledgment

The Goal 5 rule states that upon acknowledgment of a Metro functional plan addressing a Goal 5 resource the local governments within Metro's jurisdiction shall apply the requirements of the functional plan. OAR 660-023-0080(3). This provision of the Goal 5 rule appears to limit implementation of a functional plan until after LCDC acknowledges the plan for compliance with the goals. Unless the Metro Council adopts interim provisions regulating Goal 5 resources, which also comply with the Goal 5 rule, Metro cannot impose the "consistency" requirement under Title 8 of the UGMFP prior to the time that the Fish and Wildlife Habitat Conservation program is acknowledged.

After acknowledgment, and because Fish and Wildlife Habitat Conservation program is a component of the RFP, its implementation schedule must be consistent with the Metro Charter and state law. Beginning one year after acknowledgment, local governments must make all "land use decisions"⁵ consistent with the RFP. ORS 268.390(5)(c). Within two years after acknowledgment, local comprehensive plans and implementing regulations must be amended to comply with the RFP. ORS 268.390(5)(a). This means that full local compliance with the RFP not including extension should occur within two years after Metro adoption.

³ After the amendments specified in the continuance order are complete, LCDC may review the modified acknowledgment package on an accelerated review schedule. OAR 660-003-0032.

⁴ "Extenuating circumstances" is not defined in the rule or statute. Apparently, there is no case law interpreting the phrase.

⁵ ORS 197.015(10) defines "land use decision" to include development approvals applying the goals, comprehensive plan or land use regulations. Approval of permits that do not require the exercise of policy or legal judgement are not land use decisions and, therefore, would not be subject to the RFP until local comprehensive plans and implementing regulations are amended to comply with the RFP pursuant to ORS 268.390(5)(a).

Earliest Time For Compliance

Based on the time considerations discussed above, Metro should anticipate a best case scenario for full implementation of the Fish and Wildlife Habitat Conservation provisions in the UGMFP and RFP of approximately 2-½ years from the time of Metro Council adoption. That calculation assumes that acknowledgment will take double the statutory 90 days set for acknowledgment. Metro's Fish and Wildlife Habitat Conservation component of the RFP would not be applicable for one year after acknowledgment. During the second year after acknowledgment, consistency with the RFP will be required for approval of all land use development applications. Thereafter, all land use decisions must adhere to comprehensive plans and implementing regulations that have been amended to comply with the RFP, including the Fish and Wildlife Habitat Conservation Program.

cc: Metro Council
Mike Burton, Executive Officer
Andy Cotugno
David Moskowitz
Paul Ketcham
Mark Turpel

Summary Comparison of NMFS 4(d) Rule, Metro adopted Title 3 and proposed Goal 5 Stream Protection Program

Objective	Addressed by Title 3: Water Quality & Flooding?	Addressed by Proposed Metro Goal 5 Streamside CPR?	Addressed by NMFS 4 (d) Rule?
1. Avoid inappropriate areas such as: a. steep slopes, b. wetlands, c. areas of high habitat value	Partial Full Protection No	Full Protection Full Protection Full Protection	Yes No additional guidance given.
2. Avoid stormwater discharge impacts to a. water quality and quantity or b. to the watershed hydrograph.	Partial No	Metro interim storm water program	Yes Use a combination of design and management techniques
3. Require adequate riparian buffers around: a. all perennial streams b. and intermittent streams, c. lakes d. or wetlands	Partial (15' –50', 200' next to 25% slopes) Partial Partial Partial	Full Protection (175' or floodplain or steep slopes whichever is greater plus 25')	Yes Describes a 200' management area, with a 50' no-entry zone closest to the watercourse.
4. Avoid stream crossings by roads, and minimizing impacts through choice of mode, sizing and placement	No	Full Protection proposed	Yes Minimize crossings, use transit, access redesign, and minimize impacts by choosing bridges over culverts.
5. Protect historic stream meander patterns and channel migration zones, avoid hardening of streambanks	Partial	Full Protection proposed	Yes Linked with adequate riparian areas, and helps prevent erosion, maintains channel complexity.
6. Protect wetlands and wetland functions	Full Protection	Full Protection proposed	Yes Design around wetlands to protect their flood control, groundwater re-charge and water quality values.
7. Preserve the hydrologic capacity of any intermittent or permanent stream to pass peak flows	Full protection	Full Protection proposed	Yes Refers to Metro's Title's 3 flood management performance standards.
8. Design and build landscapes to reduce need for a. watering, b. herbicides, c. pesticides and d. fertilizer	No No No No	Within riparian zone Within riparian zone Within riparian zone Within riparian zone	Yes Must include techniques local governments can use to encourage native vegetation which may use less water and require less fertilizers, pesticides, and herbicides.
9. Prevent erosion and sediment runoff during construction	Full protection	n/a	Yes Refers to Metro's Title 3 standards as a minimum.

