

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF PROVIDING ) RESOLUTION NO 99-2838  
MAILED NOTICE TO PROPERTY )  
OWNERS AFFECTED BY TITLE 3 OF ) Introduced by Executive Officer Mike Burton  
THE URBAN GROWTH MANAGEMENT )  
FUNCTIONAL PLAN )

WHEREAS, on June 18, 1998, the Metro Council adopted Ordinance 98-730C, Metro's Floodplain and Stream Protection Plan through amendments to Title 3 of the Urban Growth Management Functional Plan; and

WHEREAS, Ordinance 98-730C amended Metro Code 3.07.820(F) to require Metro to mail notice to property owners affected by Title 3 Flood Management and Water Quality performance standards; and

WHEREAS, the notice to property owners is required prior to the first hearing by local governments on comprehensive plan and zoning code amendments proposed for compliance with Title 3; and

WHEREAS, Metro staff will coordinate with local government staff to identify owners of property in the Flood Management and Water Quality Areas who will receive the required notice; and

WHEREAS, some local governments anticipate adopting comprehensive plan and zoning code amendments by December, 1999, while others have requested extensions from the Metro Council to complete their compliance with Title 3; and


WHEREAS, those local governments moving toward December, 1999 compliance with Title 3 are beginning their local hearings; and

WHEREAS, Metro staff offered, at the local government's request, to add a notice meeting the requirements of Ballot Measure 56 on Metro's Title 3 notice thereby accomplishing two required notices in one mailing. The form and content of the Ballot Measure 56 will be supplied by the local governments; now, therefore,

BE IT RESOLVED:

1. That Metro staff shall coordinate with local governments in mailing the Title 3 notice to property owners in the Title 3 Flood Management and Water Quality Areas.
2. That upon request by the local governments, Metro staff may include a notice to comply with Ballot Measure 56 in the same mailing.

ADOPTED by the Metro Council this 30<sup>th</sup> day of September 1999.

  
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Rod Monroe, Presiding Officer

APPROVED AS TO FORM:

  
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Daniel B. Cooper, General Counsel

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EXHIBIT A

Ordinance 98-730A  
Amendment packet  
May 28, 1998

AMENDMENT AREAS:

Amendments considered at the May 5 meeting, redrafted at committee request.

- Naito 3a--clarifies optional non-application of performance standards
- Naito 7a--Debris definition

Wetlands related.

- Morissette 3 (Model Ordinance). Carried over from May 5 meeting.
- Morissette 4 (Model Ordinance). Carried over from May 5 meeting.
- Naito--Discussion Draft 1B

(items for legal counsel to put on the record during discussion of Naito discussion draft 1B--Oregon Freshwater Wetland Assessment Methodology-sect. 7.C; modifications-sect. 7.B; public hearings on maps prior to adoption, "periodic review"-sect. 3.C; Title 3 wetlands definition; the record relative to items taken off the map-sect. 3D.)

Notice and Compliance

- Morissette-McLain (amendment to cover ordinance)
- Naito (amendment to cover ordinance)
- Naito #8

Other

McLain-Mixed use areas, Model Ordinance Table, Model Ordinance Alternatives  
Analysis

Other possible amendments

MORISSETTE-MCLAIN AMENDMENT TO ORDINANCE 98-730

Local Hearing and Property Owner Notice

Section 4. To provide effective notice to affected property owners of the first city or county hearing on the ordinance to implement Title 3, the following effective dates, local hearing and property owner notice requirements are added to Title 8.

Section 1 of Title 8 of the Urban Growth Management Functional Plan at Metro Code Section 3.07.810 is hereby amended to read:

"A. All cities and counties within the Metro boundary are hereby required to amend their comprehensive plans and implementing ordinances to comply with the provisions of this functional plan within twenty-four months of the effective date of this ordinance. Metro recommends the adoption of the policies that affect land consumption as soon as possible."

"B. Notwithstanding subsection A of this section, cities and counties are required to amend their comprehensive plans and implementing ordinances to comply with Sections 1-4 of Title 3 within 18 months after the Metro Council has adopted the Model Ordinance and Water Quality and Flood Management Areas Map."

Section 2A of Title 8 at Metro Code Section 3.07.820 is hereby amended to add:

"A. On or before six months prior to the 24 month deadline established in Section 1A, cities and counties shall transmit to Metro the following:

1. An evaluation of their local plans, including public facility capacities and the amendments necessary to comply with this functional plan;
2. Copies of all applicable comprehensive plans and implementing ordinances and public facility plans, as proposed to be amended;
3. Findings that explain how the amended city and county comprehensive plans will achieve the standards required in titles 1 through 6 of this functional plan.

