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STAFF REPORT to the PLANNING COMMISSION

For the April 3, 2017 Work Session

Pertaining to

ADOPTING ESEE REPORTS, AMENDING THE MULTNOMAH COUNTY ZONING MAP TO APPLY SIGNIFICANT ENVIRONMENTAL CONCERN (SEC) OVERLAYS TO ADDITIONAL AREAS FOR THE PROTECTION OF STREAM CORRIDORS AND WILDLIFE HABITAT, AND AMENDING THE MULTNOMAH COUNTY ZONING CODE TO ADD DESCRIPTIONS OF NEW PROTECTED AREAS, IN COMPLIANCE WITH STATEWIDE PLANNING GOAL 5

CASE FILE: PC-2017-7228

1.0 INTRODUCTION

One of the secondary tasks undertaken in conjunction with last year's Comprehensive Plan update was an assessment of the County's Goal 5 inventory and resource protection program. The primary purpose of this task was to identify and evaluate current data sources and resource inventories in order to determine whether there are any significant Goal 5 resources not now protected under the County's resource protection program – that is, subject to Significant Environmental Concern (SEC) overlay zones. If this new information showed there are significant resource areas that are unprotected, then an Economic, Social, Environmental, and Energy (ESEE) analysis might have to be completed in order to justify adding protective SEC regulations to those areas.

The Goal 5 evaluation focused on two of the major Goal 5 resources -- stream corridors and wildlife habitat. A review of the County's current inventories for stream corridors (also referred to as riparian corridors) and key wildlife habitat areas found that there are areas of Multnomah County that are not currently under SEC overlay zone protections; consequently, the Comprehensive Plan update work program was expanded to add the task of conducting the necessary ESEE analyses.

2.0 BACKGROUND ON GOAL 5 RESOURCES

Goal 5 is a broad statewide planning goal that covers more than a dozen resources, including natural resources (streams, wetlands, wildlife habitat), scenic and historic areas, and open spaces. The Goal mandates that local governments “adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations.”

Among other things, Goal 5 requires local governments to maintain current inventories and analyses of riparian areas, wetlands and wildlife habitat, and to develop land use ordinances with standards to protect those resource areas found to be significant.

Oregon Administrative Rules (OAR) Chapter 660 division 23 establishes two approaches that local governments can take to inventory and protect the major resources, including riparian corridors, wetlands, and wildlife habitat. Under the standard process outlined in the OAR, once the inventory is completed the local government is required to identify conflicting land uses and then examine the impacts of allowing, conditionally allowing (limiting) or not allowing these uses within significant Goal 5 resource sites. The impacts of conflicting uses are evaluated by looking at the economic, social, environmental and energy (ESEE) consequences of each general category of uses. Based on the results of the ESEE analysis, a program to protect the resource can be adopted. As an alternative to the standard process, the OAR also provides local governments with an objective “safe harbor” method for inventorying and protecting these resources. Use of the safe harbor method avoids the need to perform a local ESEE analysis but safe harbor standards take away the flexibility available under the standard process.

3.0 PREVIOUS INVENTORIES AND ESEE ANALYSES

In Multnomah County, several Goal 5 inventories and ESEE analyses were completed in the mid-1990s as part of the work done during the County’s Periodic Review and the Rural Area Planning Program. Protection of significant Goal 5 resource areas primarily occurs by applying Significant Environmental Concern (SEC) Overlay Zones: SEC (general), SEC-s (streams), SEC-w (wetlands), SEC-wr (water resources), SEC-h (wildlife habitat), SEC-sw (scenic waterways), and SEC-v (scenic views).

The following reports established the basis for the County’s current application of SEC overlays:

- *Howard Canyon Reconciliation Report (September 1994. Revised September 1995)*
- *West Hills Reconciliation Report and 1996 Inventory and ESEE 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)*
- *Sauvie Island and Multnomah Channel (SIMC) Rural Area Plan (1997) and Inventory.*

Metro’s Urban Growth Management Functional Plan Title 13, also referred to as “Nature in Neighborhoods”, established a regional inventory and ESEE for cities and counties in the Portland Metropolitan area to meet statewide Goal 5 requirements for fish and wildlife habitat. Title 13 required Multnomah County to adopt protections for Metro identified significant streams inside the Metro boundary. As part of its 2007 work program, the County conducted an analysis of its current SEC zoning to see if it complied with Title 13 requirements. Based on a code

analysis and comparison, the County amended its SEC-wr and SEC-s zones within Metro's boundary to make them compliant with Metro requirements.

