

Memorandum



July 14, 2015

To: Air, Land, Water, Wildlife and Hazards Subcommittee

Cc: Project Team

From: Rithy Khut, Assistant Planner

Re: Comprehensive Plan Policy Issue Analysis - Air, Land, Water, and Wildlife

OVERVIEW

This report presents a brief summary of preliminary policy issues that have been identified for further discussion by the Community Advisory Committee (CAC) and subcommittees. The issues are related to policies addressing environmental quality, including air, land, water, and wildlife. Issues are described briefly in this report in order to provide background and context for the CAC, and the Air, Land, Water, and Wildlife and Hazard Subcommittee to begin reviewing and prioritizing them for future discussions.

The basis for identifying these issues included:

- Has been identified as an issue of concern by community members expressed in comments from the November open houses
- Represents a frequent or long-standing area of concern for County staff and/or decision makers
- Involves a policy area or regulatory requirement where the County has discretion and wants to explore multiple options

The policy issues that are analyzed in this memo are related to the following Statewide Planning Goal 5 - Natural Resource topics:

- Riparian Corridors
- Wetlands
- Wildlife Habitat

For each issue topic (as applicable), this memo provides an analysis using the outline below.

1. Description of key policy issues and background information
2. Relationship to state law and potential level of County discretion or flexibility
3. Geographic applicability:
 - Do local conditions or Rural Area Plan policies appear to merit a differing approach among different rural areas?
4. Existing policies:
 - Does the County have existing policies to address this issue?
 - Are current policies or requirements the same across the entire county or do they differ among rural planning areas?

5. Related concerns expressed by community members

The information contained in this issue analysis was derived from a variety of sources including several internal memoranda on previous work the County has conducted in compliance with Statewide Planning Goal 5. Prior to reading this analysis, CAC and subcommittee members should refer to the background reports on:

- Goal 5 Inventories and EESE Analysis (dated: November 21, 2014)
- Standard and Safe Harbor Process Analysis (dated: May 19, 2015)

ISSUE SUMMARY

Statewide Planning Goal 5 requires that counties inventory and adopt a program to protect significant Goal 5 resources. Multnomah County meets the requirements of Goal 5 through creation and application of the various Significant Environmental Concern (SEC) overlays and protection programs. The rationale for the existing inventories and regulations are found in:

- Howard Canyon Reconciliation Report (September 1994. Revised September 1995)
- West Hills Reconciliation Report (May 1996)
- East of Sandy River Wildlife Habitat and Stream Corridor ESEE Report (June 30, 1995; Revised January 1997)
- West of Sandy River Wildlife Habitat and Stream Corridor ESEE Report (December 12, 2002)

Based on these completed reports and analyses, the County currently has eight overlays that address various Goal 5 resources.

Table 1 – Goal 5 Resource and SEC overlays

Goal 5 Resource	SEC Overlay	Rural Area/ Countywide?
Riparian Corridor	SEC-s (Streams)	West Hills and East of Sandy River
Riparian Corridor	SEC-wr (Water Resource)	West of Sandy River
Wetland	SEC-w (Wetlands)	Sauvie Island & Multnomah Channel
Wildlife Habitat	SEC-h (Habitat)	West Hills and West of Sandy River
State Scenic Waterways	SEC-sw (Scenic Waterway)	West of Sandy River
Mineral and Aggregate Resources	PAM (Protected Aggregate and Material Sites) - Policies already completed and approved by CAC	West Hills
Historic Resources	HP (Historic Preservation) - Policies will be addressed in a separate memorandum	Countywide
Scenic Views and Sites	SEC-v (Views) - Policies already completed and approved by CAC	West Hills

RIPARIAN CORRIDORS

Statewide Planning Goal 5 requires that counties inventory and adopt a program to protect significant riparian areas associated with rivers and streams. The process for creating the inventory and subsequent protection program is found in OAR Chapter 660, division 23. The County has already completed the process of determining significant riparian corridors from the riparian inventory. Additionally, the County has analyzed the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use to create regulations that are contained in the SEC-s and SEC-wr protection program.

Since the completion of the existing County riparian inventory and SEC protection programs, the State created additional rules that provided an alternative method to determine significant riparian corridors and forgo the need to conduct an ESEE analysis. This method, or “safe harbor,” uses objective standards to complete the Goal 5 inventorying process. The creation of a protection program also has “safe harbor” provisions that can be used in place of conducting an ESEE analysis.