In developing the evaluation, plan and ordinance amendments and findings, cities and counties shall address the Metro 2040 Growth Concept, and explain how the proposed amendments implement the Growth Concept."

Section 2 of Title 8 at Metro Code Section 3.07.820 is hereby amended to add a new subsection as follows:

"F. On or before six months prior to the 18 month deadline established in Section 1B, cities and counties shall schedule their first hearing on the ordinance to implement Section 1-4 of Title 3, or a hearing on implementation of Title 3, if no code amendments are proposed to comply with Title 3, and transmit notice of that hearing and a copy of the proposed ordinance to Metro at least 30 days prior to the hearing.

1. Metro shall prepare and mail a notice of the city or county hearing to each affected property owner.
2. The Metro notice shall include the date, time, location and the title and number of any local ordinance; an explanation of the general requirements of Title 3, and an explanation of the implementation in the local ordinance, if no code amendments are proposed to comply with Title 3.
3. Metro shall review any amendments to Title 3 proposed by cities and counties based on the testimony of property owners.

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**Motion to Amend #7:** Councilor Morissette moved Councilor Morissette Amendment No. 6.

Councilor Morissette said Councilor Morissette Amendment No. 6 concerns flexibility. He said the City of Hillsboro has said it supports this amendment.

There was no committee discussion.

**Vote on Motion to Amend #7:** Councilor Morissette voted aye. Councilors McCaig and Naito voted nay. The vote was 2/1 opposed and the motion failed.

Chair Naito said there are no proposed amendments to Exhibit B. She moved to amendments to Exhibit C, the Model Ordinance.

Councilor McCaig said Councilor Naito Amendment No. 4, to replace the staff version of the Model Ordinance with the MPAC version, should have included a table of contents and appendix, which were inadvertently omitted from the amendment packet.

**Motion to Amend #8:** Councilor McCaig moved Councilor Naito Amendment No. 4, with the inclusion of the table of contents and appendix.

Chair Naito said her amendment includes the housekeeping portion regarding the table of contents and appendix, but the purpose of the amendment is to move the amended MPAC April 22, 1998, Model Ordinance.

Councilor Morissette asked for a brief description of the amendment.

Mr. Helm said Exhibit C is the Model Ordinance to implement Title 3. He said the staff version of the Model Ordinance was included in the committee's last agenda packet, and also in the packet that was first read in Council. He said both MPAC and WRPAC subsequently reviewed the Model Ordinance and made comments. He said the MPAC version in Councilor Naito Amendment No. 4 incorporates the comments of the advisory committees and sets a baseline Model Ordinance from which the Council can work. He said the MPAC version of the Model Ordinance needs to be amended into Ordinance No. 98-730.

**Vote on Motion to Amend #8:** Councilors Morissette, McCaig and Naito voted aye. The vote was 3/0 in favor and the motion passed unanimously.

Councilor Morissette said Councilor McLain has an amendment which he supports. He asked if Councilor McLain could present her amendment before the committee moves on the amendments to Exhibit C.

Councilor McLain said Councilor Morissette and others have stated an interest in public notification of Title 3. She said she has drafted an amendment which would address Councilor Morissette's concerns and, in her opinion, do nothing more than restate Title 8 in the Functional Plan as it relates to Title 3. She said at the committee's request, she would bring her amendment to the next committee meeting. Councilor McLain read her amendment:

The Metro Council shall consider any requests for exceptions to the Water Quality and Flood Management Area Map in Title 3 after local jurisdictions give public notice of changes to implement Title 3 performance standards.

She said her amendment restates Title 8, which applies to all Functional Plan elements: local jurisdictions, as well as local citizens if they have been through the public hearing process at the local jurisdictional level, may bring issues to the Metro Council to reconsider. She said her amendment also indicates that the Council wants local jurisdictions to give public notice as they start to implement Title 3.

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Chair Naito said the Executive Officer also has some proposed amendments for how Metro can help local jurisdictions with notification. She said that with the committee's agreement, she would like Councilor McLain and the Executive Officer to write up their respective amendments and bring them to the next committee meeting.

Councilor McLain said she would be happy to do so. She said she has read Executive Officer Burton's draft amendments, and nothing in her amendment would be counteractive to his work.

Councilor Morissette said he and Mr. Helm have debated the difference between legal requirements and people's expectations. He said he agrees with Mr. Rodger's testimony that increased public involvement yields a better product. He said he wants to create an atmosphere that allows a positive review, because he believes that the public is unaware of what the Council is doing to their properties.

