

Lane County Statewide Planning Goal 5 Compliance for Wetland, Riparian Corridor, and Wildlife Habitat

Introduction

Oregon's statewide planning goals provide the framework for planning within the state. Statewide Planning Goal 5 requires all Oregon cities and counties "to conserve open space and protect natural and scenic resources." The goal itself, plus Oregon Administrative Rules (OARs) 660-23, establishes specific procedures and criteria for Goal 5 compliance.

The Department of Land Conservation and Development (DLCD) currently requires Lane County, through the periodic review work program, to comply with Goal 5 for wetlands, riparian corridors, and wildlife habitat. This report describes the Goal 5 requirements and documents how the County has complied with them for the area outside the urban growth boundary (UGB) and within the Metro Plan boundary.

Background

The new Goal 5 rule, adopted in 1996, allows local jurisdictions to choose between two processes: (a) the standard process, and (b) the "safe harbor" process. Each approach has trade-offs in the subsequent analysis and policy steps. The standard process allows the jurisdiction more flexibility in determining which sites are significant for further analysis, and in policy choices for dealing with the site, but requires an analysis of every site for environmental, social, economic, and energy (ESEE) consequences of allowing, limiting, or prohibiting conflicting uses. Jurisdictions using the safe harbor approach may skip the analysis step, but must gather resource data from specified sources and adopt the protection measures required in the Goal 5 rule.

Local elected officials decided in spring 1997 to take a two-pronged approach to the inventory for the Eugene/Springfield Metropolitan Natural Resources Study (NR Study). The officials directed staff to use the standard process for sites inside the UGB, and to use the safe harbor approach for the area outside the UGB. Until Spring of 2002, the three jurisdictions have been working together on one Metropolitan-wide natural resources study. Currently, the work program of the NR Study is divided into four separate work program subtasks to address the requirements of Periodic Review and the Goal 5 Rule within the Metro Plan boundary for wetlands, riparian corridors, and wildlife habitat. The two cities and the county will split the NR study into independent work programs, leaving in the NR Study only the policies that the jurisdictions must do as part of the Metro Plan revisions. The goal of splitting the NR Study into separate work programs, is to address Goal 5 requirements for wetlands, riparian corridors, and wildlife habitat in a timely and efficient manner. This report focuses on Lane County's compliance with Goal 5, for the area outside of the UGB and within the Metro Plan boundary.

Citizen and Public Official Involvement

Work on an inventory of wetlands, riparian and upland wildlife habitat sites started several years ago, as a joint effort among the cities of Eugene and Springfield, and Lane County. The Joint Planning Commission Committee approved the Public Involvement Plan for the Study in May 2000. In May-June 2000, the Planning Commissions of Eugene and Springfield, plus the elected officials of Lane County and Springfield, received initial briefings on the study. A number of public workshops and comment sessions on the Metro-wide inventory occurred between June 2000 and October 2001 as part of processing the inventory and significance criteria.

Two public workshops (one in Eugene, one in Springfield) were held in June 2000 on the draft inventory. Over 15,000 affected property owners, property owners living within 150 feet of affected property, and interested citizens were notified of the public meetings. Approximately 150 citizens attended the public

workshops. Staff received almost 200 comments about the NR Study from June through September 2000, in the form of letters, e-mails, and comment forms. The Citizens' Nature Project submitted 136 of the comments on inventory forms that they created to propose additional sites and modifications of site boundaries. The Citizens' Nature Project, comprised of representatives of 11 environmental interest groups, formed in July 2000 to help organize citizen input to the NR Study.

On March 6, 2001, the Planning Commissions of the three jurisdictions had a joint work session followed by a public comment session on updated *Draft NR Study Inventory and Significance Criteria*. Approximately 10,000 notices were sent to affected property owners and interested parties. To satisfy the public's expressed desire to have more time to review and comment on the inventory, another public information session was held on April 18, 2001. At this session, the public had a chance to review the *Draft NR Study Inventory and Significance Criteria*, ask questions of staff, hear a staff presentation, and submit comments. A follow-up Joint Planning Commission work session and public comment session was held on May 8, 2001.

After the May 8th meeting, the elected bodies of the three jurisdictions met separately to provide direction on using the significance criteria and the resulting inventory in the remaining steps of the study. The Eugene City Council met on October 22, 2001. The Springfield City Council met on December 10, 2001. The Lane County Board of Commissioners met on January 16, 2002 and on February 19, 2002. The Eugene City Council directed staff to move forward with the study without any modifications to the significance criteria. The Springfield City Council suggested changes to four of the Significance Criteria. The Lane County Board of Commissioners supported the revisions suggested by the Springfield City Council. After additional reviews by the agencies within the metropolitan area and consultation with DLCDC, each agency agreed to address its own portion of the metro area for Goal 5 compliance. As of January 2003 there were 376 public comments related to the metro-wide effort.