Because the County is updating its Comprehensive Plan voluntarily rather than as part of a standard required “Periodic Review” process, the County is not required to add new riparian corridors to its inventory or create a new protection program based on the newly created inventory. However, staff recommends adding select streams by applying the objective “safe harbor” standards to those streams and updating the location of existing protected rivers and streams based on more precise data from the Oregon Department of Fish and Wildlife (ODFW) (see Figure 1A and 1B) . This will give the County the ability to use a GIS-based approach to add riparian corridors that were not originally determined as significant and update its existing inventory based on the latest available data.

KEY POLICY QUESTIONS

Following are key policy questions:

- *Should other streams corridors not currently in the inventory be added to the inventory based on County recommendations?*
- *If so, should these additional streams be protected following “safe harbor” provisions? [Note: the alternative would be to use existing SEC-s requirements which would require additional environmental analysis by the County];*
- *Should any of the rural area plan policies for riparian areas be applied county-wide?*

STATE REQUIREMENTS AND DEGREE OF DISCRETION

Outside of Periodic Review, state law does not require updating the riparian corridor inventory and protection program. As discussed in the memo, “Standard and Safe Harbor Process Analysis (dated: April 09, 2015)” the County can elect to add streams to the inventory using either the standard or “safe harbor” process and if streams are added to the inventory, they can

be protected using either the standard or “safe harbor” process. The standard process requires an ESEEE analysis, whereas the safe harbor process does not.

GEOGRAPHIC APPLICABILITY

This issue is generally applicable or relevant to all of the rural areas where:

- Streams and rivers were not considered significant due to lack of data
- Streams and rivers were not previously inventoried and could be re-evaluated to determine if they should be included in the inventory
- Streams and rivers were incorrectly mapped and the location can be improved based on new data

EXISTING COUNTY POLICIES

The Comprehensive Framework Plan contains the following policy related to riparian corridors:

Policy 16-G: Water Resources and Wetlands

It is the County’s policy to protect and, where appropriate, designate as areas of Significant Environmental Concern those water areas, streams, wetlands, watersheds, and groundwater resources having special public value in terms of the following:

- A. Economic value;
- B. Recreation value;
- C. Educational research value (ecologically and scientifically significant lands);
- D. Public safety (municipal water supply watersheds, water quality, flood water storage areas, vegetation necessary to stabilize river banks and slopes);
- E. Natural area value (areas valued for their fragile character as habitats for plant, animal or aquatic life, or having endangered plant or animal species).

Policy 16-G also contains strategies that outline the Goal 5 process. Those strategies have been completed as part of the Rural Area Planning process or as part of the Reconciliation process.

In addition, the East of Sandy RAP contains specific policy language that seeks to balance protection of significant streams with use by property owners.

22. Encourage cooperative property owner organizations for individual streams and their watersheds to provide technical assistance and information regarding financial resources to people about best management practices necessary to protect streams.
STRATEGY: Multnomah County will work cooperatively with the East Multnomah Soil and Water Conservation District and the U.S. Natural Resources Conservation Service to promote cooperative property owner organizations.
23. Work with the Oregon Department of Forestry to better protect significant streams from any negative impacts associated with timber harvesting.

STRATEGY: Multnomah County will forward this policy to the Oregon Department of Forestry for their consideration.

24. Provide incentives, consistent with current zoning, for new development which is compatible with and enhances significant streams and adjoining riparian habitat.

STRATEGY: When considering amendments to its zoning ordinance, Multnomah County will consider whether such amendments can act as an incentive to new development being compatible with and enhancing significant streams and adjoining riparian habitat.

25. Work with the East Multnomah County Soil and Water Conservation District to provide technical assistance and information regarding financial resources property owners about sound farming practices which also protect significant streams and adjoining riparian habitat.

STRATEGY: Multnomah County will work cooperatively with the East Multnomah Soil and Water Conservation District and the U.S. Natural Resources Conservation Service to develop an educational program which will let landowners become informed on how they can manage their properties to best protect streams and their watersheds while continuing to make productive agricultural use of their land.

26. Use property tax deferral and exemption programs to encourage streamside property owners to maintain and upgrade streams and adjoining riparian habitat.