Policy 21 Streams

The 1994 *Howard Canyon Reconciliation Report* focused on three streams in the East of Sandy River rural planning area within the Howard Canyon area -- Big Creek, Howard Canyon Creek and Knieriem Creek. The ESEE analysis found that all three creeks met the location, quality and quantity conditions to be considered significant and to limit conflicting uses within the vicinity of these streams. The SEC-s overlay was subsequently applied to each of the creeks.

The 1995 *East of Sandy River Wildlife Habitat and Stream Corridor ESEE Report* inventoried and analyzed a select few streams in that rural planning area. The report studied the following six streams: Smith, Pounder, Buck, Gordon, Cat, and Trout Creeks. It found that all six streams are significant environmental resources deserving of SEC overlay protection.

In 1997, the County adopted the East of Sandy River Rural Area Plan (ESR-RAP) which contained several policies specific to the six streams addressed in the 1995 ESEE. Policy 21 of the ESR-RAP directed the county to:

“Protect significant streams in the East of Sandy River Rural Area by prohibiting new residential development within 150 feet of a stream [300 feet full width when measured on both sides of the stream] centerline and limiting new roads, stream crossings, additions to existing structures, and other grading activities within this 150 foot area. Additions to existing dwellings of up to 400 square feet shall be exempt from the setback requirements. All related ground disturbing activities within the 150 foot stream setback shall be confined to the period between May 1 and October 1 in any year.”

The related implementing strategy to Policy 21 stated:

“Multnomah County shall implement this policy with amendments to the Multnomah County Zoning Code Significant Environmental Concern Zoning Overlay District and applying the district to areas within 150 feet of the centerline of each significant stream.”

Since the adoption of this policy in 1997, the County zoning map has never been amended to apply the SEC-s overlay to the six streams determined to be significant in the 1995 ESEE report. Staff refers to these six streams as 'Policy 21 streams' and has treated them as protected Goal 5 resources by applying the objective standards of Policy 21 directly.

In 2013, the Planning Commission considered implementation of Policy 21 as part of its annual work program. The work program task was based on the understanding that the SEC-s overlay needed to be applied to Policy 21 streams. However, staff determined that the task was more complicated than that because several issues and inconsistencies were identified between existing SEC-s code and what is called out by Policy 21. After evaluating its options, the Planning Commission agreed with the staff recommendation to address Policy 21 streams as part of a future Rural Area Plan update because of the major public outreach that would be needed in order to reconcile these inconsistencies. Ultimately, the idea of a Rural Area Plan update was

abandoned in favor of doing a full County Comprehensive Plan update that would fold in the various rural area plans.

Findings of 2016 Updated Inventory

As stated previously, the County evaluated its Goal 5 resource inventories as part of the recent Comprehensive Plan update work program. The project consultant focused their evaluation on the most widely studied Goal 5 resources -- wetlands, riparian (stream) corridors, and wildlife habitat areas -- and found a number of new or updated data sources for these resources. One example is Oregon Wetlands Explorer, via the Oregon Explorer website, which provides a comprehensive collection of wetlands data, including the US Fish & Wildlife Service National Wetland Inventory, wetland boundaries, wetland soils, flood zones, mitigation banks, and local wetland inventories, among others.

Another example is Metro's Title 13 wildlife habitat inventory conducted approximately ten years ago that included both riparian areas and upland habitat. Metro's inventory extended approximately one mile beyond its jurisdictional boundary thereby shedding new light on regionally significant resources in rural Multnomah County not currently covered by SEC overlays. Metro then completed an ESEE analysis to assess tradeoffs of protecting or not protecting the resources identified in the inventory. Metro Council adopted the inventory and ESEE analysis for the areas within the Urban Growth Boundary but not for the areas outside the UGB (one-mile streams).

A comparison of the County's current resource inventories with the various new data sources concluded that there are additional significant riparian corridors and wildlife habitat areas and that an ESEE analysis would need to be done in order to amend the applicable SEC zoning maps to include these additional resource lands.

Comprehensive Plan Policies Pertaining to Goal 5 Environmental Resources

During the Comprehensive Plan update process the Community Advisory Committee (CAC), both as a whole and through its environmental subcommittee, spent many hours discussing the County's present Goal 5 resource protection program, the findings of the updated resource inventories, and past policies surrounding this topic. From this assortment of information, the project team and the CAC crafted new Plan policies and strategies to direct future actions on designating and protecting Goal 5 resources. (These policies do not apply inside the Columbia River Gorge National Scenic Area because this area is subject to the Federal NSA Management Plan.) The general direction given by those policies can be summarized as follows:

Riparian Corridors and Wetlands

- Maintain and update inventories by periodically reviewing new data
- Include significant riparian corridors identified in Metro's Nature in Neighborhoods inventory (one-mile streams)
- If possible, rely on Metro's regional ESEE analysis to support adding the SEC-s overlay to these additional streams.

