



## LIMITED GOAL 5 PROGRAM UPDATE

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### MEETING AGENDA

Date: Jan. 23, 2024

Time: 1-3 p.m., via Zoom

Meeting Link: <https://us02web.zoom.us/j/83568137024>

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**Meeting Purpose:** Status update on project work, including public engagement and Inventory. Review and give feedback on the Draft ESEE Analysis/Title 13 Compliance Status Report and Code Concepts.

**I. Welcome (5 min)**

- Introductions
- TAC Meeting #2 Meeting Summary (attached)
- Review agenda

**II. Report of Community Engagement and Inventory (20 min)**

- Overview of Community Engagement (attached)
- Resulting changes to Inventory
- Next Steps

**III. Status Update on Draft ESEE Analysis/Title 13 (25 min)**

- Review memo and discussion questions (attached)

**IV. Draft Code Concepts (60 min)**

- Review memo and discussion questions (attached)

**V. Public Comment (10 min)**

**VI. Closing and wrap up (5 min), including discussion of Next Steps**

***Materials attached (via email to TAC members):***

- Technical Advisory Committee Summary – Meeting #2
- Community Engagement and Inventory Update
- Status Update on Draft ESEE Analysis and Title 13
- Draft Code Concepts



# LIMITED GOAL 5 PROGRAM UPDATE

## Technical Advisory Committee Summary – Meeting #2

August 21, 2023  
1-3 p.m., via Zoom

Members and alternates present:

Ariana Scipioni, Oregon Department of Fish and Wildlife (ODFW)	Lacey Townsend, Tualatin Soil and Water Conservation District (TSWCD)
Amanda Punton, Natural Resource Specialist, Department of Land Conservation and Development (DLCD)	Greg Creager, Tualatin Hills Park and Recreation District (THPRD)
Laura Kelly, DLCD Regional Representative	Stephen Shane, Washington County
Rachel Marble, City of Hillsboro	Deborah Lockwood, Planning Commission Chair
Fran Warren, Community Advocate	Matt Wellner, Home Building Association (HBA)
Tim Moss, Oregon Department of Forestry (ODF)	Glen Hamburg, Metro
Rob Zoeller, City of Beaverton	

Members absent:

Bruce Barbarasch, THPRD	Ted Labbe, Urban Greenspace Institute
Damon Reische, Clean Water Services (CWS)	Lindsay Obermiller, CWS
Morgan Will, Planning Commissioner	

Public present:

Francene	Li
Jill Warren	Virginia Bruce
Victoria Frankeny	Emily Vonada
Liz Saufley	Dan Brenner
Josie	Susan Mates
Gregg	

Staff/Consultants present:

Cathy Corliss, MIG   Angelo Planning Group (APG)	Brandon Crawford, MIG   APG
Ethan Rosenthal, David Evans and Associates (DEA)	Michelle Miller, Washington County (Project Manager)
Traci Shirley, Washington County	Theresa Cherniak, Washington County
Suzanne Savin, Washington County	Brenda Schaeffer, Washington County
Emily Brown, Washington County	Erin Wardell, Washington County

Meeting Purpose: Review and give feedback on the Draft Inventory Report and Economic, Social, Environmental and Energy (ESEE) Analysis / Title 13 Compliance Approach

## Summary

The second meeting of the Limited Goal 5 Program Update Technical Advisory Committee (TAC) was attended by representatives from a variety of agencies and jurisdictions, members of the public, County staff and the consultant team for the project. Members who hadn't attended the previous meeting introduced themselves, after which staff reviewed the meeting agenda.

This TAC meeting addressed the draft report for the Goal 5 inventory, and reviewed the proposed approach to the ESEE analysis.

## Discussion

Highlights of the discussion are summarized below.

### Draft Goal 5 Inventory Report

- Consultant provided an overview of the inventory update
  - Recap of approach
  - Status update
  - Explanation of habitat patch assessment
  - Examples of typical manual edits
  - Request for feedback from TAC members
- A community advocate representative expressed concern that the Urban Greenspace Institute (UGI) representative was not present at today's meeting. She asked whether the inventory was based on ground-truthing versus remote scans, whether community scientists may be able to assist, and expressed interest in protection of head waters.
  - Consultant responded that the UGI representative had reached out to him before this meeting and that no ground-truthing had been done yet; there is limited project budget for that.
- An HBA representative expressed concern about the incorporation of Metro Riparian I and II Habitat into the inventory, noting that he doesn't want another layer of regulation beyond that required by CWS. He asked why the Metro Riparian Habitat I and II acreage was much larger than the acreage of County water-related habitat. He would like to have a "before" and "after" map of natural resource locations.
- The Metro representative commented on Slide 23 of the PowerPoint presentation, "Remaining Types of Edits," which showed a Metro Upland Wildlife Habitat mosaic. Regarding the question of how we think about "finger-shaped" habitat patches of Upland Habitat, he noted that in 2005, when Metro was thinking about what type of habitat to protect, they considered the edge effects of habitat, including size, shape and connectivity of features. If a habitat was long and skinny and disconnected, his understanding is that it wasn't necessarily intended to be protected.
- The ODFW representative noted that mitigation corridors providing important connections for certain species are often narrow and long, so there are a lot of considerations to think about.