Compiling the Inventory and Protection Measures

The inventory relies on existing state agency data, such as the State/National Wetland Inventory (S/NWI) and fish-bearing stream maps, for inventory information. The methodology does not involve collecting information from site-specific field visits. The intent of the safe harbor approach is to ensure compliance with, and meet the intent of, Goal 5, while reducing time, costs, and the potential for legal challenge sometimes associated with the standard process. The Goal 5 rules (OARs 660-023-0000-0250), specify protection measures that must be applied.

For wetlands and riparian corridors, Goal 5 provides for the identification and protection of the same wetlands and waterways that are currently identified and protected with Lane County practices and code (see maps). The County will continue to notify DSL of development proposals on sites potentially containing wetlands. Slight modifications to the Lane Code integrate safe harbor riparian corridor protection standards. The following table summarizes the data sources and significance determination for the inventoried resources and how the County conforms to required implementation measures.

**Goal 5 Data Sources, Significance Determination and Implementation
For the Area Between the Urban Growth Boundary and Metro Plan Boundary**

Goal 5 Resource	Inventory Data Sources	Significance Determination	Implementation
Wetlands	State/National Wetland Inventory (S/NWI)* – based on USGS 7.5 minute quadrangle maps with wetland data from 1989 and 1990 based on air photos from 1982.	Significance determination for wetlands is not required outside the UGB.	Adopt map showing S/NWI wetlands in the area between the UGB and Metro Plan boundary (see attached map). New policy added to the Metro Plan Environmental Element directing that Lane County notify Division of State Lands of proposed development on sites indicating S/NWI wetlands (see Appendix 1).
Riparian Corridors	Maps of fish-bearing streams compiled by the Oregon Department of Forestry (ODF). Obtained in 2000. The data were verified and augmented by the lead fisheries biologist with the ODFW, Springfield office.	The significant riparian corridor area setback is 75 feet from the top of bank of a waterway with a stream flow greater than 1,000 cubic feet per second (the Willamette and McKenzie Rivers), and 50 feet for other fish-bearing streams.	Adopt map showing significant riparian corridors in the area between the UGB and Metro Plan boundary (see attached map). Amended Lane Code to incorporate Goal 5 riparian protection requirements (see Appendix 2) New policy added to the Metro Plan Environmental Element directing that Lane County apply protection measures in amended code (see Appendix 1).
Wildlife Habitat	Oregon Natural Heritage Program (data obtained in 2001) Oregon Department of Fish and Wildlife (ODFW)	Areas where one or more of the following occur: (1) 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; (2) The habitat has documented occurrences of more than incidental use by a species; (3) The habitat has been documented as a sensitive bird nesting, roosting, or watering resource site for osprey or great blue herons (4) The area is identified and mapped by ODFW as habitat for a wildlife species of concern and/or as a habitat of concern	New policy added to the Metro Plan Environmental Element directing that development proposals on sites with significant wildlife habitat, be subject to ODFW review and comment and to mitigation measures approved by ODFW (see appendix 1). Adopt map showing significant wildlife habitat sites in the area between the UGB and Metro Plan boundary (see list of quarter section in Appendix 3)

* Both state and federal agencies confirm that the SWI is the same inventory as the NWI for the area between the UGB and the Springfield/Eugene Metro Plan boundary.

Insert wetlands map front

Insert wetlands map - back

Insert Riparian Map - Front

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Appendix 1

Statewide Planning Goal 5 Safe Harbor Riparian Corridor Requirements and Lane County's Code Provisions to Meet Goal 5 Requirements