- Protect all significant riparian corridors and wetlands, in accordance with applicable ESEE analysis reports
- Use the Statewide Wetlands Inventory to identify the location of wetlands in the County
- Use “safe harbor” protection of new wetlands rather than preparing an ESEE analysis and applying the SEC-w overlay
- Update and adjust stream data to more accurately show riparian corridor centerlines on the County zoning maps.

Fish and Wildlife Habitat

- Maintain and update inventories by periodically reviewing new data
- Protect all significant wildlife habitats in accordance with applicable ESEE analysis reports
- Designate wildlife habitat and corridors mapped by ODFW as significant
- Conduct an ESEE analysis for these mapped areas and apply the SEC-h overlay if justified by the analysis

Attachment A contains all of the Comprehensive Plan policies pertaining to wetlands, riparian areas and fish and wildlife habitat.

Upon further investigation into Metro’s inventory, County staff learned that Metro’s ESEE analysis for Title 13 stream corridors did not address inventoried streams outside the Urban Growth Boundary. This meant that the County would have to conduct a new ESEE analysis specific to these areas. So in order to carry out the Comprehensive Plan policies, the County’s Comprehensive Plan update consultant team conducted separate ESEE analyses for East County resources and West County resources. The ESEEs specifically examined the consequences of conflicting uses on newly inventoried riparian corridors and wildlife habitat areas. The analyses resulted in the following two reports (Attachments B and C):

- *Supplemental Goal 5 Economic, Social, Environmental and Energy (ESEE) Analysis Multnomah County, East and West of the Sandy River Areas, July 27, 2016*
- *Supplemental Goal 5 Economic, Social, Environmental and Energy (ESEE) Analysis Multnomah County, West Hills and Sauvie Island/Multnomah Channel, March 24, 2017*

Resources Subject to the 2016 ESEE Analyses

East County

The resources evaluated in the East County ESEE analysis included significant riparian corridors and wildlife habitat areas identified by Metro and the Oregon Department of Fish and Wildlife (ODFW) inventories within the West of Sandy River and East of Sandy River planning areas but which are not already subject to the County’s SEC-wr, SEC-h or SEC-s overlay zones.

Attachments D and E are maps from the East County ESEE that illustrate these areas, generally described as follows:

- Metro one-mile riparian areas, including:
 - Riparian corridors within and adjacent to several unnamed creeks, located approximately parallel to and north of E Bell Road.
 - Riparian corridors associated with Smith Creek and its tributaries, including a portion paralleling SE Hurlburt Road, as well as Pounder Creek.
- Riparian corridors mapped by ODFW as fish-bearing streams within and connected to Buck Creek, Gordon Creek and Trout Creek.
- Riparian areas previously identified as “Policy 21” streams, including portions of Buck, Gordon, Cat and Trout Creeks. Smith and Pounder Creeks (noted above) also fall into this category. Some portions of these corridors also are coincident with the ODFW stream corridors noted above.
- Portions of the Sandy River corridor where the channel has migrated since the County’s SEC overlay was established in this area and/or where the SEC-s designation was not previously applied.
- Wildlife habitat located in the northwest corner of unincorporated East Multnomah County just south of the Columbia River Gorge National Scenic Area. The bulk of the habitat is located in the East of the Sandy River area. This area includes big game (black bear, elk, and/or black tailed deer) habitat mapped by the ODFW.

West County

The resources that were evaluated in the West County ESEE analysis included those significant riparian corridors and wildlife habitat areas identified by Metro and the ODFW inventories within the West Hills and SIMC areas but which are not already subject to the County’s SEC-wr, SEC-h or SEC-s overlay zones. Attachments F and G are maps from the West County ESEE that illustrate these areas, generally described as follows:

- Riparian corridors within and adjacent to portions of Ennis/Newberry Creek, South Angell Creek, Middle Angell Creek and a tributary of McCarthy Creek, located approximately southwest of US 30 in the lower slopes of the West Hills. The Angell Brothers quarry site is located northeast of the portion of Middle Angell Creek within the study area.
- Riparian corridors within and adjacent to two tributaries of Rock Creek, located in the upper slopes of the West Hills, near Skyline Blvd and Cornelius Pass Road.
- Wildlife habitat located due east of US 30, adjacent to the Multnomah Channel and both on and west of Sauvie Island, both north of the southern tip of the island and south of the Multnomah/Columbia County border. This area includes big game (black bear, elk, and/or black tailed deer) habitat mapped by the ODFW.