- The DLCD Natural Resource Specialist asked if the Metro Upland Wildlife Habitat mosaic shown on Slide 23 would be protected under Metro’s Title 13. She thought such mosaics should be retained in the inventory.
  - Consultant responded that this area was in the Urban Growth Boundary prior to 2005, so it would not be regulated or protected under Metro’s Title 13. Mosaics such as these will be kept in the inventory for now.
- The ODFW representative had a question about manual edits to the inventory to delete areas that are substantially developed. She asked how “substantially developed” was defined.
  - Consultant responded that paved areas, gravel driveways were considered substantially developed.
- The ODFW representative noted that the Backyard Habitat Certification Program engages people – would a backyard be substantial?
  - Consultant responded that residential lots less than 10,000 square feet in size that contained habitat were generally determined not to significant from the get-go. The County didn’t want to impose regulations on individual yards providing voluntary protections.

### ESEE Analysis / Title 13 Compliance Approach

- Consultant provided an overview of the ESEE (Economic, Social, Environmental and Energy) Analysis process
  - ESEE proposed approach; relationship to Goal 5 and Metro Title 13 requirements
  - Conflicting uses
  - Impact area
  - ESEE consequences
- Slide 30 of PowerPoint presentation described ESEE approach for “old” UGB areas (located within UGB on or before 12/28/05) versus “new” UGB areas (added to UGB after 12/28/05)
  - The HBA representative asked whether cities would handle the ESEE process for new UGB areas.
    - Consultant responded that during this interim period, the County would need to do the ESEE for these areas that currently have a land use designation of FD-20. It could be a short-term issue because ultimately these new UGB areas will be annexed by cities.
  - The HBA representative asked if there are any new UGB areas that won’t be governed by a city. He asked why the County would want to be more restrictive than the ultimate city regulations – would future County regulations handcuff any later allowance by a city?
    - Consultant responded that she didn’t think County regulations would have that effect, because the land use district of the properties would change when site annexed to a city.
  - The DLCD Natural Resource Specialist noted that the Goal 5 safe harbor protection measure is available for riparian areas without doing an ESEE analysis.
    - Consultant responded that within the UGB, the safe harbor is that we apply Metro’s Title 13 requirements for regional resources. We can’t be less protective than Title 13. If we’re complying with Title 13 at a minimum, do we want to be MORE protective? If so, safe harbor may not be more protective.

- The Metro representative stated interest in finding out the results of the ESEE analysis. He expressed curiosity about the idea of the safe harbor approach, but was not sure that it would be more protective.
- The community advocate representative noted that with Middle Housing and Accessory Dwelling Units coming in, buffer areas will come under pressure. The buffer areas are needed even in the backyard habitats.
- Slide 33 of PowerPoint presentation listed the proposed conflicting use categories for the ESEE analysis
  - The DLCDC Natural Resource Specialist expressed additional thoughts about “new” UGB areas – specifically the ESEE analysis that would apply to locally significant resources versus the supplemental ESEE analysis that would apply to regionally significant habitat. If Title 13 measures apply, she wondered whether conflicting uses that are NOT allowed under Title 13 would need to be counted? She wondered if we could only look at conflicting uses that ARE allowed under Title 13?
    - Consultant replied that this was an interesting thought that she would consider further.
  - The community advocate representative noted that construction of schools has contributed to the greatest loss of habitat in the region, and asked which conflicting use category they fell under.
    - Consultant replied that schools likely fall within the “High Intensity Urban” conflicting use category.
- Slide 34 of the PowerPoint presentation contained a list of potential wildlife habitat disturbance activities.
  - The DLCDC Natural Resource Specialist noted that the keeping of pets is listed as a wildlife habitat disturbance activity, but this activity cannot be controlled through planning or land use regulations.
    - Consultant replied that this list is really just to help people understand the types of activities that could disturb habitat. The impacts of some disturbance activities may not be able to be mitigated through planning or land use regulations.

#### Questions for TAC members:

- Do you have any recommendations for resources/references that we should consider as we work to quantify positive economic and energy consequences?
- Do you foresee problems with the proposed approach?
- What are your thoughts on how to handle wildlife habitat? Do you have recommendations for an approach?
- Do you have any suggestions on how to engage the community-at-large in the ESEE analysis process?

## Public comment:

- A community member asked how this process relates to the County's approach to addressing climate change. She asked if there's a measure that can protect these areas while this regulatory process is moving forward.
  - Consultant responded that the ESEE can address the positive economic benefit of protecting significant natural resources and trees, including their ability to mitigate for climate change.
  - Staff responded that the County's urban unincorporated area is subject to the regulations that are currently in effect. Furthermore, the Department of Land Conservation and Development's Enforcement Order prohibits residential development on properties containing designated Wildlife Habitat until new regulations are adopted.
- A community member noted that King City proposes to put a new road through a current County significant natural resource area, and asked staff to comment on that.
  - Staff noted that the area in question is a new UGB area that King City is conducting the comprehensive planning for. It will ultimately be annexed into King City, and recommended that the community member should check with King City.
- A community member reiterated concern that resources are being lost as this work takes place, and asked when regulations will be adopted.
  - Staff responded that we hope to have the regulations adopted by October 2024.

## Closing and Wrap Up

Staff noted that a draft summary of this meeting will be available on the website prior to the next TAC meeting. A scheduling email will go out soon.



## LIMITED GOAL 5 PROGRAM UPDATE

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# COMMUNITY ENGAGEMENT AND INVENTORY UPDATE

January 16, 2024

## Introduction

Since TAC meeting #2, we shared the Draft Significant Natural Resources (SNR) Inventory maps and the ESEE process with community members and owners of property with natural resources. We sought their input through an online open house and an in-person Community Forum held on Oct. 24. We have also briefed the Planning Commission and Board of County Commissioners on the project. This memo provides a summary of public engagement and how that has influenced the inventory mapping.