STRATEGY: Multnomah County will work cooperatively with the East Multnomah Soil and Water Conservation District and the County Assessor to inform landowners become about the property tax deferral and exemption programs available to them for stream enhancement.

27. Monitor educational and/or regulatory programs to protect streams on a regular basis in order to gauge their effectiveness.

STRATEGY: Multnomah County will conduct periodic reviews of stream regulatory and educational programs to gauge their effectiveness.

The West Hills RAP also contains similar policies and strategies related to riparian resources with the following additional policies or strategies:

- Minimize runoff from roads, particularly from County road clearing processes.
- Consider additional streams for significance and protection if requested by a property owner or other interested party.

The proposed Sauvie Island/Multnomah Channel RAP now up for adoption also has one policy related to riparian corridors.

Policy 3.4 - Update the inventory of surface water resources and associated riparian areas in compliance with Goal 5 requirements. Apply the Significant Environmental Concern overlay to significant wetlands (SEC-w) and streams (SEC-s) in the planning area.

COMMUNITY MEMBER COMMENTS

The following comments regarding riparian corridors were provided during open house events held last November:

- Focus development towards areas of existing development and small lots and protect higher value areas in riparian and larger undeveloped areas.
- Improve regulations to increase buffer zones along roads and streams.
- It would be nice if the county would be more assertive about people who graze their cows in streams, and enforce riparian rules.
- Protect wildlife, streams and forests.
- Increase protection for wildlife habitat (oak woodlands), streams, and water quality.

WETLANDS

To meet Statewide Planning Goal 5 - Wetland requirements, at minimum, counties are required to adopt the Statewide Wetland Inventory (SWI). A county may also elect to create a Local Wetland Inventory (LWI) as outlined in OAR Chapter 660, division 23. Multnomah County has completed the process of determining significant wetlands and has a LWI. Wetlands in the LWI are primarily located on Sauvie Island. Additionally, the county has analyzed the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use to create regulations that are contained in the SEC-w protection program.

The County is not required to add new wetlands to its LWI or create a new protection program based on the newly created inventory because the County is voluntarily updating its Comprehensive Plan outside of a Periodic Review process. Staff recommends adopting the Statewide Wetland Inventory and applying SEC-w protections in accordance with the Sauvie Island/Multnomah Channel RAP. Staff also recommends including other wetlands in the state inventory that were not included in previous county analyses as “notification wetlands” in order to ensure that the Oregon Department of State Lands (DSL), which regulates fill and removal of wetlands, is notified in the event of any proposal that would impact these wetlands (see Figure 2). The County can also elect to add other wetlands outside of SIMC area to its LWI that were not originally determined as significant using the Oregon Fresh Water Assessment Methodology (OFWAM). If the County elects to add wetlands to the LWI, it can adopt “safe harbor” provisions or complete an ESEE analysis to create a protection program.

KEY POLICY QUESTIONS

Following are key policy questions

- *Do you concur with staff's recommendation and the Sauvie Island policy directing the County to protect wetlands identified on the island as part of previous wetland inventories?*

- *Do you agree with the project team’s recommendation to include wetlands shown in the state wetland inventory but not currently covered by the SEC-w overlay as “notification wetlands?”*
- *Should any of the rural area plan policies for wetlands be applied County-wide?*

STATE REQUIREMENTS AND DEGREE OF DISCRETION

Outside of Periodic Review, state law does not require updating the wetland inventory and protection program. The County can adopt the Statewide Wetland Inventory and require that applications for development notify the Department of State Lands (DSL), if the development encroaches on identified wetlands. Additionally, if the County feels that there are wetlands in the SWI that are significant or there are significant wetlands that were not identified in the SWI, the County could elect to add those wetlands to its LWI using OFWAM.. Once added to the LWI, the County can decide to use either the standard or “safe harbor” process to create a protection program for those wetlands.

GEOGRAPHIC APPLICABILITY

This issue is generally applicable or relevant to all of the rural areas where the SWI differs from Multnomah County’s mapping efforts. This issue is also relevant to wetlands on Sauvie Island/Multnomah Channel that are not currently protected by the SEC-w overlay.

EXISTING COUNTY POLICIES

Within the Comprehensive Framework Plan, wetlands are included in Policy 16-G, which can be read above in the Riparian Corridors section of this analysis.

The West Hills RAP has one strategy concerning wetlands as it relates to water quality.