Chair Naito said she will schedule Councilor McLain's amendment for the next committee meeting. She asked Councilor McLain to formally write up the amendment and distribute it for comment.

Councilor Morissette presented Councilor Morissette Amendment No. 1 to Exhibit C. He said the word "optional" removes the Council's responsibility for what he believes is clearly a takings. He said the reason given for Section 5 of the Model Ordinance is that it provides local jurisdictions with an example of what to do. He said the Council should not encourage local jurisdictions to do the wrong thing by having an inappropriate example in the ordinance.

**Motion to Amend #9:**

Councilor Morissette moved Councilor Morissette Amendment No. 1 to Exhibit C.

Chair Naito asked legal counsel why Section 5 should be included in Exhibit C.

Mr. Helm said it is a policy decision for the committee and Council to include these types of provisions. He said this provision implements a section of Title 3 itself that encourages local jurisdictions to require or seek dedications or conservation easements. He said within the language suggested for the Model Ordinance are further options that allow ownership to stay with the original owner in various capacities. He said from a legal perspective, he does not believe that this section gets the Council or the local jurisdictions in trouble with a takings problem.

Chair Naito asked staff for its position on why Section 5 should be included.

Ms. Wilkerson said the purpose of Section 5 is to show local jurisdictions how they could implement that particular part of the title. She said if the Council does not actually propose language, it will not be considered. She said Section 5 gives local jurisdictions one option, and they can decide whether to insert the language in their codes or not.

Councilor McLain said Section 5 gives flexibility, as both WRPAC and MPAC recognized. She said she agrees with Ms. Wilkerson that this is an opportunity to demonstrate some different types of good examples. She said she hopes the committee will vote to keep the language.

**Vote on Motion to Amend #9:**

Councilor Morissette voted aye. Councilors McCaig and Naito voted nay. The vote was 2/1 opposed and the motion failed.

**Motion to Amend #10:**

Councilor Morissette moved Councilor Morissette Amendment No. 2 to Exhibit C.

Councilor Morissette presented the amendment. He said his proposed amendment allows people to continue to use their properties.

Chair Naito asked for committee discussion. There was none.

Mr. Houck said the problem with the amendment is that changing the language "5,000 feet" to "the minimum area necessary," removes all limits on development.

**Don Morissette  
Metro Councilor**

# Memo

**To:** Metro Councilors  
**From:** Don [Signature]  
**CC:** Clerk of the Council  
**Date:** 05/07/98  
**Re:** Oregonian article dated

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Attached is an article I thought you might have seen, but if by chance you have not it is very interesting. As I have stated frequently, the more land inside the UGB we protect, the more we will have to expand the boundary to comply with State requirements for a 20-year supply of land. Many of the urban reserves are in areas with slopes and sensitive lands that could require protection and decrease the amount of buildable land.

Most of our suburban communities have already installed separated sewer systems. New commercial and residential projects that I am familiar with are required to connect and pay for storm and sanitary sewers.

I agree Portland has a problem with combined sewers that need to be fixed. Perhaps more of the growth and development will have move to our suburban partners' communities and the density planned near the Willamette and Columbia rivers be reduced.

I also believe that we need to require the same standards for farms inside the Metro boundary. I am convinced that only about 5% of the sediment erosion is caused by planned and permitted projects. The remainder of the sediment comes from farming both inside and outside the urban growth boundary. If we really want to help with the erosion inside the urban growth boundary, we need to include farming in the Title 3 definition of "development".



**May 7, 1998 Don Morissette**

**I want this statement noted in the record:**

I have studied, discussed, reviewed and thought about Title 3 for a long time. I have real life experience protecting streams, corridors and wetlands. I have employed experts to evaluate, delineate and design protection plans for sensitive lands. I have also experienced the impact of a government condemning my property and taking it without my agreement. I know first hand the impact of setbacks from water and flood corridors, and from trees, sidewalks, property lines and roads.

I believe it is a personal and moral responsibility to give people a 'heads up' when changes are coming that will affect them.

My experience and personal code require me to make every effort I can to tell people in advance what I believe will happen if Title 3 passes the Metro Council with the current proscriptive language. I have been assured that lots of public input and support has been demonstrated through open houses. My own experience with many open houses is that activists always attend. Until individuals understand the impact to them personally they pay little attention. Let's tell the property owners directly what Title 3 requires and let it stand the test of light instead of keeping average citizens in the dark. Tell the people being affected.

I have two ideas that I believe would allow property owners adequate notification.