4.0 CONCLUSIONS AND RECOMMENDATIONS OF THE ESEE REPORTS

The purpose of a Goal 5 ESEE analysis is to determine whether to allow, limit, or prohibit identified conflicting uses within the geographical areas that are the subject of the study. A decision to prohibit or limit conflicting uses protects those natural resources. A decision to allow some or all conflicting uses may also be consistent with Goal 5 provided it is supported by the ESEE analysis. The analysis must reach one of the following determinations with regard to conflicting uses for a resource site:

- (a) Allow: The County may decide that the conflicting use should be fully allowed notwithstanding the possible impacts on the significant resource areas. The ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource and must indicate why measures to protect the resource to some extent should not be required.
- (b) Limit: The County may decide that both the significant resource 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 to a desired extent or requires mitigation of lost resource areas and their associated values and functions.
- (c) Prohibit: The County may decide that a significant resource is of such importance compared to the conflicting uses and that the ESEE consequences of allowing the conflicting uses are so detrimental to the resource that the conflicting uses should be prohibited.

The ESEE analyses for East County and West County conclude that overall the limit scenario offers the greatest net benefit in all categories of conflicting use. Therefore, they recommend “limit” as the most appropriate response to protecting the resource (b among the three possible determinations noted above).

Multnomah County has a number of existing Goal 5 compliant regulations and policies that apply to significant riparian corridors and wildlife habitat areas. The County currently implements these regulations and policies through its base zoning code standards but more specifically through its SEC-Streams, SEC-Water Resources and SEC-Wildlife Habitat overlay zones as well as applicable state statutes and administrative rules.

The conclusion of the ESEE reports is that amending the County Zoning Map to apply SEC overlay regulations to this latest inventory of significant riparian corridors and wildlife habitat areas would provide an appropriate level of protection and a reasonable balance between allowing development outright and prohibiting it altogether. Use of SEC zoning achieves the recommendation of the ESEE reports to “limit” development.

Acres Affected

By amending the County zoning map to apply SEC overlays to the resource areas evaluated by the 2016 ESEE analyses, additional property will be subject to the regulations of those overlays. The amount of land that will be affected by this decision is based on the “impact area” that was

established in the ESEE reports. The "impact area" is a geographic area within which conflicting uses could adversely affect a significant Goal 5 resource.

For the Metro inventoried “one-mile streams” proposed to be added to the County’s Goal 5 inventory, Metro’s methodology chose an impact area that took into account a variety of factors and a significant amount of technical analysis. Metro identified the impact area as the land extending 150 feet from the sides of a water body, and the land extending 25 feet from edge of inventoried wildlife habitat. The 2016 ESEE analyses in Multnomah County used this same methodology. A 150-foot impact area on each side of the centerline of the stream is also consistent with the area identified in the 1995 ESR ESEE analysis. When the County applies a protection program to these areas, it may vary requirements within the buffer area, as contemplated in the County’s previous evaluation of Policy 21 requirements. The 150-foot impact area is a reduced buffer width from what the County’s SEC-s overlay currently applies since the zone now extends 300 feet from the centerline on both sides of a protected stream.

For the East County ESEE, the riparian corridor impact area is illustrated in Attachment H and tabulated in Table 1 below. For the West County area, this impact area is illustrated in Attachment I and tabulated in Table 2. These numbers reflect the additional acres of property that would be subject to the SEC-s and SEC-wr overlay zones. Relatively little acreage occurs in the West of Sandy subarea because the only additional land affected are portions of the Sandy River corridor where the channel has migrated since the County’s SEC overlay was mapped.

Table 1. East County: Summary of New Riparian Corridor Impact Areas by Zone (in acres)

	CFU	CFU3	CFU4	EFU	MUA 20	RC	RR	Total
East of Sandy River Subarea	-	517.9	1,658.6	138.4	55.1	16.9	67.5	2,454.5
West of Sandy River Subarea	60.7	-	-	0.2	0.3	-	7.3	68.5
Total	60.7	517.9	1,658.6	138.6	55.4	16.9	74.9	2,523.0

Table 2. West County: Summary of New Riparian Corridor Impact Areas by Zone (in acres)

	CFU1	CFU2	EFU	MUA20	RC	RR	Total
Sauvie Island/Multnomah Channel	-	-	.07	103.58	4.78	-	108.43
West Hills	140.59	47.80	8.10	18.02	-	30.39	244.90
Total	140.59	47.80	8.17	121.60	4.78	30.39	353.33

The impact area for the wildlife habitat element of the ESEE analyses relied on the data available from the ODFW to define wildlife habitat areas for big game (elk, black bear, and black tail deer). Neither ODFW nor state regulations provide guidance on delineating an impact area that extends beyond the habitat area boundary. In identifying resource and impact areas for upland wildlife habitat as part of the Title 13 process, Metro identified the resource and impact areas as coincident. The 2016 ESEE analyses of wildlife habitat used this same methodology.