POLICY 19: Protect water quality in areas adjacent to Multnomah Channel through control of runoff from West Hills Rural Area streams.

STRATEGY: Revise the ESEE analysis and protection program for Burlington Bottoms to include discussion of water quality impacts from West Hills drainages into this wetland, and adopt appropriate zoning ordinance amendments to protect water quality in Burlington Bottoms.

The West of Sandy River has the following strategy:

Strategy 1.2: Multnomah County shall utilize the Statewide Wetland Inventory to identify the general location of wetlands within the West of Sandy River Rural Area.

The proposed Sauvie Island/Multnomah Channel RAP also has three policies related to wetlands that will be implemented as part of the Long Range Planning program upon adoption of the SIMC RAP by the Multnomah County Board of Commissioners.

Policy 3.4: Update the inventory of surface water resources and associated riparian areas in compliance with Goal 5 requirements. Apply the Significant Environmental Concern overlay to significant wetlands (SEC-w) and streams (SEC-s) in the planning area.

Policy 3.8: Encourage educational programs regarding the maintenance and restoration of wildlife habitat in the planning area, including programs addressing:

- (a) Maintenance and restoration of wildlife corridors.
- (b) Restoration and enhancement of wetlands, riparian areas and grasslands.
- (c) Planting of native vegetation hedgerows.
- (d) Conserving Oregon white oak habitat and bottomland cottonwood/ash forests.
- (e) Use of wildlife-friendly fencing.

Policy 3.12: Recognize and celebrate the heritage value of the natural resources of Sauvie Island to Native American tribes, including historic wetlands, riparian areas, water bodies and oak uplands. Encourage and support the protection and restoration of these resources.

COMMUNITY MEMBER COMMENTS

The following comment regarding wetlands was provided during open house events held last November:

- The weed control is an issue, along streams, wetlands and forests. Regulations in place now are not enforced! Where is the soil and water department?

WILDLIFE HABITAT

To meet Statewide Planning Goal 5 – Habitat requirements, counties must inventory and adopt provisions to create a program to protect significant wildlife habitat resources. The county has already completed the process of inventorying significant wildlife habitat. Additionally, the county has analyzed the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use to create regulations that are contained in SEC-h protection program.

The County is not required to add new wildlife habitat to its inventory or apply the SEC-h to possible newly identified significant wildlife resources because the County is voluntarily updating its Comprehensive Plan.

However, the County may elect to add wildlife habitat using either the standard process or “safe harbor” provisions. There are two areas documented as big game habitat by the Oregon Department of Fish and Wildlife (ODFW) that are not already covered by the County’s SEC-H overlay (see Figure 3A and 3B). To add these areas to the inventory using “safe harbor” provisions, one or more of the following conditions must exist:

- (a) The habitat has been documented to perform a life support function for a wildlife species listed by the federal government as a threatened or endangered species or by the state of Oregon as a threatened, endangered, or sensitive species;
- (b) The habitat has documented occurrences of more than incidental use by a species described in subsection (a) of this section;
- (c) The habitat has been documented as a sensitive bird nesting, roosting, or watering resource site for osprey or great blue herons pursuant to ORS 527.710 (Oregon Forest Practices Act) and OAR 629-024-0700 (Forest Practices Rules);
- (d) The habitat has been documented to be essential to achieving policies or population objectives specified in a wildlife species management plan adopted by the Oregon Fish and Wildlife Commission pursuant to ORS Chapter 496; or
- (e) The area is identified and mapped by ODFW as habitat for a wildlife species of concern and/or as a habitat of concern (e.g., big game winter range and migration corridors, golden eagle and prairie falcon nest sites, or pigeon springs).

There are no “safe harbor” provisions for creating a protection program, so if the County elects to add wildlife habitat to the inventory, the County is obligated to complete an ESEE analysis to apply the SEC-h protection program to the newly added wildlife habitat.

KEY POLICY QUESTIONS

Following are key policy questions

- *Should the SEC-h overlay be applied to certain wildlife habitat areas not currently protected? [Note: This may result in additional restrictions on development in rural residential and/or other areas of the County in the East of Sandy River and Multnomah Channel areas. Additionally to use existing SEC-h requirements which would require additional environmental analysis by the County]]*

STATE REQUIREMENTS AND DEGREE OF DISCRETION

Outside of Periodic Review, state law does not require updating the wildlife habitat inventory and protection program. As discussed in the memo, “Standard and Safe Harbor Process Analysis (dated: April 09, 2015)” the County can elect to add wildlife habitat to the inventory using either the standard or “safe harbor” process. If additional wildlife habitat is added to the inventory, the County must use the standard process and conduct an ESEE analysis to either apply the SEC-h provisions or create a new protection program.