1. Modify the Title 3 language to allow flexibility to give property owners current use of their property.
2. Send out Title 3 to local communities with the requirement that they notice all affected property owners. Then set up forums to allow participation and to make modification recommendations to the Metro Council prior to an implementation period beginning.

Please think about this. If it was your property and a significant change was being made wouldn't you want a chance to participate before it became a regulation? I have heard all the arguments that citizens will get plenty of chance to participate at the local level. The problem is that Title 3 regulations are so proscriptive, including doubling and tripling existing setbacks and limiting existing uses including:

gardening, adding a new room, replacing lawns, types of plants allowed (only native vegetation), swing sets, decks and so forth

that local notification will not enable citizens to make changes to what Metro has already decided.

We are making another big mistake by not reaching out to citizens who will be affected by our decisions and votes.



## METRO

Date: April 24, 1998  
To: Mike Burton, Executive Officer  
From: Elaine Wilkerson, Director *MT fm*  
Growth Management Services Department

**Re: *Response to Councilor Morissette's Request for List of Citizens Affected by Title 3***

Councilor Don Morissette requested an address list of all landowners potentially affected by Title 3 in the Metro region at the Growth Management Committee meeting on April 21, 1998. As you know, MPAC has recommended that notifications not be sent out by Metro at this time. In addition, the Growth Management Committee has not yet discussed the MPAC recommendation, nor has the full Metro Council asked for notification to date. I have asked staff to list the work steps and estimate costs and I am providing the following information to clarify the scope and cost of the request.

Map Assumptions

We want to highlight the level of accuracy of the Title 3 maps, particularly if used to identify specific property owners affected by Title 3. As noted on the maps, our tax lot map accuracy is plus or minus 10 feet. Given this, we propose to increase the mapped widths by 20 feet on all sides of areas which lie within either: 1) a water quality resource area, or 2) a flood management area. We estimate that about 45,000 properties lie within these areas and this estimate is used as the basis for costs. The final figure could vary by plus or minus 10,000. If the flood management area were dropped from the selection area, the above figure would be decreased.

The three-county tax lot selection process is computer memory-intensive and could run for up to 24 hours. The GIS system computer hardware and software must remain in working order throughout the processing. If a system failure occurs, the work must be re-started.

Staff Tasks

**Step 1.** Existing Title 3 data is comprised of four components:

- FEMA 100-year Floodplain
- 1996 Flood Inundation Area
- Stream Corridors
- Wetland Areas

These four layers must be merged into one data set in order to search the tax lot database.

Estimated Staff Time: 3 hours

**Step 2.** A macro computer program is written and tested to automate the following tasks for each county's tax lot data:

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1. search for tax lots which overlap the Title 3 protected areas;
2. extract ownership (name, address) information for each tax lot selected;
3. weed out publicly owned properties, rights-of-way, invalid or incomplete data records;
4. export the GIS ownership information to a database file format; and
5. translate database file into dBase, Excel or other spreadsheet format.

Estimated Staff Time: 8 hours

**Step 3.** The resulting data will contain some duplicates and unrecognizable addresses. Additional data cleaning work will have to be done, manually examining some of the files. After cleaning, most duplicates will be eliminated and all addresses will be deliverable through our comparison with US Postal Service recognized deliverable addresses. This work element is difficult to estimate as the number of unrecognized addresses is not easily projected and could be much more or much less than that estimated. Should the number of unrecognized addresses be very large, we would contact Councilor Morissette to see how he may wish to proceed.

Estimated Staff Time: 24 hours

**Step 4.** Transfer spreadsheet data to an in-house PC for loading into spreadsheet.

Estimated Staff Time: 1 hour

**Step 5.** Print or electronically transfer spreadsheet.

Estimated Staff Time: 1-3 hours

**Total Staff Time: 37- 40 hours**

**Estimated Costs: 11 hours @ \$ 51.50/hour + 26 - 29 hours @ \$27.77 = \$1,288.50 – 1,381.83**

Actual incurred costs will be documented and billing will be made based on actual costs. Total time from authorization to the list is estimated to be 7 working days. Susan Payne and Sherrie Blackledge may be contacted should there be questions about the methodology.

I might also note that should a mailing be sent out by a private party, it would be very important for us to know whether the mailer refers recipients to Metro and the timing of the mailing. A hotline or other method of handling large numbers of calls coming in a short period of time would reduce frustration of those contacting Metro. The staff time and costs for this activity are not included in the above estimates.