For the East County ESEE, the wildlife habitat impact area is illustrated in Attachment J and tabulated in Table 3. For the West County area, this impact area is illustrated in Attachment K

and tabulated in Table 4. These numbers reflect the additional acres of property that would be subject to the SEC-h overlay zone.

Table 3: East County: Summary of New Wildlife Habitat Impact Areas by Zone (in acres)

	CFU	CFU3	CFU4	EFU	MUA20	RR	Total
East of Sandy River Subarea	-	143.1	365.5	905.4	546.7	124.1	2,084.8
West of Sandy River Subarea	106.6	-	-	276.6	4.5	31.5	419.1
Total	106.6	143.1	365.5	1,182.0	551.2	155.5	2,503.9

Table 4: West County: Summary of New Wildlife Habitat Impact Areas by Zone (in acres)

	EFU	MUA20	Total
Sauvie Island/Multnomah Channel	340.34	1318.12	1,658.45

Countywide, approximately 7,038 total acres of additional significant riparian corridors and wildlife habitat areas would be placed under SEC-s, SEC-wr and SEC-h overlay zone protection. This compares to 31,600 acres that are currently within these three zones, or about a 22% increase.

5.0 REQUIRED ACTIONS

There are three legislative actions required to implement the Comprehensive Plan policies pertaining to Riparian Areas and Fish and Wildlife Habitat.

1. The two supplemental ESEE reports that provide the analytic justification for limiting development activity within these natural resource areas through Significant Environmental Concern overlay zoning would be adopted as part of the County Comprehensive Plan.
2. The County Zoning Map would be amended to include these new resource areas within the boundary of the applicable SEC overlay zone – SEC-s, SEC-wr and SEC-h – and to update and adjust the SEC-s and SEC-wr maps to more accurately show riparian corridor centerlines based on more recent data.
3. The text of the SEC-s zone would be amended to reference the supplemental ESEE reports and to add a description of the Stream Conservation Area (impact area) for the new significant riparian corridors as the area extending 150 feet on both sides of the centerline of the stream. The SEC-s Stream Conservation Area would remain unchanged for those streams where it currently extends 300 feet on both sides of the stream or where the width now varies within Metro jurisdictional boundary.

It is important to point out that the SEC overlay standards themselves are not changing.

The Planning Commission’s role in this matter is to weigh the merits of these legislative actions and to make a recommendation to the Board of County Commissioners concerning their adoption.

6.0 ATTACHMENTS

- Attachment A: Comprehensive Plan policies pertaining to wetlands, riparian areas and fish and wildlife habitat.
- Attachment B: Supplemental Goal 5 Economic, Social, Environmental and Energy (ESEE) Analysis, Multnomah County, East and West of the Sandy River Areas
July 27, 2016
- Attachment C: Supplemental Goal 5 Economic, Social, Environmental and Energy (ESEE) Analysis, Multnomah County, West Hills and Sauvie Island/Multnomah Channel, March 24, 2017
- Attachment D: Figure 2 from the Supplemental Goal 5 Economic, Social, Environmental and Energy (ESEE) Analysis for East and West of the Sandy River Areas – Riparian Corridors
- Attachment E: Figure 3 from the Supplemental Goal 5 Economic, Social, Environmental and Energy (ESEE) Analysis for East and West of the Sandy River Areas – Wildlife Habitat Areas
- Attachment F: Figure 2 from the Supplemental Goal 5 Economic, Social, Environmental and Energy (ESEE) Analysis for West Hills and Sauvie Island/Multnomah Channel – Riparian Corridors
- Attachment G: Figure 3 from the Supplemental Goal 5 Economic, Social, Environmental and Energy (ESEE) Analysis for West Hills and Sauvie Island/Multnomah Channel – Wildlife Habitat Areas
- Attachment H: Figure 5, Significant Riparian Areas and Impact Areas, from the Supplemental East County ESEE
- Attachment I: Figure 5, Significant Riparian Areas and Impact Areas, from the Supplemental West County ESEE
- Attachment J: Figure 6, Significant Wildlife Habitat Areas and Impact Area, from the Supplemental East County ESEE
- Attachment K: Figure 6, Significant Wildlife Habitat Areas and Impact Area, from the Supplemental West County ESEE