## A. Community Engagement

### Community Forum

Over 300 people attended the in-person Forum held Oct. 24 from 3 – 8 p.m. at the Washington Street Conference Center in Hillsboro. Posters in Spanish and English were displayed with the project overview, timeline, Inventory Methods and ESEE process. Large poster size maps displayed the SNRs by community plan area, providing larger habitat context. Many people left comments regarding the Inventory or ESEE methodology on posters or comment forms.

Staff and the consultant team spoke about the project and answered questions. A bank of computers were available for people to look up the SNR mapping on their property and provide input. A Spanish interpreter was available.

### Online Open House

An online open house in Spanish and English for the general community ran from Oct. 20 – Nov. 17. The open house contained information on the project, the project team, the interactive mapping tool and SNR maps by community plan along with comment forms. Overall, 72 comments were received with 37 specific comments concerning the Portland Golf Club property and the designation of the resources on this site. Over 3,000 views were received on the online open house web page.

## **Property Owner Outreach**

Goal 5 Rules require the County to inform property owners as early in the process as possible that their property may contain inventoried natural resources. In early October, we mailed approximately 4,000 letters to property owners with resources mapped either on the County's or Metro's SNR maps, letting them know about the project. Included in the letter was a link to an online Property Owner Resource tool with project information and an interactive map, which allowed property owners to see where the draft resources were on their property. People could share comments or ask questions using the online comment form.

## **Property Owner Resources**

[About the Project | SNR Property Owner Resources \(washcoopenhouses.org\)](#)

The property owner resource tool was created especially for property owners wanting to learn more about the project from the owners perspective. The interactive GIS map allowed property owners to look up their property and see the type of SNR (Riparian or Upland Habitat) and its location on their properties. The webpage also included an FAQ, an interested parties sign up and links to the project pages. Property owners could comment on the map or ask questions about the project in general. As of Dec. 31, 2023, we had over 1,100 views on the property owner resource tool.

To many property owners, this was an introduction to Goal 5 and the development review process. Some were unaware that their property was included on any SNR inventory. Over the past several months, we have interacted with a number of property owners requesting more information about the process and how this project would affect them, impacts on the property value or further development, or what they may be prohibited from doing in the future. Some were pleased that the County was updating the inventory and considering protections for the natural resources.

### *Property Owner interactions*

- *Online comments received: 269*
- *Phone calls: 55*
- *Emails: 61*
- *In person or Microsoft Teams meetings: 3*
- *Mailed project information: 2*

## **Interested Parties**

Our outreach efforts have met with some success. We now have over 400 people tracking this project through our interested parties list. Multiple social media outlets were used to let people know about the project and available comment opportunities. Our next outreach opportunities will be in March, with another in-person Community Forum and an online open house to review the Draft Code Concepts.



## B. Inventory Refinement

Through the outreach to date, we've received comments from a number of property owners about our mapping. Some believed we had inaccurately mapped resources on their property, for instance by showing resource mapping overlaying their house or other developed areas (e.g., driveways, patios, landscaping or trees they had planted). They believed these were not necessarily habitat.

As a result of comments and further research, we are refining the GIS analysis. We are looking specifically at properties we've received comments on as well as conducting an overall refinement of the GIS analysis to remove:

- Building footprints
- Small or isolated habitat patches on individual lots
- Sites that have been through the development review process and already met existing SNR requirements

We are also working with cities that are currently undertaking SNR inventory mapping to ensure we are coordinated. The intent is for SNR mapping to match within the new UGB areas.

This work is ongoing. Any habitat marked for removal or refinement will be reviewed and confirmed by our environmental consultants to assess its significance based on an updated Natural Resource methodology. We are planning to finalize the inventory map and the Draft Habitat Inventory Report over the next few months.

## STATUS UPDATE ON DRAFT ESEE ANALYSIS AND TITLE 13

Prepared for the Technical Advisory Committee (TAC) by MIG | APG

January 16, 2024

### I. Introduction

As discussed at TAC meeting #2, this project will include an evaluation of Goal 5 compliance including:

- Compliance with the Metro Urban Growth Management Functional Plan (UGMFP) Title 13 as required by OAR 660-023-0800(3)<sup>1</sup> and
- An Economic, Social, Environmental, and Energy (ESEE) Analysis which considers the pros and cons of allowing, limiting, or prohibiting uses that might conflict with the natural resources.

Work is still underway on this evaluation. This memo provides a status report and highlights some initial findings.

### II. UGMFP Title 13 (Nature in Neighborhoods)

Title 13 (3.07.1330(b)) includes several implementation alternatives for cities and counties to demonstrate substantial compliance with its requirements. In compliance with subsection 3.07.1330(b)(5), as a member of the Tualatin Basin Natural Resources Coordinating Committee (TBNRCC), Washington County amended its comprehensive plan and implementing ordinances to comply with the maps and provisions of the TBNRCC Goal 5 Program (the "Tualatin Basin Program"), subject to the intergovernmental agreement entered into between Metro and the TBNRCC. Our initial finding is that the map and program changes envisioned in the County's Draft Inventory and Draft Code Concepts will not negatively impact Washington County's compliance with Title 13.

#### Regionally Significant Riparian Habitat (Class I and II):

- For most riparian resources, the regulatory framework will continue to follow the Tualatin Basin approach outlined in UGMFP 3.01.1330(b)(5) to ensure protection of these resources.

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<sup>1</sup> OAR 660-023-0800(3) "...Upon acknowledgment of Metro's regional resource functional plan, local governments within Metro's jurisdiction shall apply the requirements of the functional plan for regional resources rather than the requirements of this division.

