MILWAUKIE
Dogwood City of the West

To: **Katie Mangle, Planning Director**

From: **Brett Kelver, Associate Planner**

Date: **October 23, 2009**

Subject: **Amending the Habitat Conservation Area map**

The City is preparing to amend its zoning code and zoning map to implement Metro's Title 13 (Nature in Neighborhoods). The intent of this memo is to outline the methodology involved with the original designation of Title 13 Habitat Conservation Areas (HCAs). It is important for City staff to be familiar with the data and processes Metro used to designate particular areas as HCAs. Likewise, staff needs to understand the Metro-sanctioned mechanisms for amending the HCA map, since the City is evaluating the HCAs identified by Metro within the city limits in order to determine which areas should in fact be included on the City's zoning map.

Metro Methodology for HCA mapping

Statewide Land Use Planning Goal 5 establishes standards for protecting natural resources, open spaces, and scenic and historic areas. The Metro Council adopted Title 13 (Nature in Neighborhoods) to meet Goal 5 by protecting riparian corridors and wildlife habitat. Metro underwent a 5-year inventory process to produce a map of the region's significant natural resources, concluding in 2001.

The inventory started with the identification of streams, tree canopy areas at least 1 acre in size, grassy and shrubby areas within 200 ft of streams, wetlands, and floodplain areas. Metro then used two models to evaluate these natural areas for their riparian functions (e.g., pollution control, stream flow moderation, provision of organic material) and for their contributions to healthy upland wildlife habitat. Analysis yielded three graded designations of habitat in each model—Class I, II, and III riparian habitat and Class A, B, and C upland wildlife habitat.

Next, Metro conducted an analysis that assessed the economic, social, environmental, and energy (ESEE) impacts of protecting and not protecting the riparian and upland wildlife habitats identified in the inventory phase. Metro evaluated the consequences of prohibiting, limiting, or allowing uses that might conflict with the preservation of the inventoried resources. The agency developed six management options combining higher or lower degrees of habitat protection and urban development. For Milwaukie, the map of Environmental Resources found in the City's Transportation System Plan (TSP) shows the Goal 5 development value of property versus its conservation value (see Attachment 1, TSP Figure 3-19).

After considering the analysis of options, the Metro Council decided that (1) none of the inventoried resources was environmentally significant enough relative to conflicting uses to warrant prohibiting those conflicting uses and (2) development should be limited within some significant resources and allowed in others. Throughout the process, Metro conducted extensive

public outreach efforts for comments and input from citizens, local governments, and other interested parties. See Attachment 2 for a more detailed accounting of the Metro Council's analysis and decision.

The Metro Council opted for a classification system to reflect the two priorities noted above. Table 1 shows the crossing of habitat designation with a development value and prescribes a corresponding degree of resource protection with regard to use: Strictly Limit, Moderately Limit, Lightly Limit, and Allow. Essentially, resource areas that rated a "Strictly Limit" level of use protection were designated High-value HCAs; those rating a "Moderately Limit" level were designated Moderate-value HCAs; those rating a "Lightly Limit" level were designated Low-value HCAs. Inventory areas that rated an "Allow" level of use protection were not designated as HCAs.

Table 1 – Metro HCA Designations:
Habitat Classification versus Development Value

Fish & Wildlife Habitat Classification	High Urban Development Value	Medium Urban Development Value	Low Urban Development Value	Other Areas
	Primary 2040 components[1], high employment value, or high land value[4,5]	Secondary 2040 components[2], medium employment value, or medium land value[4]	Tertiary 2040 components[3], low employment value, or low land value[4]	Parks and Open Spaces, no design types outside UGB
Class I Riparian/Wildlife	ML / A[6]	SL	SL	SL / SL+[7]
Class II Riparian/Wildlife	LL/ A[6]	LL	ML	ML / SL+[7]
Class III Riparian/Wildlife	A	A	A	A
Class A Upland Wildlife	A / LL[8]	A / ML[8]	A / ML[8]	A / SL[8,9] / SL+[7,8]
Class B Upland Wildlife	A / LL[8]	A / LL[8]	A / ML[8]	A / SL[8,9] / SL+[7,8]
Class C Upland Wildlife	A	A	A	A
Impact Areas	A	A	A	A

Key: SL = strictly limit; ML = moderately limit; LL = lightly limit; and A = allow.

