

A G E N D A

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736  
TEL 503 797 1542 | FAX 503 797 1793



**METRO**

**Agenda**

MEETING: METRO COUNCIL REGULAR MEETING  
DATE: January 13, 2000  
DAY: Thursday  
TIME: 2:00 PM  
PLACE: Metro Council Chamber

**CALL TO ORDER AND ROLL CALL**

1. INTRODUCTIONS
2. CITIZEN COMMUNICATIONS
3. GROWTH AND ENVIRONMENTAL IMPACT Doppelt
4. EXECUTIVE OFFICER COMMUNICATIONS
5. AUDITOR COMMUNICATIONS
  - A. CAFR PRESENTATION
6. MPAC COMMUNICATIONS
7. CONSENT AGENDA
  - 7.1 Consideration of Minutes for the December 16, 1999 and January 6, 2000 Metro Council Regular Meetings.
8. ORDINANCES - FIRST READING
  - 8.1 **Ordinance No. 00-838**, For the Purpose of Establishing a Metro Code Governing Elections.
  - 8.2 **Ordinance No. 00-839**, For the Purpose of amending Metro Ordinance No. 98-730C, Title 3 and Title 8 of the Urban Growth Management Functional Plan and the Regional Framework Plan.
  - 8.3 **Ordinance No. 00-840**, For the Purpose of Amending Metro Code Chapter 7.01 To Change the Metro Excise Tax on Solid Waste to A Tax Levied Upon Tonnage Accepted at Solid Waste Facilities, And Making Other Related Amendments.

**9. CONTRACT REVIEW BOARD**

9.1 **Resolution No. 00-2879**, For the Purpose of Authorizing a Personal Services Contract for the Provision of Legal Services.

**10. COUNCILOR COMMUNICATION**

**ADJOURN**

**Cable Schedule for January 13, 2000 Metro Council Meeting**

	Sunday (12/16)	Monday (12/17)	Tuesday (12/18)	Wednesday (12/19)	Thursday (12/13)	Friday (12/14)	Saturday (12/15)
<b>CHANNEL 11</b> (Community Access Network) (most of Portland area)		4:00 P.M.					
<b>CHANNEL 21</b> (TVCA) (Washington Co., Lake Oswego, Wilsonville)							
<b>CHANNEL 30</b> (TVCA) (NE Washington Co. - people in Wash. Co. who get Portland TCI)							
<b>CHANNEL 30</b> (CityNet 30) (most of City of Portland)	8:30 P.M.						
<b>CHANNEL 30</b> (West Linn Cable Access) (West Linn, Rivergrove, Lake Oswego)		10:00 A.M. (previous meeting)	7:00 P.M. (previous meeting)			8:00 P.M. (previous meeting)	
<b>CHANNEL 33</b> (ATT Consumer Svcs.) (Milwaukie)	4:00 P.M. (previous meeting)					10:00 P.M. (previous meeting)	9:00 A.M. (previous meeting)

***PLEASE NOTE THAT ALL SHOWING TIMES ARE TENTATIVE BASED ON THE INDIVIDUAL CABLE COMPANIES' SCHEDULES.***

Agenda items may not be considered in the exact order. For questions about the agenda, call Clerk of the Council, Chris Billington, 797-1542. Public Hearings are held on all ordinances second read and on resolutions upon request of the public. Documents for the record must be submitted to the Clerk of the Council to be considered included in the decision record. Documents can be submitted by email, fax or mail or in person to the Clerk of the Council. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

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**METRO**

## Agenda

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### CALL TO ORDER AND ROLL CALL

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2. CITIZEN COMMUNICATIONS

3. GROWTH AND ENVIRONMENTAL IMPACT

Doppelt

4. EXECUTIVE OFFICER COMMUNICATIONS

5. AUDITOR COMMUNICATIONS

A. CAFR PRESENTATION

6. MPAC COMMUNICATIONS

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7.1 Consideration of Minutes for the December 16, 1999 Metro Council Regular Meetings.

8. ORDINANCES - FIRST READING

8.1 **Ordinance No. 00-838**, For the Purpose of Establishing a Metro Code Governing Elections.

8.2 **Ordinance No. 00-839**, For the Purpose of amending Metro Ordinance No. 98-730C, Title 3 and Title 8 of the Urban Growth Management Functional Plan and the Regional Framework Plan.