Summary Comparison of NMFS 4(d) Rule, Metro adopted Title 3 and proposed Goal 5 Stream Protection Program
(continued – page 2 of 2)

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Objective	Addressed by Title 3: Water Quality & Flooding?	Addressed by Proposed Metro Goal 5 Streamside CPR?	Addressed by NMFS 4 (d) Rule?
<i>10. Assure that water supply for new development can be met without impacting flows needed for threatened salmonids either directly or through groundwater withdrawals, and that any new diversions are positioned and screened to prevent injury or death of salmonids.</i>	n/a Regional Framework Plan addresses this requirement	n/a Regional Framework Plan addresses this requirement	Yes Links water diversions for urban development to instream flow needs for fish, and to requirements to provide proper diversion screening.
<i>11. Provide all necessary enforcement, funding, reporting and implementation mechanisms.</i>	Partial	To be developed	Yes Desires assurance for long-term funding for the implementation and enforcement of local ordinances
<i>12. Comply with all other state and federal environmental or natural resource laws.</i>	Yes	Yes	Yes No additional guidance provided.
Title 3, Goal 5 & Other Considerations			
<i>Balanced Cut and Fill Required?</i>	Yes	No Balanced cut & fill may not protect fish and wildlife habitat	No Balanced cut & fill may not protect fish and wildlife habitat
<i>Inventory Required?</i>	No But was produced	Yes	No But difficult to complete program without one.
<i>Economic, Social, Environmental and Energy Analysis required?</i>	No But economic impacts considered by deleting some areas	Yes	Partial Economic impact assessment is part of Federal process.
<i>Wildlife Protection Required?</i>	No	Yes	Partial Only listed species

I:\gm\longrangeplanning\projects\Goal 5\Title 33 Goal 5 matrix

NOTE: Title 3 and Goal 5 programs were not prepared as a response to the NMFS 4(d) rule. They were developed in response to the Metro Council's adoption of the Urban Growth Management Functional Plan in 1996 which called for the protection of fish and wildlife habitat. The Metro programs together constitute a package that can be submitted to the National Marine Fisheries Service (NMFS) to fulfill Endangered Species Act requirements for listed salmonids.



METRO

TO: Rod Park, Chair
Growth Management Committee

FROM: Michael Morrissey
Sr. Council Analyst

DATE: May 15, 2000

RE: Goal 5 Options to be presented to MPAC

You have asked that two options concerning Goal 5 be presented by the Growth Management Committee to MPAC, for consideration at MPAC's May 24th meeting.

The options that you are posing are these:

1. Should Metro continue its work on Title 3, Fish and Wildlife Habitat Conservation (Goal 5) program, consistent with the 1st phase periodic review work plan. This option would result in Title 3 functional plan amendments, and adoption of urban growth boundary amendments (consistent with Title 3, as amended) by October 31, 2000? or
2. Should Metro allow itself more time to complete its Title 3/Goal 5 work, possibly finishing in winter/spring of 2000-01? Then, for the purposes of completing its HB 2709 UGB requirements, assume a riparian management area consistent with state law or federal regulation?

Option 1 could (based on a 200 foot safe harbor riparian management area on all streams draining more than 50 acres in the region), lead to a UGB expansion estimated in the 1999 Urban Growth Report Update to be as much as 3,500 acres. This potential expansion would be based on a reduction in the buildable land supply needed to accommodate about 15,000 dwelling units.

The UGB implications of option 2 are unknown at this time, but clearly would result in an increase in the calculation of available buildable land inside the UGB, as compared to option 1. Option 2 would also likely require some form of agreement by LCDC, as the current work plan submitted to them by Metro includes the adoption of a Goal 5 functional plan, and its use in meeting the buildable land calculations of HB 2709.

COUNCILOR ROD PARK

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FAX 503 797-1793



METRO

June 1, 2000

The Honorable Earl Blumenauer
U.S. Representative, District 3
Weatherly Building
516 SE Morrison, Suite 250
Portland, Oregon 97214

Dear Representative Blumenauer:

David Bragdon, Presiding Officer of the Metro Council, and I are hoping to meet with you at a convenient time to update you on Metro's work on Fish and Wildlife Habitat Protection (Oregon Land Use Planning Goal 5) and our Urban Growth Boundary Periodic Review Work Program.

If possible, we would like to schedule a 30-minute meeting on Friday, June 16, when both you and Presiding Officer Bragdon will be attending the Congress for New Urbanism conference. If that proves impossible, we understand you will be back in Oregon during your July break.

My assistant, Suzanne Myers, handles my schedule, and will work with David Bragdon's assistant to find a time that works for both of us. Suzanne may be reached at 797-1543.

Thank you for working us into your busy schedule. I look forward to seeing you again.

Sincerely,

Rod Park
Metro Councilor, District 1
Chair, Metro Council Growth Management Committee

RP:sm