Please let me know how you would like to proceed. Thank you.

c: Susan Payne  
Sherrie Blackledge

## STAFF REPORT

### CONSIDERATION OF RESOLUTION NO. 99-2838 FOR THE PURPOSE OF PROVIDING MAILED NOTICE TO PROPERTY OWNERS AFFECTED BY TITLE 3 OF THE URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN

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Date: August 30, 1999

Presented by: Mary Weber  
Ken Helm

#### Proposed Action

Adopt Resolution No. 99-2838 to clarify the administration of Metro Code Section 3.07.820F and the Agency's role in providing notice to property owners affected by local proposals to implement Title 3 requirements.

#### Background and Analysis

Metro has received a number of calls from local jurisdictions regarding reimbursement for Title 3 public notice. Metro Code is very specific about Metro preparing and posting notice to property owners that may be subject to Title 3 of the Urban Growth Management Functional Plan. Metro Code Section 3.07.820F states:

On or before six months prior to the 18-month deadline established in Section 3.07.810. (1) Metro shall prepare and mail a notice of the city or county hearing to each affected property owner. (2) The Metro notice shall include the date, time, location and the title and number of any local ordinance; an explanation of the general requirements of Title 3, and an explanation of the implementation in the local ordinance, if no code amendments are proposed to comply with Title 3.

This requirement represents the first instance in which the Metro Council has acted to provide notice directly to property owners of regional regulations.

Local governments are focused on meeting the legal requirements outlined in Ballot Measure 56 including who receives notice and specific language in the notice. This focus is resulting in a resistance from jurisdictions to having Metro prepare and mail notice on local Title 3 implementation proposals. Several local governments have requested that Metro reimburse them for the notice they intend to send. However, Metro is not obligated by Ballot Measure 56 to reimburse local governments for sending the notice because Title 3 was adopted prior to Ballot Measure 56. As an accommodation, staff have offered to provide space on the back of Metro's notice where the local governments can place their Ballot Measure 56 notice of the first local hearing on proposed measures to implement Title 3. This would result in one mailing providing two required notices, thereby saving the local governments the cost of providing a separate Ballot Measure 56 notice.

Another issue arising from inquiries about Metro's Code provision relates to how jurisdictions define affected property owners. The Cities of Portland and Beaverton want to notice all property owners within their city limits on the basis of Title 3 erosion control requirements. Beaverton currently complies with the erosion control requirements in Title 3. The remaining Title 3 elements affect relatively few properties. The Data Resource Center estimates the number of property owners in the Metro designated Title 3 Floodplain and Water Quality Resource Areas for Beaverton at 266 versus a citywide count of 23,916 property owners. The postage cost at \$.36 apiece would be \$95 versus \$8,600. For Portland there are 808 property owners in the Floodplain and Water Quality Resource Areas, but 193,004 property owners citywide. This results in \$290 versus \$69,400 for postage. Metro's budget is only \$21,000 for postage and material cost associated with noticing the estimated 35,000 to 40,000 property owners affected by Title 3.

The legislative history on this section of Metro Code is outlined as follows. Councilor Morissette proposed this amendment with the intent to ensure that the affected property owners in the Title 3 Flood Management and Water Quality areas around streams and wetlands would be notified. Councilor Morissette voiced his concern in April 1998, and asked Metro staff to prepare an address list of all landowners potentially affected by Title 3 Floodplain and Water Quality Resource Areas. Councilor Morissette wanted to provide these property owners with notice of Metro's hearings on Title 3, specifically the elements that established stream corridor buffers. In a statement dated May 7, 1998, Councilor Morissette talks about the impact of setbacks from water and flood corridors and the need to require local governments notice affected property owners. A May 28, 1998 amendment, sponsored by Councilors Morissette and McLain, added a new section "F" to Title 8 that was eventually adopted. This outlines Metro's role in preparing and mailing notice to affected property owners. No legislative history was found that would suggest that Metro Council intended that Metro's notice requirements apply jurisdiction-wide to issues of erosion control. The pertinent meeting minutes and materials are attached as Exhibit A.

In summary, Resolution No. 99-2838 clarifies Metro Council's intent in Code section 3.097.820F to notify only the property owners directly affected by flood management and water quality regulations. In addition, the resolution clarifies that the Metro notice may include the local Ballot Measure 56 notice. This approach will limit potential confusion for the recipients. Staff may also reimburse local governments for the postage and/or printing of the Title 3 notice to property owners if the jurisdiction prepares and mails the notice.

#### Budget Impact

Adoption of this resolution has no budget impact.

#### Executive Officer's Recommendation

The Executive Officer recommends adopting Resolution No. 99-2838.