8.3 Removed from agenda

9. RESOLUTIONS

9.1 Resolution No. 00-2879, For the Purpose of Authorizing a Personal Services Contract for the Provision of Legal Services.

10. COUNCILOR COMMUNICATION

ADJOURN

Cable Schedule for January 13, 2000 Metro Council Meeting

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*Agenda Item Number 5.0*

**CAFR PRESENTATION – FINANCIAL STATEMENT AUDITOR COMMUNICATION**

**Metro Council Meeting  
Thursday, January 6, 2000  
Council Chamber**

**Metro**

***Financial Statement  
Auditor Communications***

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**January 2000**

**A Report by the Office of the Auditor**



**METRO**

2000-10514-AUD

**Alexis Dow, CPA  
Metro Auditor**

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**METRO**  
**OFFICE OF THE AUDITOR**

January 3, 2000

To the Metro Council and Executive Officer:

As part of their audit of Metro's financial statements, Deloitte & Touche LLP is required by professional standards to communicate information concerning certain matters regarding the financial reporting and disclosure process. The accompanying letter addresses these issues.

In their letter, Deloitte & Touche LLP state:

- They have obtained a sufficient understanding of Metro's internal controls to enable them to plan their audit and determine auditing procedures to be performed.
- They are not aware of any significant changes in accounting estimates or in management's judgement relating to the two significant accounting estimates reflected in Metro's financial statements - accrued self insurance claims and post-closure costs payable.
- No proposed audit adjustments arising from the audit were determined, individually or in aggregate, to have a significant effect on the financial reporting process.
- They are required to read other information in documents containing the audited financial statements and they noted no material inconsistency or misstatement of fact in their reading of the other information in Metro's Comprehensive Annual Financial Report.
- They summarized management's assertions regarding Metro's year 2000 activities and disclaim any assurances by Deloitte & Touche LLP because it is outside the scope of their audit.

I will be happy to discuss any aspect of this Deloitte & Touche LLP letter with you.

Very truly yours,

Alexis Dow, CPA  
Metro Auditor



November 19, 1999

The Metro Council, Executive Officer  
and Metro Auditor  
Metro  
Portland, Oregon

We have audited the general purpose financial statements of Metro as of and for the year ended June 30, 1999, and have issued our report thereon dated November 19, 1999.

Our professional standards require that we communicate with you concerning certain matters that may be of interest to you in fulfilling your obligation to oversee the financial reporting and disclosure process for which management of Metro is responsible. We have prepared the following comments to assist you in fulfilling that obligation.

#### **Our Responsibility Under Generally Accepted Auditing Standards**

Our responsibility under generally accepted auditing standards has been described to you in our engagement letter dated June 7, 1999. As described in that letter, those standards require, among other things, that we obtain a sufficient understanding of Metro's internal control to enable us to properly plan our audit and to determine the nature, timing, and extent of audit procedures to be performed. We have issued a separate report to you, also dated November 19, 1999, containing our comments on Metro's internal control.

#### **Significant Accounting Policies**

Metro's significant accounting policies are set forth in Note 2 to Metro's 1999 general purpose financial statements. During the year ended June 30, 1999, there were no significant changes in previously adopted accounting policies or their application.

#### **Management Judgments and Accounting Estimates**

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's current judgments. Those judgments are normally based on knowledge and experience about past and current events and on assumptions about future events. Significant accounting estimates reflected in Metro's general purpose financial statements include accrued self-insurance claims and post-closure costs payable.

During the year ended June 30, 1999, we are not aware of any significant changes in accounting estimates or in management's judgments relating to such estimates.

### **Significant Audit Adjustments**

Our audit was designed to obtain reasonable, rather than absolute, assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud. In addition, we are obligated by generally accepted auditing standards to inform you of any adjustments arising from the audit that could, in our judgment, either individually or in the aggregate, have a significant effect on Metro's financial reporting process. All proposed audit adjustments were reviewed with management and were determined, individually or in the aggregate, not to have a significant effect on the financial reporting process.

### **Other Information in the Comprehensive Annual Financial Report (CAFR)**

When audited financial statements are included in documents containing other information such as Metro's CAFR, generally accepted auditing standards require that we read such other information and consider whether it, or the manner of its presentation, is materially inconsistent with the information, or the manner of its presentation, in the financial statements audited by us. We have read the other information in Metro's CAFR and have inquired as to the methods of measurement and presentation of such information. If we had noted a material inconsistency, or if we had obtained knowledge of a material misstatement of fact in the other information, we would have discussed the matters with management and, if appropriate, with the Council.