- For riparian resources outside the CWS service area (this is generally limited to territory added to the Metro urban growth boundary after Dec. 28, 2005, that are still within urban “holding” districts), the Draft Code Concepts outline a level of protection that is substantially compliant with Title 13.

Regionally Significant Upland Wildlife Habitat (Class A and B):

- **On lands within the UGB on or before Dec. 28, 2005.** Except for certain publicly owned parks and open spaces<sup>2</sup>, upland wildlife habitat resources that were in the Metro urban growth boundary on or before Dec. 28, 2005, received no Habitat Conservation Area (HCA) designation in Title 13 (Table 3.07-13a). Therefore, local governments are not required to establish regulations to protect these resources. While Title 13 does not direct local governments to establish a regulatory program to protect these resources, a local government is not precluded from doing so based on its own ESEE analysis. However, the local government must follow the standard Goal 5 process, including an ESEE analysis.
- **On lands added to the UGB after Dec. 28, 2005.** These resources received a Habitat Conservation Area (HCA) designation of “moderate” or “high” in Title 13 (Table 3.07-13a). Therefore, regulations will ensure compliance with the provisions of Metro Code Section 3.07.1330(b)(1) to (b)(3) as those provisions apply to regionally significant wildlife habitat in territory added to the Metro urban growth boundary after Dec. 28, 2005. NOTE: A local government can exceed the requirements of Title 13 based on its own ESEE analysis.

### III. ESEE Analysis

We are in the process of preparing the first draft of the ESEE analysis. It evaluates the economic, social, environmental, and energy consequences of allowing, limiting, or prohibiting conflicting uses within significant riparian and upland habitat. The ESEE considers the implications for jobs, housing, recreation, “ecosystem services,” and a wide range of other factors.

#### Ecosystem Services

One of the challenges is identifying and summarizing information about the economic benefits of Riparian and Upland Habitat. We have identified the following information about the ecosystem services provided by Riparian and Upland Habitat. **We would be interested in learning about other sources of information from the TAC.**

*Ecosystem Services are commonly defined as benefits people obtain from ecosystems. The Millennium Ecosystem Assessment<sup>3</sup> – a four-year United Nations assessment of the condition and trends of the world’s ecosystems - categorizes ecosystem services as:*

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<sup>2</sup> Pursuant to UGMFP Table 3.07-13a: Method for Identifying Habitat Conservation Areas (“HCA”). 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.

<sup>3</sup> <http://www.millenniumassessment.org/en/Index.aspx>

- *Provisioning Services or the provision of food, fresh water, fuel, fiber, and other goods;*
- *Regulating Services such as climate, water, and disease regulation as well as pollination;*
- *Supporting Services such as soil formation and nutrient cycling; and*
- *Cultural Services such as educational, aesthetic, and cultural heritage values as well as recreation and tourism.*

*For example, mature trees are beneficial because they intercept at least 30% of precipitation that falls on the canopy, filter stormwater, help prevent erosion, support nutrient cycling, and provide shade which cools the air and stormwater runoff. Trees also increase property values and help support adaptation to climate change and carbon sequestration. Further, it is difficult to mitigate for the removal of mature trees as it can take decades for new trees to provide equivalent benefits. A 2021 report, *The Economic Footprint and Quality-of-Life Benefits of Urban Forestry in the United States*,<sup>4</sup> found that trees provide a \$73 billion benefit to society from environmental benefits including carbon sequestration, reduced air pollution, and reduced stormwater runoff.*

*Wetlands can provide ecosystem services, which in turn provide economic and social value. Ecosystem services include, but are not limited to, water storage, retention and conveyance, flood control, pollution control and detoxification, groundwater recharge/ discharge, erosion protection and habitat for resident or transient species, and nutrient cycling. Ecosystem services can also include opportunities for tourism and recreational activities, aesthetic appreciation of natural scenery, opportunities for formal and informal education and training.*<sup>5</sup>

### **Conflicting Uses**

The first step in the ESEE analysis is to identify conflicting uses that “exist or could occur” within significant resource areas or within their identified impact areas.<sup>6</sup> Identifying conflicting uses is important in order to focus the ESEE consequences analysis on various land uses and related disturbance activities that may negatively impact significant resources. The Goal 5 rule (OAR 660-23-040(5)) allows a jurisdiction to “address each of the identified conflicting uses, or it may address a group of similar conflicting uses.”

*Under the Goal 5 rule, a conflicting use is a “land use, or other activity reasonably and customarily subject to land use regulations, that could adversely affect a significant Goal 5 resource” [OAR 660-023-0010(1)].*

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<sup>4</sup> Prepared for the Arbor Day Foundation, 2021 <https://www.arborday.org/urban-forestry-economic/>

<sup>5</sup> Ramsar Technical Report No. 3, CBD Technical Series No. 27, “Valuing wetlands: Guidance for valuing the benefits derived from wetland ecosystem services” by Rudolf de Groot, Mishka Stuij, Max Finlayson, and Nick Davidson, Ramsar Convention Secretariat Gland, Switzerland November 2006. Source: [http://www.ramsar.org/sites/default/files/documents/pdf/lib/lib\\_rtr03.pdf](http://www.ramsar.org/sites/default/files/documents/pdf/lib/lib_rtr03.pdf)

<sup>6</sup> OAR 660-023-0040(2) Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses, local governments shall examine land uses allowed outright or conditionally within the zones applied to the resource site and in its impact area. Local governments are not required to consider allowed uses that would be unlikely to occur in the impact area because existing permanent uses occupy the site.