[1] Primary 2040 components: Regional Centers, Central City, Town Centers, and Regionally Significant Industrial Areas
[2] Secondary 2040 components: Main Streets, Station Communities, Other Industrial areas, and Employment Centers
[3] Tertiary 2040 components: Inner and outer neighborhoods, Corridors
[4] Land value excludes residential lands.
[5] Regionally significant educational or medical facilities, as identified by Metro, are also designated as high urban development value because of the special economic and social contributions they provide and because they are frequently located in areas designated as Tertiary or Secondary 2040 components, and therefore would not necessarily receive the economic ranking they deserve; see Exhibit C, Section 4(D)(5)(b).
[6] Apply allow treatment to the International Terminal (IT) site and Port of Portland Terminals 4, 5 and 6 because Council finds the special economic importance of those sites outweighs its resource values.
[7] Apply more strict protection (SL+) to parks designated as natural areas in Class I and II riparian habitat, and to future parks designated as natural areas in Class A and B upland wildlife habitat brought within the urban growth boundary after the program's effective date.
[8] Apply these limit decisions for Class A and B upland wildlife habitat in areas brought within the urban growth boundary after the program's effective date.
[9] Apply SL designations to 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.
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Verifying and Revising the Map

The Title 13 model ordinance outlines the process for verifying the on-site location of HCA resources. The degree of complexity of the verification process varies depending on how accurately one believes the adopted HCA map shows the resources on a site. Where there appears to be a simple misalignment of the HCA resource with respect to a property boundary, the remedy can be as simple as providing information that documents the misalignment. Where the inaccuracy relates to a more fundamental question, such as whether the designated HCA resource qualifies as habitat or actually provides any environmental benefit, the verification process is much more rigorous.

The HCA map that Metro produced for the region includes some expected inaccuracies, since it is based more on GIS data and aerial photography than on actual site visits to every specific HCA feature. Prior to adopting the new map, the City will work with Metro to correct as many of the errors as possible in order to limit unnecessary difficulties for property owners and permit applicants in the future.

After reviewing the map, City staff has identified three categories of concern that could be addressed as part of the code amendment process:

A. Minor errors – The Metro map shows some HCAs that are not in fact resource areas, such as parking lots or streets. Whether due to mapping misalignments or to development that occurred between 2002 (when the original aerial photographs were taken by Metro) and the present, these inaccuracies could be corrected with a process similar to the basic verification approach outlined in Section 9(F) of the model ordinance. For each case, the City should provide Metro with the following information:

1) A detailed property description.
2) The applicable HCA map.
3) A current, scaled aerial photograph of the property showing lot lines.
4) A clear explanation and documentation of the error.

B. Resources of questionable value – Staff believes that some features shown as HCAs are resources with little or no actual habitat value. For example, a notable portion of the Portland Waldorf School lawn is shown as a Moderate-value HCA. These corrections could be justified by conducting a more in-depth review of the original HCA designation using the process outlined in Section 9(G-4) of the model ordinance[1]:

1) Determine the boundaries of the habitat area on the property using the process presented in Attachment 3 – Process Document: Designating Habitat Areas.
2) Determine the urban development value of the property using Attachment 1 – TSP Figure 3-19.
3) Cross-reference the habitat classes with the urban development value of the property using Table 2, Method for Identifying Habitat Conservation Areas, below.

This review may result in the questionable feature disappearing from the map. If not, and if the City continues to believe that the feature should not remain on the map, the City

[1] This process excludes the model ordinance's suggestion (Section 9(G-4b) to require boundary verification of habitat in future urban growth boundary expansion areas, as the suggestion is not relevant to the Milwaukie situation.

should provide a clear narrative rationale to Metro that the resource in question is not worth protecting.

Table 2 – Method for Identifying Habitat Conservation 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	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.

C. **Very small HCAs that may be difficult to administer –** In cases where a property includes a very small HCA area, it may be onerous for the property owner and difficult for staff to apply the HCA-specific regulations to just a few square feet of land. This seems especially true for properties that include a very small HCA area outside a designated Water Quality Resource (WQR) feature. WQR features are currently regulated by the zoning ordinance in Section 19.322 and will maintain a high level of protection under the new Natural Resources Overlay. It seems reasonable to believe that the WQR regulations will serve to adequately protect the overall resource on these properties.

   In situations where there is only a very small HCA area to trigger regulation beyond the existing WQR rules, the City should present a case to Metro that (1) verifies the original HCA resource designation utilizing the process outlined under point B, above, and then (2) documents the rationale for excluding that particular HCA.