### **Disagreements With Management**

We have not had any disagreements with management related to matters that are material to Metro's 1999 general purpose financial statements.

### **Consultation With Other Accountants**

We are not aware of any consultations that management may have had with other accountants about auditing and accounting matters during 1999.

### **Major Issues Discussed With Management Prior to Retention**

Throughout the year, routine discussions regarding the application of accounting principles or auditing standards were held with management in connection with transactions that have occurred, transactions that are contemplated, or reassessment of current circumstances. In our judgment, such discussions were not held in connection with our retention as auditors.

### **Difficulties Encountered in Performing the Audit**

In our judgment, we received the full cooperation of Metro's management and staff and had unrestricted access to Metro's senior management in the performance of our audit.

## **Management Consulting Services**

Metro did not engage us to perform any management consulting services during 1999.

### **Year 2000**

The approach of the year 2000 presents significant issues for many financial, information, and operational systems. Many systems in use today may not be able to appropriately interpret dates after December 31, 1999, because such systems allow only two digits to indicate the year in a date. As a result, such systems are unable to distinguish January 1, 2000 from January 1, 1900, which could have adverse consequences on the operations of the entity and the integrity of information processing, causing safety, operational, and financial issues.

Our audit of Metro's general purpose financial statements for the year ended June 30, 1999, does not provide any assurances, nor did we express any opinion, that Metro's systems, including the Metropolitan Exposition – Recreation Commission ("MERC") component unit's systems, or any other systems, such as those of Metro's vendors, service providers, customers, or other third parties, are year 2000 compliant. In addition, we were not engaged to perform, nor did we perform as part of our audit engagement, any procedures to test whether Metro's systems or any other systems are year 2000 compliant or whether the plans and activities of Metro or any third parties are sufficient to address and correct system or any other problems that might arise because of the year 2000, nor did we express any opinion or provide any other assurances with respect to these matters.

However, during our audit fieldwork, we made limited inquiries about Metro's activities to address the year 2000 issue. Our inquiries were made of management at Metro and MERC. We have not performed any procedures to test the accuracy or completeness of the responses to our inquiries, but we have included our observations resulting from those inquiries in the following paragraphs. Our observations supplement the communications that were previously made to the Metro Auditor in our October 23, 1998 letter and are appropriate as of the date of this letter. Because year 2000 activities are currently in process, we may have had additional observations had we made inquiries after the date of this letter. Accordingly, we encourage the Metro Council, Executive Officer, Metro Auditor and management to continue their oversight of Metro's year 2000 activities.

Based on these inquiries, management stated:

1. Metro has a Year 2000 Readiness Disclosure Plan; however, the plan does not specifically describe the resources that are needed.
2. An inventory of all critical information systems, as well as desktop hardware and software, has been completed. The mission critical systems identified were PeopleSoft Financials and HRMS systems. The PeopleSoft Financials system is currently being upgraded to be year 2000 compliant when PeopleSoft Financials 6.0 is fully implemented.
3. Responsibility for year 2000 desktop testing was delegated to the Departments and has been validated by documentation.

4. Metro sent out a year 2000 compliance letter to its suppliers, vendors, and customers.
5. MERC has a written plan that outlines MERC's procedures for the year 2000 issue and management believes the year 2000 activities are on schedule.

This report is intended solely for the information and use of the Council, Executive Officer, Metro Auditor, management, and others within Metro and is not intended to be and should not be used by anyone other than these specified parties.

We will be pleased to discuss this report with you further at your convenience.

Yours truly,

*Deloitte + Touche LLP*

Consideration of the December 16, 1999 and January 6, 2000 Regular Metro Council Meeting minutes.