We have made some refinements to the Conflicting Use categories that were presented at TAC meeting #2. The following table shows the current categories.

**Updated List of Conflicting Use Categories**

Conflicting Use Category	Corresponding General Land Use Designations (Districts)
High Intensity Urban (HIU)	<ul style="list-style-type: none"> <li>- Commercial (including NC, OC, CBD, and GC districts)</li> <li>- Industrial (including IND and MAE districts)</li> <li>- Mixed Use and Regional Centers, Town Centers, Station Areas, Employment Areas, Corridors (including Transit Oriented Districts: TO: R40-80, TO:R80-120, TO:RC, TO:EMP, TO:BUS and Pedestrian-Oriented Mixed Use Districts: CCMU and NMU)</li> <li>- Other (including INST district)</li> </ul>
Other Urban (OU)	<ul style="list-style-type: none"> <li>- Residential single-family and multi-family (including R-5, R-6, R-9, R-15, R-24 districts and Transit Oriented Districts: TO:R9 -12, TO:R12-18, TO:R18-24, TO:R-24-40)</li> </ul>
Non/Future Urban (NFU)	Typically, within Urban Growth Boundary (UGB) Expansion Areas <ul style="list-style-type: none"> <li>- Farm/Forest (including EFU, EFC, AF-20 districts)</li> <li>- Rural (including RR-5, AF-5, AF-10 districts)</li> <li>- Future Development (including FD-10, FD-20 districts)</li> </ul>
Parks/Open Space	These uses/activities can occur in any land use district, (including the State and Regional Park Overlay District). They include active and passive parks and open space, trail corridors, and similar facilities.
Utilities	Utilities can occur in any land use district. They include facilities for water, wastewater, electricity, natural gas, communications and similar services.
Transportation Facilities	Transportation facilities can occur in any land use district (including the Private Use Airport Overlay Zone and Public Use Airport Overlay District).

**Analysis of the ESEE Consequences and Development of a Goal 5 Program**

The purpose of the ESEE analysis is to inform the program and help determine the policies and standards used to carry out the program decision. To do this, the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use must be analyzed for each ESEE category of conflicting uses. While an ESEE analysis does incorporate available research, there is also a reliance on qualitative considerations, for example based on community values and policies.

Based on the ESEE analysis, local governments must then determine whether to allow, limit or prohibit identified conflicting uses for significant resource sites. A decision to prohibit or limit conflicting uses is intended to provide increased protection for the resource. A decision to allow some or all conflicting uses for a particular site may also be consistent with Goal 5 provided it is supported by the ESEE analysis. One of the following determinations must be reached:

- Allow conflicting uses - The conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. The ESEE analysis must demonstrate that the conflicting use is of

sufficient importance relative to the resource site and must indicate why measures to protect the resource to some extent should not be provided per OAR 660-23-040(5)(b).

- Limit conflicting uses - Both the resource site and the conflicting uses are important compared to each other; and, based on the ESEE analysis, the conflicting uses should be allowed in a limited way that protects the resource site to a desired extent (e.g., strictly, moderately, or lightly limit).
- Prohibit conflicting uses - The significant resource is of such importance compared to the conflicting uses and the ESEE consequences of allowing the conflicting uses are so detrimental to the resource, that the conflicting uses should be prohibited.

While the Draft ESEE analysis is still in work, initial indications suggest that a general recommendation to “limit” conflicting uses will be appropriate, but that there will likely be variation in the degree of limitation applied to the conflicting use. These potentially include the following:

- High Intensity Urban – “Lightly Limit” given the relatively high economic, energy and social value of the conflicting use.
- Other Urban – “Moderately Limit” given that the economic, social, environmental and energy values of the resources and conflicting uses are roughly balanced.
- Non-Urban – “Strictly Limit” given the relatively low economic, energy and social value of the conflicting use.
- Parks/Open Space – “Moderately to Strictly Limit” for those parks and open space activities which have the potential to impact habitat areas (e.g., active recreation facilities).
- Utilities and Transportation – “Lightly Limit” given the relatively high economic, energy and social value of the conflicting use and the environmental benefits associated with enabling efficient infrastructure systems.

The Draft Code Concepts reflect these preliminary results. In addition, the ESEE analysis will make recommendations that are intended to help direct the program. For example, recommendations could include concepts such as the following:

- Mature native trees in larger habitat patches that are proximate to other habitats (e.g., riparian areas) provide the greatest degree of ecosystem services. Limiting impacts to mature trees within these resource areas should be prioritized.
- Where impacts cannot be avoided, disturbance areas should be designed in such a way that trees with the highest ecosystem services value are protected by observing additional tree protections for native trees over 6 inches diameter breast height (DBH).
- Protect public health by providing access to restorative ecosystem services in public greenspaces, while limiting impacts to habitat areas by strategically locating public trails and related recreational infrastructure.
- Provide a clear and objective path for mitigation as well as flexibility in mitigation opportunities to allow for variations in site conditions, habitat features, and existing conditions at impact and mitigation sites.

- Support the clustering of residential development away from resources so that the economic and social benefits of providing housing are accomplished in conjunction with environmental benefits of protecting resources.
- Recognize that utilities and transportation facilities may need to impact resources in order to ensure an efficient design and allow these impacts with mitigation.