Next Steps

As the City proceeds with the code amendment project to comply with Title 13, staff will organize its list of proposed map changes using the three categories noted above. As soon as possible, City staff will select one example from each category and prepare the rationale for change as prescribed above. These three test cases will be sent to Metro staff for evaluation, with a request for feedback in order to determine whether the same format can be used to present the remaining change items on the City's list. Once Metro has responded, City staff will

make any necessary adjustments to the rationale templates for each of the three categories and then prepare the rationales for all remaining proposed change items.

Public participation is a key part of this particular code amendment process, including opportunities for the public to propose additional changes to the HCA map prior to adoption. City staff will ask that such suggestions be accompanied by a narrative explaining the rationale for the proposed change, to facilitate the City's presentation to Metro. City staff will use available aerial photographs and limited site visits to evaluate proposed map changes. However, it will not be possible for staff to conduct new ESEE analyses or LIDAR (Light Detection and Ranging) surveys. The City will endeavor to evaluate and resolve as many errors as possible, within the project's schedule and budget, prior to adoption of the new HCA map. Once the new map has been adopted, future proposed changes will be processed and evaluated as provided in the new code.

Attachments

1. TSP Figure 3-19, Environmental Resources – Goal 5 map
2. Pages 1-5 from Attachment F to Metro Ordinance No. 05-1077C, Findings of Fact and Conclusions of Law
3. Process Document: Designating Habitat Areas