Metro Council Meeting  
Thursday, January 13, 2000  
Council Chamber

*Agenda Item Number 8.1*

**Ordinance No. 00-838, For the purpose of establishing a Metro Code Governing Elections.**

***First Reading***

**Metro Council Meeting  
Thursday, January 13, 2000  
Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ESTABLISHING ) ORDINANCE NO 00-838  
A METRO CODE GOVERNING )  
ELECTIONS. ) Introduced by Councilor Atherton

WHEREAS, quality political campaigns provide a valuable public service in our democracy as all citizens of the region benefit when political campaigns communicate truthfully and fully the important choices on Metro issues; and

WHEREAS, large expenditures for political campaigns do not guarantee a clear understanding of Metro issues and candidates, and;

WHEREAS, the public interest is well served if political campaigns with low levels of financial resources are able to communicate with voters in ways other than the current Voter's Pamphlet; and

WHEREAS, modern communications technology allows Metro to offer opportunities, at minimal cost, for voters to reasonably review candidates and issues in political campaigns for Metro offices or issues; and

WHEREAS, the public interest is well served by limiting even the appearance of undue influence from large contributors who might have a direct interest in Metro contract or land use decisions; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. That the following Chapter 2.18 "Metro Elections" is hereby added to the Metro Code:

Section 2.18.010: Purpose and Intent.

This chapter is created to enhance citizens' participation in Metro elections. By adopting this Chapter, the Metro Council intends:

1. To reduce the appearance of undue influence of the political process with large financial contributions by individuals who may seek a decision by Metro elected officials to approve a contract or land use decision in which the individual has a direct financial interest.

2. To allow political campaigns to participate at some basic level in Metro elections without the need for very large contributions and expenditures of money.

3. To help assure that Metro voters are provided truthful information about candidates or issues by supporting Oregon Election Law that prohibits candidates or campaign organizations from making deliberate false statements about a political candidate, committee, or measure.

This chapter also provides for the Metro Committee for Citizen Involvement (MCCI) to promote public awareness of Metro candidates and campaign issues by using modern technology to provide, at a low cost, unbiased information that is useful to voters.

Section 2.18.020: Definitions

"Elected official" means any person elected or appointed as a member of the Metro Council, the Executive Officer, or the Metro Auditor.

Section 2.18.030: Disclosure

Prior to participating in any deliberation on a land use decision or contract approval, a Metro Councilor will disclose any immediate family or business relationship with any parties to the proposed contract or land use decision, or has received campaign contributions during the

previous four-year period with a combined value in excess of \$100 from the applicant for the land use decision or anyone who is a party or employee of a party to the proposed contract.

**Section 2.18.040: Recusal from voting**

Metro elected officials shall recuse themselves from voting on a land use decision or Metro contract approval if the official has:

- 1) A business or immediate family relationship with any person who is the applicant for the land use decision or who is employed by a party to the proposed metro contract, or
- 2) Received gifts or campaign contributions from a party or employee of the party to the proposed metro contract or an applicant for a land use decision, if the value of the gift or campaign contribution exceeds a combined value in excess of \$100 during the four-year period prior to the land use decision or contract approval.

**Section 2.18.050: Timely challenge and appeal.**

Any Metro Council decision made in violation of this Chapter is void if a timely appeal is upheld before the appropriate court, agency, board, or commission designated to review the decision.

**Section 2.18.060: Metro Committee for Citizen Involvement (MCCI)**

In conjunction with the requirements of this Chapter, MCCI may:

- 1) Prepare an estimated budget to publish a communication of one full page in the largest newspaper of general circulation in the Portland region that summarizes, perhaps in a matrix format, important information about candidates and issues in any Metro election.

2) Prepare an estimated budget to conduct and televise on public cable access television a public conversation on relevant Metro issues between candidates or political committees for each Metro election.

Section 2.18.080: Metro Auditor

The Metro Committee for Citizen Involvement (MCCI) may, at the request of the MCCI and with the approval of the Metro Auditor, operate in the Office of Metro Auditor. The MCCI may request that the Metro Auditor assist the members of the MCCI to prepare proposals to amend the by-laws and mission statement of the MCCI consistent with the requirements of this Chapter.

Section 2.18.090 Severability

The provisions of this ordinance are separate and severable. The invalidity of any clause, sentence, paragraph, section, subsection, or portion of this ordinance or the invalidity of the application thereof to any city, county, person or circumstance shall not affect the validity of the remaining provisions of this ordinance or its application to other cities, counties, persons or circumstances.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_ 2000.