## DRAFT CODE CONCEPTS

Prepared for the Technical Advisory Committee (TAC) by MIG | APG  
January 16, 2024

### Introduction

The project is focused on changes to the Goal 5 program for natural resources (specifically those we call riparian and upland wildlife habitat) in the Urban Unincorporated Areas (UUAs) of Washington County. The extent of these resources is described in detail in the draft Washington County Natural Resources Inventory. They include habitat areas previously identified as significant by the County or Metro (including Metro resources - Riparian I and II and Upland A and B), the boundaries of which have been updated by this project. The levels of protection proposed must be consistent with the findings of the Economic, Social, Environmental and Energy (ESEE) analysis as to where to allow, limit (lightly/moderately/strictly) or prohibit uses that might conflict with the resources.

The focus of this memo is code concepts for the new riparian and upland habitat standards for the UUA. We are not considering changes to the natural resource mapping or standards for the rural area at this time.

The code concepts are outlined in the following sections.

- A. Overall Purpose/Scope
- B. Submittal Requirements for Properties with Significant Habitat
- C. General Provisions/Standards
- D. Tree Inventory/Preservation within Significant Habitat
- E. Tree Protection and Mitigation Requirements
- F. Additional Standards for Riparian Habitat
- G. Boundary Corrections

### A. Overall Purpose/Scope

The code will explain that the requirements are intended to implement Statewide Planning Goal 5 (and Metro Title 13) by regulating development on properties with Significant Habitat. It will also make it clear what type of resources are subject to the regulations (Significant Habitat), where those resources are identified (the "Regulatory Map"), and when the regulations apply (at time of development).



The standards would apply to the entire property that contains **Significant Habitat** as shown on the regulatory map.

<b>Significant Habitat =</b>	<b>Significant Riparian Habitat =</b>
	<ul style="list-style-type: none"> <li>• Water resources such as wetlands, streams, and open water habitats</li> <li style="text-align: center;">+</li> <li>• Associated riparian buffer. The riparian buffer is the area within a specified distance of wetlands, streams, and open water habitat</li> </ul>
	<b>Significant Upland Habitat =</b>
	<ul style="list-style-type: none"> <li>• All other Significant Habitat shown on the regulatory map (i.e., all areas other than Significant Riparian Habitat)</li> </ul>

The code concepts envision that the County would adopt a new regulatory map showing Significant Habitat (Riparian and Upland Habitat combined). The “Regulatory Map” is simply the map used to implement the program. It is the result of the Washington County Natural Resources Inventory and ESEE analysis. The map would include two categories of Significant Habitat (i.e., the map would have only two colors). Establishing two categories will keep it simple, while making it easier to apply different regulations.

The two categories on the map would be:

- Significant Habitat that was in the UGB on Dec. 28, 2005, is identified on the map as “Pre-2005 Significant Habitat.”
- Significant Habitat on lands added to the UGB after Dec. 28, 2005, is identified on the map as “Post-2005 Significant Habitat.”

This section of the code will establish which types of “development” are subject to the standards. For example, the regulations could apply to all “development” as defined in the County’s Community Development Code (CDC) with some exceptions or exemptions.

Some possible exceptions that are under consideration:

- Farming practices
- Emergency measures
- Maintenance (and possibly minor expansion) of existing uses and improvements
- Maintenance and construction of streets and utilities within the existing right-of-way
- Other uses and activities that do not otherwise require a Development Permit per CDC Section 201-2.

#### **Discussion/Questions:**

The County’s existing definition of “development” is very broad/inclusive.

*Development. Any man-made change to improved or unimproved real estate or its use, including but not limited to construction, installation or change of land or a building or other structure, change in use of land or a building or structure, land division, establishment, or termination of right of access, storage on the land, tree*

*cutting, drilling, and site alteration such as that due to land surface mining, dredging, grading, construction of earthen berms, paving, improvements for use as parking, excavation or clearing.*

However, as described in Subsection B, below, applicants who believe the County's Significant Habitat map is accurate and are not proposing any development within the boundary, would not be subject to any standards.

In addition, the code could include some outright exceptions. For activities listed as exceptions, applicants would not need to comply with any of the Habitat submittal requirements or standards.

Does the TAC have any suggestions regarding this approach?

## B. Submittal Requirements for Properties with Significant Habitat

This section of the code would establish a clear and objective path for establishing the map boundary, options for modifying the boundary (if necessary), and materials to be submitted with an application.

For development proposals on properties with Significant Habitat as shown on the regulatory map, an applicant would confirm the location of the boundary and submit a site plan showing the extent of ground disturbance proposed for development relative to the habitat boundary.

- If the applicant believes that the County's Significant Habitat map is accurate, and they are not proposing any development within the boundary, they could simply acknowledge their acceptance of the habitat boundary in writing and need not submit further information to the County to verify the location of habitat on the subject property. NOTE: other agencies may still require additional information, delineations, etc.
- If the applicant does not believe the County's Significant Habitat map is accurate, they could refer to the adopted Washington County Natural Resources Inventory to identify the type(s) of habitat on the property and then identify the applicable correction methodology. See code concepts in Section G. of this memo.

If an applicant is proposing development within the Significant Habitat boundary, then they would need to comply with the applicable provisions/standards. See code concepts in Section C. of this memo. This includes submitting the following additional information.

- Submit a tree inventory. See code concepts in Section D. of this memo.
- If Regulated Trees within the Significant Habitat boundary will be impacted by the proposed development, the applicant would need to submit a tree mitigation plan. See code concepts in Section E. of this memo.

- Verify the Riparian Habitat boundary (if applicable). See code concepts in Section F. of this memo.

**Discussion/Questions:**

The goal of the code concepts is to provide a simple clear and objective process for applicants who concur with the boundary shown on the County's regulatory map, but also to provide options for applicants who think the map is inaccurate. In either case, once the boundary is established, the additional requirements for a tree inventory, mitigation plan and/or riparian boundary determination would only apply if the applicant is proposing development within the boundary.