ATTACHMENT 1

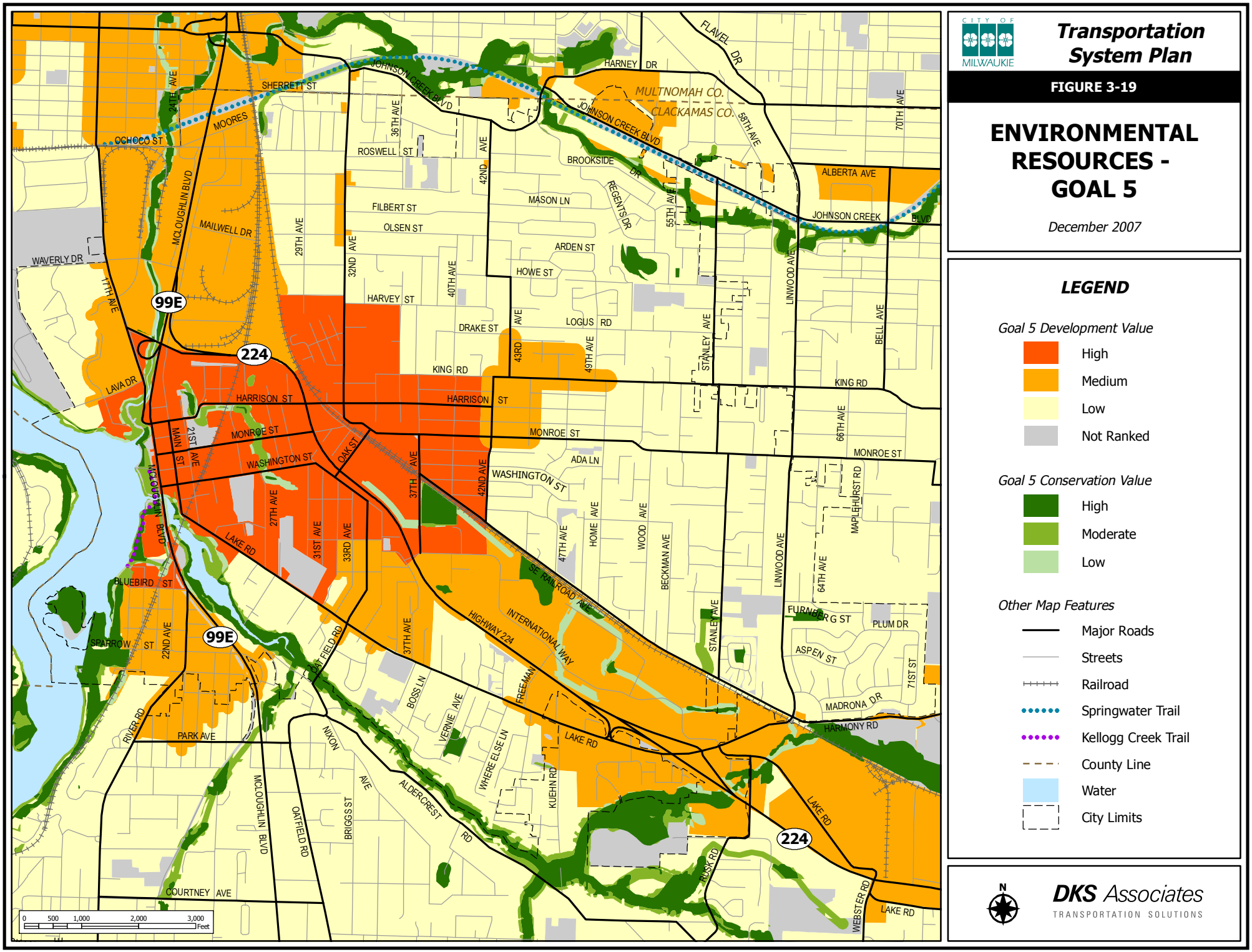

EXHIBIT F—ORDINANCE NO. 05-1077C

FINDINGS OF FACT AND CONCLUSIONS OF LAW

By approving this ordinance, Metro adopts a new title (Title 13, "Nature in Neighborhoods") to the Urban Growth Management Functional Plan ("UGMFP"), amends the Regional Framework Plan, amends other provisions of the UGMFP, and adopts a model ordinance for use by cities and counties, at their option, to comply with the new provisions of the UGMFP. Metro adopts this ordinance to implement certain provisions of Statewide Planning Goals 5 and 6 within the Metro region. As described in these Findings of Fact and Conclusions of Law ("Findings"), Metro's adoption of this ordinance complies with Oregon land use planning statutes, statewide land use planning goals, administrative rules adopted by the Land Conservation and Development Commission to implement the statewide land use planning goals, and the Regional Framework Plan.

These Findings are intended to explain how this ordinance complies with applicable laws and goals in general. These Findings supplement the extensive decision record for this multi-year planning effort, and are supported by the facts in the decision record. That record includes all documents in the public record for Metro Resolution Nos. 00-2965, 01-3087A, 01-3141C, 02-3176, 02-3177A, 02-3195, 02-3218A, 03-3332, 03-3376B, 04-3440A, 04-3488, 04-3489A, 04-3506A, 05-3557, 05-3574A, and 05-3577A, all of which were adopted by the Council in the course of developing this ordinance. Some of the most critical documents supporting Metro's adoption of this ordinance are included as attachments to these Findings. Metro has relied on the attached documents and information in the record in developing this ordinance.

FINDINGS OF COMPLIANCE WITH STATEWIDE PLANNING GOALS

As noted above, Metro adopts this ordinance to implement certain provisions of Statewide Planning Goals 5 and 6 within the Metro region. These Findings will therefore start with Metro's compliance with those goals, and then address compliance with the other goals in numerical order.

Goal 5. Open Spaces, Scenic and Historic Areas and Natural Resources

Division 23 of Chapter 660 of the Oregon Administrative Rules (the "Goal 5 Rule") establishes procedures and criteria for complying with Goal 5. The Goal 5 Rule provides that "Metro may adopt one or more regional functional plans to address all applicable requirements of Goal 5 . . . for one or more resource categories and to provide time limits for local governments to implement the plan." OAR 660-023-0080(3). In order to adopt a Goal 5 program, local governments must follow a three-part process. The first part is to conduct an inventory of Goal 5 resources within the jurisdiction. OAR 660-023-0030. The second part is to conduct an analysis of the economic, social, environmental, and energy (ESEE) consequences of protecting or not protecting such inventoried resources (the "ESEE Analysis"), and to decide whether to allow, limit, or prohibit uses that conflict with the preservation of the inventoried resources (the "ALP Decision"). OAR 660-023-0040. The third part is to develop a program to achieve Goal 5 consistent with the government's ALP Decision. OAR 660-023-0050.