Goal 5 Safe Harbor Riparian Corridor Requirements (OAR 660-023-0090)	Existing code section and/or changes made
<p>(5) As a safe harbor in order to address the requirements under OAR 660-023-0030, a local government may determine the boundaries of significant riparian corridors within its jurisdiction using a standard setback distance from all fish-bearing lakes and streams shown on the documents listed in subsections (a) through (f) of section (4) of this rule, as follows:</p> <p>(a) Along all streams with average annual stream flow greater than 1,000 cubic feet per second (cfs) the riparian corridor boundary shall be 75 feet upland from the top of each bank.</p> <p>(b) Along all lakes, and fish-bearing streams with average annual stream flow less than 1,000 cfs, the riparian corridor boundary shall be 50 feet from the top of bank.</p> <p>(c) Where the riparian corridor includes all or portions of a significant wetland as set out in OAR 660-023-0100, the standard distance to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland.</p> <p>(d) In areas where the top of each bank is not clearly defined, or where the predominant terrain consists of steep cliffs, local governments shall apply OAR 660-023-0030 rather than apply the safe harbor provisions of this section.</p>	<p>Currently, each zone in the zoning code requires a setback distance of 50 feet for non-resource zones and 100 feet for farm and forest resource zones.</p> <p>Zoning code setback distance changed as required for each zone.</p>
<p>(8) As a safe harbor in lieu of following the ESEE process requirements of OAR 660-023-0040 and 660-023-0050, a local government may adopt an ordinance to protect a significant riparian corridor as follows:</p> <p>(a) The ordinance shall prevent permanent alteration of the riparian area by grading or by the placement of structures or impervious surfaces, except for the following uses, provided they are designed and constructed to minimize intrusion into the riparian area:</p> <p>(A) Streets, roads, and paths;</p> <p>(B) Drainage facilities, utilities, and irrigation pumps;</p>	<p>The Lane County zoning code currently prevents permanent alteration by grading or structure placement in each zone.</p> <p>Exceptions added to current code.</p>

<p align="center">Goal 5 Safe Harbor Riparian Corridor Requirements (OAR 660-023-0090)</p>	<p align="center">Existing code section and/or changes made</p>
<p>(C) Water-related and water-dependent uses; and</p> <p>(D) Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area.</p>	
<p>(b) The ordinance shall contain provisions to control the removal of riparian vegetation, except that the ordinance shall allow:</p> <p>(A) Removal of non-native vegetation and replacement with native plant species; and</p> <p>(B) Removal of vegetation necessary for the development of water-related or water-dependent uses;</p>	<p>As specified in 16.253 (2), (2)(a), (2)(b), (2)(b)(I), (2)(b)(ii), (2)(b)(iii), (2)(b)(iv), and (2)(c)</p> <p>As specified in 16.253 (5)(b), (5)(b)(i), (5)(b)(ii), (5)(b) (iii), (5)(c), (5)(c)(I), (5)(c)(ii), (5)(c)(iii)</p> <p>Existing code amended to include water-related or water-dependent uses exemption.</p>
<p>(c) Notwithstanding subsection (b) of this section, the ordinance need not regulate the removal of vegetation in areas zoned for farm or forest uses pursuant to statewide Goals 3 or 4;</p> <p>(d) The ordinance shall include a procedure to consider hardship variances, claims of map error, and reduction or removal of the restrictions under subsections (a) and (b) of this section for any existing lot or parcel demonstrated to have been rendered not buildable by application of the ordinance;</p>	<p>Riparian setback distances will not change in areas related to forest or farm practices.</p> <p>Undue hardship variance is specified in 16.253 (3) (C)</p> <p>Existing code amended to include language related to map error including specifying review by ODFW or DSL.</p>
<p>(e) The ordinance may authorize the permanent alteration of the riparian area by placement of structures or impervious surfaces within the riparian corridor boundary established under subsection (5)(a) of this rule upon a demonstration that equal or better protection for identified resources will be ensured through restoration of riparian areas, enhanced buffer treatment, or similar measures. In no case shall such alterations occupy more than 50 percent of the width of the riparian area measured from the upland edge of the corridor.</p>	<p>As specified in 16.253 (3) (a), (3) (b), (4), (4) (a), (5), (5) (a), (5) (b), (5) c), (5) (d), (5) (e), (5) (f), and (5) g).</p> <p>Amended code to include the 50 percent width limitation. This requirement lessens existing standards for most lots except small lots with less than 100 feet of water frontage.</p>

Appendix 2
New Metro Plan Policies Related to Goal 5
for the Area Between the Metro Plan Boundary and the Urban Growth
Boundary

Wetlands

The Statewide Wetland Inventory as shown on the map titled Goal 5 Wetlands for the area inside the Plan Boundary but outside the Eugene-Springfield UGB, adopted and incorporated here, shall be used to identify wetlands for purposes of notifying the Division of State Lands concerning applications for development permits or other land use decisions affecting Goal 5 wetlands in the area outside the UGB and inside the Plan Boundary. The map is on file at the Lane County Land Management Division.

Riparian Corridors

The map titled Goal 5 Significant Riparian Corridors for the area inside the Plan Boundary but outside the Eugene-Springfield UGB, adopted and incorporated here, shall be used to identify significant riparian corridors for purposes of applying Goal 5 riparian protection provisions (Class I Stream Riparian Protection Regulations) in Lane Code Chapter 16.253 for areas outside the UGB and inside the Plan Boundary. The map is on file at the Lane County Land Management Division.