Does the TAC have any concerns with this approach?

## C. General Provisions/Standards

This section of the code would specify the standards and provisions that apply to development within Significant Habitat, including:

- Development within Significant Habitat would be subject to tree protection/mitigation standards. See code concepts in Section D and E of this memo.
- Development within Riparian Habitat would also be subject to additional standards including limitation on permitted uses - See code concepts in Section F of this memo.
- Areas designated as a Significant Habitat would be eligible for density transfer.
- The code could allow for a special category of adjustments that provides applicants with flexibility from standards such as setbacks in order to protect Significant Habitat.
- Development within a Significant Habitat would continue to be required to obtain all required local, state and federal permits.

## D. Tree Inventory/Preservation within Significant Habitat

The code concept is to require preservation or mitigation when impacts to trees within the Significant Habitat boundary exceeds a specified percentage of the total. The tree preservation and mitigation standards would apply to the removal of Regulated Trees in both Riparian and Upland Habitat Areas. As described below, not all trees would necessarily be regulated.

- "Regulated Trees" would include trees that are six inches or greater in diameter at breast height (DBH) and located completely or partially within the Significant Habitat boundary (with some exceptions).
- Exceptions could be provided, for example, for:
  - Hazardous Trees.

- Diseased or Dying Trees.
- Removal of invasive tree species.
- Removal of trees in tree farms and nurseries.
- Removal of trees under 6 inches DBH unless such trees are or will be preserved to meet the mitigation requirements of this section.
- Development on a site with a Significant Habitat area of less than 2,000 square feet.
- Development associated with the regionally significant educational or medical facilities at Portland Community College, Rock Creek Campus, 17865 N.W. Springville Road, Portland as identified on the Regionally Significant Educational or Medical Facilities Map in Metro's Urban Growth Management Functional Plan, Title 13.

#### Discussion/Questions:

Does the TAC have any suggestions regarding Regulated Trees (e.g., the minimum size and/or exceptions)?

- Applicants would be required to complete a Tree Inventory and calculate a Tree Value score (points), including the number and percentage of points to be retained and/or mitigated (if applicable). The concept is that trees that are larger, certain species, or closer to water are more valuable as habitat and their preservation is encouraged by giving them a higher value.

#### Discussion/Questions:

Assigning each Regulated Tree a "Tree Value score (points)" would allow the code to prioritize certain trees (e.g., native trees, larger trees, select species, and/or trees that are close to riparian areas). For example:

"Tree Value" score - points could be calculated as follows:

- Base score based on tree size (DBH) - 1 point per inch DBH;
- Additional points - an additional 10% increase in score for each of the following attributes:
  - (a) Diameter over 30 inches DBH
  - (b) White Oak (*quercus garryana*), Willamette Valley Ponderosa Pine (*Pinus ponderosa*) or Madrone (*arbutus menziesii*)
  - (c) Within 300 feet of a water feature

**Example:** 40" DBH white oak within 200' of a water feature

Base score - 1 point per inch DBH = 40 points

+ 10% for being over 30" DBH = 40 + 4

+ 10% for being White Oak = 40 + 4 + 4

+ 10% for being within 300' of water = 40+4+4 +4

Total = 52 tree points

NOTE: This is just conceptual. The specific values are still being worked out, but the intent of the concept is to reflect the importance of certain habitat features.

Does the TAC think the approach should prioritize certain trees? If so, does the TAC have suggestions about the types of features that should be prioritized and/or how much weight should be given to prioritized features relative to the base score?

## E. Tree Protection and Mitigation Requirements

This section of the code would establish a clear and objective approach to ensuring a certain percentage of the total Tree Value points is maintained on the site. The percentage of Tree Value points that would have to be maintained could differ within pre- and post-2005 areas.

### Discussion/Questions:

The County's current standards require mitigation for Wildlife Habitat, but they are subjective and inconsistent. The code concept is to provide a clear and objective method of calculating mitigation.

Metro Title 13 has different requirements for Upland Habitat on lands that were added to the UGB after Dec. 28, 2005, and the findings in the ESEE will differ for different conflicting use categories. Therefore, the percentage of Tree Value points that would be required to be protected will likely need to differ between the two categories on the map. The percentage of the total Tree Value points that must be maintained on a site is still to be determined; however, it could be on the order of something like the following:

- Pre-2005 Significant Habitat: 40 – 60% of the total Tree Value points
- Post-2005 Significant Habitat: 80 – 100% of the total Tree Value points

It is also important to note that the Draft Inventory does add habitat areas to the County's current Wildlife Habitat based on Metro's Upland Habitat A and B, and these areas extend beyond the Clean Water Services (CWS) vegetated corridor.

Does the TAC have any suggestions regarding the proposed code concepts?

If an applicant wanted to remove more Regulated Trees, and thereby go below the required percentage of Tree Value points to be maintained, they would have to provide mitigation to make up for those points.

- Mitigation could be provided by preserving smaller native trees (2" – 5.9" DBH) that are not otherwise regulated or by planting new trees.

- Similar to the tree inventory requirements above, trees protected or planted within the habitat boundary would be assigned a Tree Value score. Applicants would need to provide enough mitigation to make up the deficit in Tree Value points.

The code would also provide standards to ensure trees that are to be retained or planted are correctly installed and protected.