\_\_\_\_\_  
Presiding Officer

ATTEST:

Approved as to Form:

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Daniel B. Cooper, General Counsel

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## STAFF REPORT

### CONSIDERATION OF ORDINANCE NO. 00-838, FOR THE PURPOSE OF ESTABLISHING A METRO CODE GOVERNING ELECTIONS.

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Date: December 15, 1999

Prepared by: Michael Morrissey

**Proposed Action:** Ordinance No. 00-838 amends Metro code by adding a new chapter, number 2.18 Metro Elections, to Title II of the code, Administration and Procedures. This chapter would create requirements that exceed existing Metro and state law, with regard to disclosure of certain activities and voting. This chapter intends to enhance citizen participation in Metro elections by: 1) prescribing behavior of Metro elected officials in relation to land-use decisions and contract approvals, through disclosure of business or family relationships, or campaign or other gifts in excess of \$100 over a four-year period, and recusal from voting in relation to same; and 2) enhancing the role of the Metro Committee for Citizen Involvement (MCCI) in Metro related elections, in conjunction with the Metro Auditor.

#### **Factual Background and Analysis:**

##### Metro Code:

Existing metro code Title IX Elections contains two chapters concerned with vacancies in office (9.01), and ballot measures, initiative and referendum (9.02). They are not directly related to matters in Ordinance 00-838. Metro code chapter 2.17 Code of Ethics for Metro Officials and Requirements for Lobbyists, does contain provisions related to this ordinance, and was significantly revised in the Spring of 1999. Metro code does not require recusal from voting for any purpose, however it does make reference to strict compliance with ORS 244.040, which limits the solicitation or receipt of gifts by public officials.

Another section of Metro code related to disclosure of information (MC 2.17.050), requires elected officials to annually file a Statement of Economic Interest, in compliance with ORS 244.060. The statement must also include ownership of property outside the Metro boundary, but otherwise within Clackamas, Multnomah or Washington counties.

Metro Code section 2.12.020 defines the establishment of the Metro Committee for Citizen Involvement (MCCI). Section (a) declares "The Metro CCI will be responsible for assisting with the development, implementation and evaluation of Metro's citizen involvement program and advising the council, executive officer and appropriate Metro

committees in ways to involve citizens in regional planning activities and other Metro programs.” The council appoints MCCI members.

MCCI operates, in the Office of Citizen Involvement, by code. Operation in the Office of the Auditor directs a change of the operation of MCCI within the organization.

#### State Law

Various provisions of ORS Chapter 244, Government Standards and Practices, are referenced in relevant Metro code. Section 244.040 for example, prescribes the receipt of gifts or honoraria. ORS 244.120(2) describes the process that elected public officials are required to undertake in declaring a potential or actual conflict of interest, and limiting action, including recusal from voting, if an actual conflict is declared. However, this limitation does not apply to campaign contributions, but may apply to business or immediate family relationships.

State election statutes in ORS Chapter 260, call for the disclosure of campaign contributions over \$50 in C & E reports.

**Ordinance No. 00-839, For the Purpose of Amending Metro Ordinance No. 98-730C, Title 3 and Title 8 of the Urban Growth Management Functional Plan and the Regional Framework Plan.**

***First Reading***

**Metro Council Meeting  
Thursday, January 13, 2000  
Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING ) ORDINANCE NO 00-839  
METRO ORDINANCE NO. 98-730C, )  
TITLE 3 AND TITLE 8 OF THE URBAN )  
GROWTH MANAGEMENT ) Introduced by Councilor Rod Park  
FUNCTIONAL PLAN AND THE )  
REGIONAL FRAMEWORK PLAN )

WHEREAS, Ordinance No. 96-647C, the 1996 Urban Growth Management Functional Plan (“UGMFP”), was adopted to provide early implementation of Metro’s Region 2040 Growth Concept; and

WHEREAS, Title 3 of the 1996 UGMFP delayed implementation of Sections 1-4 of Title 3 (Water Quality and Fish and Wildlife Habitat Conservation) until Metro adopted a Model Ordinance, to demonstrate an approved method of implementing Title 3, and Water Quality and Flood Management Area maps. The 1996 UGMFP provided that once the Model Ordinance and maps were adopted, local governments had 24 months to amend their comprehensive plans and implementing ordinances to comply with Title 3; and

WHEREAS, the Metro Council adopted Ordinance No. 97-715B, the Regional Framework Plan (“RFP”), in December, 1997, to “address” policy topics listed in the Metro Charter. Ordinance 97-715B included the 1996 UGMFP as Appendix A of the RFP upon the recommendation of the Metro Policy Advisory Committee (“MPAC”). The RFP has been pending before the Land Conservation and Development Commission (“LCDC”) for acknowledgement since December, 1997; and