Wildlife Habitat

The map titled Goal 5 Significant Wildlife Habitat for the area inside the Plan Boundary but outside the Eugene-Springfield UGB, adopted and incorporated here, shall be used to identify significant wildlife habitat for purposes of notifying the Oregon Department of Fish and Wildlife concerning applications for development permits or other land use decisions affecting significant wildlife habitat on the Goal 5 inventory for areas outside the UGB and inside the Plan Boundary. The map is on file at the Lane County Land Management Division.

Appendix 3

Goal 5 Safe Harbor Wildlife Habitat Locations

The Goal 5 rule provides for limiting availability of information about the location of wildlife habitat sites. Maps for general public review are not available because showing each site would increase the threat of habitat or species loss. Therefore, safe harbor wildlife habitat sites are instead included in the inventory as a list of quarter sections. Table 1 identifies the township, range, sections, and quarter sections that contain Goal 5 safe harbor wildlife habitat within the area outside the UBG but within the Metro Plan boundary.

Wildlife habitat sites are located in almost all quarter sections located outside the UGB and inside the *Metro Plan* boundary (see Table 1). Wildlife species that are listed as sensitive, threatened, or endangered^[1] that are documented to occur outside the UGB and inside the *Metro Plan* Boundary include:

- Western pond turtle (*Clemmys marmorata*), listed as *sensitive-critical* by ODFW;
- Painted turtle (*Chrysemys picta*), listed as *sensitive-critical* by ODFW;
- Bald eagle (*Haliaeetus leucocephalus*), listed as *threatened* under state and federal Endangered Species Act (ESA);
- Purple martin (*Progne subis*), listed as *sensitive-critical* by ODFW;
- Great blue heron (*Ardea herodias*);

^[1] The listing designations are taken from the Oregon Natural Heritage Program's publication *Rare, Threatened, and Endangered Plants and Animals of Oregon*, published in February 2001.

Table 1. List of Wildlife Habitat ¼ Sections outside the Eugene-Springfield UGB, but inside the *Metro Plan* boundary.

Section	1/4 Sections	Species
17-02-25	1, 2, 3, 4	Western pond turtle
17-02-26	1, 2, 3, 4	Western pond turtle
17-02-27	1, 2	Western pond turtle
17-02-28	1, 2, 3, 4	Western pond turtle
17-02-29	3	Western pond turtle
17-02-30	1, 4	Great blue heron, Western pond turtle
17-03-06	2	Western pond turtle, Bald eagle, great blue heron rookery
17-03-07	1, 2, 3, 4	Western pond turtle
17-03-08	1, 2	Western pond turtle
17-04-01	1	Western pond turtle
17-04-07	3, 4	Western pond turtle
17-04-12	1, 3, 4	Western pond turtle
17-04-16	2, 3	Western pond turtle
17-04-19	1, 2, 3, 4	Western pond turtle
18-02-04	3, 4	Western pond turtle
18-02-05	2	Western pond turtle
18-02-06	3, 4	Western pond turtle
18-02-07	1, 2	Western pond turtle
18-02-08	1, 2, 4	Western pond turtle, Bald eagle
18-02-09	1, 2, 3, 4	Western pond turtle
18-02-17	1	Bald eagle
18-02-18	1, 2, 3, 4	Western pond turtle, Painted turtle
18-02-19	1, 2	Western pond turtle
18-02-20	2	Western pond turtle
18-03-01	1, 3, 4	Western pond turtle
18-03-09	1, 3, 4	Purple martin nests
18-03-10	1, 2, 3, 4	Purple martin nests
18-03-11	1, 2	Western pond turtle
18-03-12	1, 2, 3, 4	Great blue heron, Western pond turtle
18-03-15	1, 2, 3, 4	Purple martin nests
18-03-16	1, 2, 4	Purple martin nests

The data source for the list of quarter-sections is the Oregon Natural Heritage Program^{2[2]} database, which is the most comprehensive documentation of statewide data regarding threatened, endangered, sensitive, and other species. From this database, staff extracted only that data that pertains to threatened, endangered, and sensitive species. To ensure a complete list, staff also met with ODFW staff, who both confirmed the quality of the Oregon Natural Heritage

The Oregon Natural Heritage Information Center, part of Oregon State University Institute for Natural Resources, manages the Oregon Natural Heritage Program (ONHP) under an interagency agreement with the Division of State Lands. The ONHP is Oregon's Natural Areas Program, its Invertebrate Species Protection Program, and the state's center for information on natural areas. Additional information about ONHP is available at <http://oregonstate.edu/ornhic/ORNHP.html>

Program data and mapped several other sites, particularly regarding a species of concern, the western pond turtle.