GEOGRAPHIC APPLICABILITY

This issue is generally applicable or relevant to all of the rural areas where wildlife habitat is not currently protected by an SEC-h overlay. However, the only documented wildlife habitat areas not already covered by the SEC-h overlay (per state data) are in the East of Sandy and SIMC areas.

EXISTING COUNTY POLICIES

The Comprehensive Framework Plan contains the following policy and strategies related to wildlife habitat. Strategy A and C have been completed:

Policy 16-D: Fish and Wildlife Habitat

It is the County's policy to protect significant fish and wildlife habitat and to specifically limit conflicting uses within natural ecosystems within the rural portions of the County and sensitive big game winter habitat areas.

STRATEGIES

- A. Utilize information provided by the Oregon Department of Fish and Wildlife to identify significant habitat areas and to delineate sensitive big game winter habitat areas. If necessary, supplement this information with additional professional analysis to identify additional significant habitat areas and natural ecosystems within rural portions of the County.
- C. Include provisions within the Zoning Ordinance to review development proposals which may affect natural ecosystems within the rural portions of the County and sensitive big game winter habitat areas.

The West Hills RAP also has various policies and strategies that address wildlife habitat. Some of the policies have been completed through the implementation of the SEC-h protection program. The West Hills RAP policies and strategies include:

POLICY 26: Balance protection of wildlife habitat with flexibility of use by property owners

STRATEGY: Enforce existing animal control restrictions on free-ranging domestic pets which can have a negative impact on wildlife.

STRATEGY: Develop programs to educate people about how wildlife habitat can co-exist with other uses on private property.

STRATEGY: Continue to collect data and information on the status of wildlife and wildlife habitat in the West Hills.

STRATEGY: Work with the Oregon Department of Forestry to better protect wildlife habitat from the negative impacts associated with timber harvesting.

STRATEGY: Work with the local Soil and Conservation Districts to educate farmers about sound farming practices which also protect wildlife habitat.

STRATEGY Provide incentives for development compatible with wildlife habitat.

The East of Sandy RAP has similar policies that direct the County to work with the Soil and Water Conservation District and Department of Forestry. The plan also suggests incentives for development that are compatible with wildlife habitat.

The proposed Sauvie Island/Multnomah Channel RAP also has similar policies and strategies that direct the County to work and collaborate with various agencies and groups. A new policy not found in other RAPs is:

Policy 3.2: Encourage voluntary conservation efforts such as conservation easements and community-based restoration projects that complement Multnomah County's Goal 5 (Natural and Cultural Resources) and Goal 15 (Willamette River Greenway) regulatory programs and if possible, extend the Wildlife Habitat tax deferral to MUA lands.

The West of Sandy RAP policies and strategies have all been completed as part of the SEC-h protection program.

COMMUNITY MEMBER COMMENTS

During open house events held last November, there were many comments about wildlife. There were seven comments that listed wildlife habitat as something that was valued most. Individuals also commented that if Multnomah County successfully planned for the next 20 years, they would see:

- The community would remain rural with environmental overlays to support wildlife migration through to Forest Park.
- Folks would be more educated about how to encourage a healthy ecosystem outside the park (Forest Park), with special attention paid to wildlife connections to Coast Range.
- Degraded wildlife habitat would be restored and impediments to wildlife movement (including roads and culverts) would be reduced or eliminated... large blocks of wildlife, county policies that support wildlife and healthy streams...

One individual wanted the County to create clearer policy on wildlife protections and development in rural residential zones:

- The land parcels aren't big enough nor is the climate or soil or terrain optimal for large scale farming on most parcels. Recognize this and loosen up some of the allowed uses. If you want this to be a rural preserve, then allow wildlife habitat on rural residential sites. If you don't, then allow more development on smaller parcels of RR designation.

There were also many comments about wildlife habitat and road crossings. Many of the comments directed the county to take action to make road crossings safer for wildlife and drivers.