A. Metro's Inventory Process

The Goal 5 Rule describes a four-step process for conducting an inventory of Goal 5 resources. Metro's resources inventory is described in detail in Attachment 1 to these Findings which includes two documents, the *Metro's Riparian Corridor and Wildlife Habitat Inventories, August 2005* (the "Inventory Report") and the *Addendum and Update to Metro's Riparian Corridor and Wildlife Habitat Inventories, September 2005*, (the "Inventory Addendum"). The Inventory Report and the Inventory Addendum also refer to, and rely on, *Metro's Technical Report for Fish and Wildlife Habitat, April 2005* (the "Technical Report," included as Attachment 2 to these Findings). The Inventory Report, Inventory Addendum, and Technical Report, including their final recommendations, findings, and conclusions, are hereby incorporated by reference as part of these Findings. As described in detail in the Inventory Report and Inventory Addendum, Metro followed the inventory process required by the Goal 5 Rule to inventory two types of Goal 5 resources within the Metro region: riparian corridors (OAR 660-023-0090) and wildlife habitat (OAR 660-023-0110). Metro exercised its discretion under OAR 660-023-0080(3) not to inventory other Goal 5 resources.

Specifically, following the Goal 5 Rule's four-step inventory process (OAR 660-023-0030), and as fully described in the Inventory Report and Inventory Addendum, Metro collected information about riparian corridors and wildlife habitat, determined that the information it had collected was adequate, determined the significance of resource sites, and, by adoption of this ordinance, hereby adopts a list of regionally significant resource sites. Those sites are depicted on the Regionally Significant Fish and Wildlife Habitat Inventory Map (the "Inventory Map"), attached as Exhibit A to this ordinance. As fully described in the Inventory Report, Inventory Addendum, and Technical Report, the Council finds that Metro's inventory of riparian corridors and wildlife habitat complies with Goal 5.

B. Metro's ESEE Analysis and "Allow-Limit-Prohibit" Decision Process

The second step of the process required by the Goal 5 Rule is to analyze the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a use that conflicts with identified Goal 5 resources. OAR 660-023-0040(1). The rule provides a four-step process for conducting the ESEE Analysis: (1) identify conflicting uses, (2) determine impact areas; (3) analyze the ESEE consequences; and (4) determine whether to allow, limit, or prohibit conflicting uses for significant resource sites.

Metro conducted its ESEE Analysis in two phases. Metro's ESEE Analysis is described in detail in Attachments 3 and 4 to these Findings, *Metro's Phase I ESEE Analysis, April 2005*, and *Metro's Phase II ESEE Analysis, April 2005* (collectively, "Metro's ESEE Reports"). Except as otherwise provided in the text of this Exhibit F to this ordinance, Metro's ESEE Reports, including their final recommendations, findings, and conclusions, are hereby incorporated by reference as part of these Findings. As described in detail in Metro's ESEE Reports, Metro followed the ESEE analysis process required by the Goal 5 Rule for all inventoried regionally significant fish and wildlife habitat.

The first step of the required ESEE analysis is to identify conflicting uses. Chapter 3 of *Metro's Phase I ESEE Analysis* describes how Metro identified conflicting uses and how Metro's approach complies with the Goal 5 Rule. Metro used its seven generalized regional zones to group similar conflicting uses. *ESEE Phase I Analysis*, page 24.

The second step of the required ESEE analysis is to determine the "impact area" surrounding the significant resources. Chapter 2 of *Metro's Phase I ESEE Analysis* describes how Metro identified impact areas and how Metro's approach complies with the Goal 5 Rule.

The third step of the required ESEE analysis is to analyze the ESEE consequences that could result from a decision to allow, limit, or prohibit conflicting uses within significant resources. Chapters 4 through 7 of *Metro's Phase I ESEE Analysis* describe, respectively, the general economic, social, environmental, and energy consequences of allowing, limiting, or prohibiting such conflicting uses within regionally significant fish and wildlife habitat, and Chapter 8 of the Phase I Report describes the likely tradeoffs that will result from a decision to allow, limit, or prohibit conflicting uses for significant resources. In order to aid in its analysis, Metro differentiated its inventory of regionally significant fish and wildlife habitat by habitat type and quality, creating six habitat categories (Riparian Class I, II and III, and Upland Wildlife Class A, B and C). In Table 8-1 of the Phase I Report, Metro summarized the ESEE consequences of allowing, limiting, or prohibiting conflicting uses on each of the different habitat categories, as well as on impact areas. In addition, Appendix D to the Phase I Report provides a matrix that further summarizes the ESEE consequences of allowing, limiting, or prohibiting conflicting uses by habitat category and by generalized regional zoning designations. This analysis allowed Metro to assess the ESEE consequences that would apply to similarly situated resource sites; that is, significant resources of the same habitat type and class are similarly situated, and Metro then analyzed such properties that are subject to the same generalized regional zoning designations.