- Trees that are to be protected would be required to have protective fencing during construction. In addition, other construction management requirements might apply to ensure protected trees are not damaged during construction.
  - Installation and maintenance would be required in accordance with County standards.
  - Required mitigation could be allowed within the CWS vegetated corridor with the approval of CWS.
  - Mitigation planting would need to be completed prior to the issuance of any certificate of occupancy.

In addition to the clear and objective path described above, it might be helpful to provide an alternative discretionary approach to mitigation for applicants that are not able or do not want to use the clear and objective tree preservation standards.

#### **Discussion/Questions:**

As noted above, in order to provide flexibility, the code could include one or more alternative approaches to mitigation. For example, the code could include an approach based on tree canopy coverage preservation (e.g., this approach could be similar to Ordinance No. 869-A). In addition, some jurisdictions allow off-site mitigation or fee-in-lieu of mitigation as alternatives in certain circumstances. In all cases, the discretionary options would need to provide a level of protection comparable to that provided by the clear and objective path.

Does the TAC have any suggestions for alternative approaches to mitigation?

## F. Additional Standards for Riparian Habitat

For sites that are outside CWS's jurisdiction or where an applicant has not yet obtained their Vegetated Corridor boundary determination from CWS, this section of the code would provide a clear and objective methodology for determining the Riparian Habitat boundary.

#### **Discussion/Questions:**

If there are additional regulations that apply within Riparian Habitat, the regulations will need to provide a means for applicants to verify the boundary of that area. They could submit a Vegetated Corridor determination approved by CWS. Alternatively, if an applicant needed to determine the Riparian Habitat boundary before going through the CWS determination or if the site was outside of CWS's jurisdiction, the code could include a

methodology for determining the boundary (e.g., the method could “mirror” CWS methodology or use the approach in Metro’s Title 13).

Currently, the County does not require that an applicant confirm the location of the CWS Vegetated Corridor prior to submitting their application, although applicants often do so. For sites inside CWS jurisdiction, the County could consider changing its current practice and requiring applicants to confirm the location of the CWS Vegetated Corridor as part of their development application. This would simplify the process and ensure that the Riparian Habitat boundary and the CWS Vegetated Corridor boundary are consistent without requiring that the applicant later “correct” the County Riparian Habitat boundary if they want them to be consistent. See code concepts in Section F of this memo. Keep in mind, if the Riparian Habitat boundary and CWS Vegetated Corridor are not the same, both would apply to the site, so it is in the applicant’s interest to ensure they are consistent.

What approach would the TAC recommend for determining the Riparian Habitat boundary in areas outside CWS jurisdiction?

Similar to the current regulations in CDC Section 422, the code could restrict new or expanded alteration of the vegetation or terrain within Riparian Habitat with some exceptions. Some possible exceptions might include the following uses and activities:

- Construction, maintenance and repair of transportation facilities including, but not limited to, streets, street crossings, roads.
- Installation, maintenance or construction of the following utilities: sanitary and storm sewer and water lines, electric, communication and signal lines; and gas distribution and transmission lines.
- Public wildlife viewing areas and recreation or nature trails.
- Bank maintenance, restoration or stabilization, including riprapping for erosion control, of a river or other watercourse or body of water provided there is compliance with the requirements of Section 421-4.6 and the applicant’s CWS Service Provider Letter or associated permit materials submitted to the Oregon Department of State Lands (DSL) and/or the U.S. Army Corps of Engineers (USACE).
- Detached dwelling or middle housing duplex and accessory structures on a lot of record, provided there is not sufficient buildable land to permit construction outside the verified Riparian Habitat and all required local, state or federal permits are obtained.

**Discussion/Questions:**

The intent would be to provide a clear and objective maximum allowance for a disturbance area for detached housing and middle housing, which means that “sufficient building land” would have to be defined in a measurable way. This is typically done by identifying an area of up to X square feet of land which is outside of the habitat area (and other setbacks) and which has specific minimum dimensions.

Does the TAC have any suggestions for defining “sufficient building land”?

- An alteration as required by the applicant’s CWS Service Provider Letter or as permitted by DSL or the USACE.
- Wetland mitigation, creation, enhancement and restoration within public use airport approach surface areas and airport direct impact boundaries.
- New fencing adjacent to stream buffers or other wildlife habitat areas, provided it is split rail or other design that allows for the passage of wildlife by meeting the following design requirements:
  - The lowest horizontal fence element must be at least 18 inches off the ground for passage of fawns and smaller mammals.
  - The highest horizontal fence element must be no more than 42 inches in height to allow adult deer or elk passage.
  - Fencing shall not include woven wire, cyclone fencing, or contain barbed wire elements.

**Discussion/Questions:**

Are there other exclusions to consider, like removal of invasive species in riparian habitat areas?

## G. Boundary Corrections

Applicants would have a clear and objective option to accept the County’s map boundary, or they could apply to modify it to address standard issues. The submittal requirements for these standards could be relatively straightforward (e.g., the applicant could submit an approved wetland delineation). Examples of standard boundary correction issues include:

- Wetland location has been incorrectly identified.
- Stream location has been incorrectly identified and/or the Riparian Habitat boundary does not align with the CWS vegetated corridor.
- Upland Habitat boundary is inaccurate based on location of associated water feature.
- Upland Habitat boundary is inaccurate due to development or tree removal that occurred prior to certain dates. For “Post-2005 significant habitat”, this would be the effective date of



the ordinance adopted by the Metro Council to bring the subject property within the Metro UGB.

In addition, the code could include a discretionary map correction methodology for all other map corrections. In this case, the applicant would need to provide more detailed information to meet the approval criteria.

**Discussion/Questions:**

Are there other “standard” map correction issues that the TAC believes should be identified in the code?