The Phase II Report completed Metro's ESEE Analysis. Although not required by the Goal 5 Rule, the Metro Council directed staff to prepare multiple program approaches and to assess the ESEE consequences of each approach, based on criteria developed during Phase I of the ESEE analysis, in order to make as informed an ALP Decision as possible. As part of the Phase II Report, Metro also considered applicable requirements of the statewide goals and acknowledged plan requirements. In particular, Metro assessed the effect that existing non-regulatory programs have on regionally significant fish and wildlife habitat (Phase II Report, pages 9-13) and the effect that existing regulatory requirements, including locally adopted Goal 5 programs, have on significant habitat (Phase II Report, pages 25-33; and *Local Plan Analysis: A review of Goal 5 protection in the Metro region (August 2002)*, adopted by the Council with its approval of Resolution No. 02-3218A, August 8, 2002).

Based upon Metro's two-phase ESEE analysis and advice from citizens, Metro advisory committees, local governments, and other interested parties, Metro has made its ALP Decision, which is reflected below and in this ordinance. As described in the ESEE Reports, there are many factors weighing for and against allowing, limiting, or prohibiting conflicting uses within significant resources. Metro has weighed and considered those factors to make a balanced ALP Decision that seeks to conserve and preserve the highest value and most critical habitat, ensure that the Metro region's economy continues to thrive, protects and improves the region's water quality and prevents water pollution, and respects property rights. The Council finds that none of the significant resources are of such importance relative to conflicting uses to support a decision to prohibit such conflicting uses. The Council finds that conflicting uses should be limited in some significant resources and allowed in others. Reflecting Metro's balancing of competing factors in making its ALP Decision, Metro has structured its ALP Decision using a matrix that differentiates the significant resources by habitat class and type and by its urban development value. The following chart summarizes Metro's ALP Decision:

Fish & Wildlife Habitat Classification	High Urban Development Value	Medium Urban Development Value	Low Urban Development Value	Other Areas
	Primary 2040 components[1], high employment value, or high land value[4, 5]	Secondary 2040 components[2], medium employment value, or medium land value[4]	Tertiary 2040 components[3], low employment value, or low land value[4]	Parks and Open Spaces, no design types outside UGB
Class I Riparian/Wildlife	ML / A[6]	SL	SL	SL / SL+[7]
Class II Riparian/Wildlife	LL/ A[6]	LL	ML	ML / SL+[7]
Class III Riparian/Wildlife	A	A	A	A
Class A Upland Wildlife	A / LL[8]	A / ML[8]	A / ML[8]	A / SL[8, 9] / SL+[7, 8]
Class B Upland Wildlife	A / LL[8]	A / LL[8]	A / ML[8]	A / SL[8, 9] / SL+[7, 8]
Class C Upland Wildlife	A	A	A	A
Impact Areas	A	A	A	A

Key: SL = strictly limit; ML = moderately limit; LL = lightly limit; and A = allow.

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

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

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

[4] Land value excludes residential lands.

[5] Regionally significant educational or medical facilities, as identified by Metro, are also designated as high urban development value because of the special economic and social contributions they provide and because they are frequently located in areas designated as Tertiary or Secondary 2040 components, and therefore would not necessarily receive the economic ranking they deserve; see Exhibit C, Section 4(D)(5)(b).

[6] Apply allow treatment to the International Terminal (IT) site and Port of Portland Terminals 4, 5 and 6 because Council finds the special economic importance of those sites outweighs its resource values.

[7] Apply more strict protection (SL+) to parks designated as natural areas in Class I and II riparian habitat, and to future parks designated as natural areas in Class A and B upland wildlife habitat brought within the urban growth boundary after the program's effective date.

[8] Apply these limit decisions for Class A and B upland wildlife habitat in areas brought within the urban growth boundary after the program's effective date.

[9] Apply SL designations to 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.

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As described above, this ALP Decision is a balanced decision that limits conflicting uses in the most critical habitat, which is the Class I and II riparian habitat. Metro is not limiting development in wildlife habitat because the economic and social impacts of such a decision, as well as the impact on meeting the region's housing and employment needs, would be too significant compared with the value of such protections. Instead, Metro is developing aggressive non-regulatory programs to conserve and preserve such habitat, and will work closely with cities and counties in the region to do the same. In addition, Metro is adopting a "no rollbacks" requirement to ensure that existing, locally adopted and acknowledged Goal 5 programs that limit development in upland wildlife habitat are not repealed or weakened. Metro's "allow" decision for wildlife habitat applies only to areas within the current UGB. I future UGB expansion areas the economic and social impacts are not as significant because advance planning can reduce conflicts and help ensure that vibrant new communities are created. Such areas are not yet slated

for development, and there are not the same, concrete development expectations. For that reason, Metro has decided that a limit decision is appropriate within Class A and B upland wildlife habitat in future UGB expansion areas (but not within Class C habitat, which includes the smallest and most disconnected patches of habitat). Finally, Metro has made allow decisions in all Class III riparian habitat and in impact areas. Class III habitat consists primarily of developed flood areas that provide just one essential habitat function—water storage during flood events. The Council finds that the environmental benefits of limiting redevelopment of such areas is not commensurate with their economic value. Similarly, the Council finds that the environmental benefits of limiting conflicting uses in impact areas, which are not themselves habitat areas, are outweighed by the economic and social consequences that would result from such development limits.

In addition, publicly owned parks that are managed as natural areas are the backbone of the region's best functioning fish and wildlife habitat. The positive environmental consequences of limiting conflicting uses in such areas far outweighs any negative consequences of such a decision. For that reason, Metro has made a "strictly limit-plus" decision for such areas.

Metro has made two important modifications to its general ALP Decision in order to better calibrate its weighing and balancing of ESEE consequences. First, Metro has made an allow decision for four international marine terminals: the International Terminal site and Port of Portland Terminals 4, 5 and 6. Metro makes this allow decision because these terminals are currently developed for use as international marine terminals capable of mooring ocean-going tankers and cargo ships, and therefore have an especially critical role in supporting the region's economy, and in consideration that these terminals are substantially without vegetative cover, and therefore provide significantly less environmental value as habitat.

Second, Metro modifies its limit decision slightly to the extent that it affects owners of existing, developed residential properties. The modification allows such owners to undertake in the future any activity that they can currently undertake without having to obtain a land use approval or a building, grading, or tree removal permit from their city or county. The environmental consequences of imposing new limits on such activities would be to prevent certain activities that might harm the ecological functions being provided by such areas. However, the most harm done to habitat is due to significant property development, and the properties affected by this decision are already developed with residences. Thus, the environmental benefit of imposing new limits on such activities is relatively small. On the other hand, imposing any new limits on activities that homeowners can undertake today without having to seek permission could result in thousands of homeowners being confused regarding the new rules, resenting the new limits on their liberty to use their properties, and would thereby undermine Metro's efforts to encourage behavior that would benefit habitat areas in ways that regulations cannot. The Council therefore finds that imposing new limits on activities that homeowners can undertake today without having to obtain a permit would have significant detrimental social consequences that are not outweighed by the beneficial environmental consequences of imposing such new limits.

As described above and as supported by the record in this matter, the Council finds that Metro's ESEE Analysis and ALP Decision comply with Goal 5.

C. Metro's Program to Achieve Goal 5

The final step of the Goal 5 process is to develop a program to implement the ALP Decision. The Goal 5 Rule provides that Metro may adopt a functional plan to address the applicable requirements of the Goal and the Goal 5 Rule, and that, after acknowledgement by LCDC, local

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Process Document: Designating Habitat Areas

From the Metro model ordinance for Title 13, determining the boundaries of the habitat area on a property requires a five-step process:

1. Locate the water feature that is the basis for identifying riparian habitat:
    1. Top of bank of streams, rivers, and open water within 200 ft of the property.
    2. Flood areas within 100 ft.
    3. Wetlands within 150 ft (using the Metro 2004 Wetland Inventory Map).
2. Identify the vegetative cover status of the relevant portion of the property (using the Metro Vegetative Cover Map):
    1. Areas within 200 ft of the top of bank of streams, rivers, and open water.
    2. Wetlands and areas within 150 ft of wetlands.
    3. Flood areas and property within 100 ft of flood areas.
3. Determine whether the land slopes upward from streams, rivers, and open water within 200 ft of the property more than 25 percent.
4. Identify the habitat class of areas within 200 ft of the identified water feature as per Table 6 – Method for Locating Boundaries of Class I and II Riparian Areas, below).
5. Confirm that the development and vegetative cover status of areas within up to 200 ft of the identified water feature has not been altered without the required City approval since the effective date of the implementing code.

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.