WHEREAS, the Metro Council included Appendix A in the RFP because the Council and MPAC desired consistency between the UGMFP’s early implementation of the 2040 Growth Concept and implementation of similar policies in the RFP; and

WHEREAS, LCDC interprets Goal 2 to require that as part of its acknowledgment procedure that “plans” contain implementation measures to carry out the policies in the plan. Including the UGMFP in the RFP demonstrates how RFP policies will be implemented as part of the plan; and

WHEREAS, when the Metro Charter committee developed the requirement that the RFP must “address” nine planning issues and the requirement, codified in ORS 268.390(5), that Metro “may” adopt “implementing ordinances”, it did not distinguish, as LCDC does, between ordinances that “implement” a plan by enforcing it and a plan which contains “implementation” provisions in the plan itself; and

WHEREAS, implementing "ordinances" as used in ORS 268.390(5) are ordinances that administer and enforce the RFP such as "adjudication" of consistency and determination of "patterns or practices" which includes policies and implementation directives; and

WHEREAS, at the time the RFP was adopted, the Metro Council could not foresee the time that LCDC would take to begin acknowledgment review of the RFP, or how LCDC would apply ORS 197.274 to accomplish RFP acknowledgment, creating a longer interim period when UGMFP compliance timelines and RFP acknowledgment timelines may be different; and

WHEREAS, the Metro Council adopted Ordinance No. 98-730C on June 18, 1998, to complete work required by the 1996 UGMFP by amending Title 3 of the UGMFP, adopting the Title 3 Model Ordinance, adopting Water Quality and Flood Management Area maps and amending Title 8 of the UGMFP to require local governments to comply with Title 3 of the UGMFP within 18 months; and

WHEREAS, Ordinance 98-730C also included corresponding amendments to Appendix A of the RFP; and

WHEREAS, on November 10, 1999, the Land Use Board of Appeals issued a final order remanding Ordinance No. 98-730C and sustaining one of appellants' claims of error that the addition of the 18 month time for compliance with Title 3 of the UGMFP violated ORS 268.390(5); and

WHEREAS, LUBA held that had the 18 month compliance deadline imposed in Ordinance No. 98-730C been confined to just the UGMFP, that the compliance deadlines imposed would be consistent with Metro's broad authority to adopt and implement functional plans under ORS 268.390(2) and (4); and

WHEREAS, LUBA held that the appellants' claims that Ordinance 98-730C violated Goal 5 should be deferred to LCDC because the RFP, including the Title 3 component in Appendix A, is currently pending before LCDC for acknowledgment; and

WHEREAS, the Title 3 component in Appendix A of the RFP is currently scheduled for acknowledgment review by LCDC in February, 2000; and

WHEREAS, in response to LUBA's remand of Ordinance No. 98-730C the Metro Council is readopting Ordinance 98-730C with the amendments shown herein.

WHEREAS, this ordinance responds to the LUBA remand by deleting the compliance timelines in Title 3 of the UGMFP and the corresponding section of Appendix A of the RFP, leaving Title 8 of the UGMFP as the only provision of the UGMFP which sets forth compliance timelines that apply to local government implementation of Sections 1-4 of Title 3 of the UGMFP; and

WHEREAS, this ordinance clarifies that the compliance timelines in Title 8 of the UGMFP, which apply to Title 3 of the UGMFP, apply only to Title 3 of the UGMFP, and not to the Title 3 component in Appendix A of the RFP. Compliance with the RFP requirements corresponding to Title 3 will be consistent with ORS 268.390(5) instead of the 18 month compliance timeline which applies to the Title 3 of the UGMFP; and

WHEREAS, this ordinance clarifies that Title 8, Section 3 of the UGMFP, which requires that prior to amending comprehensive plans to comply with the UGMFP, amendments to local government comprehensive plan and implementing ordinances must be consistent with the UGMFP, does not apply to the Title 3 component of Appendix A of the RFP; and

WHEREAS, this ordinance clarifies that January \_\_\_\_, 2000, is the date by which local governments must comply with Sections 1-4 of Title 3 of the UGMFP, unless the local government has received an extension for compliance consistent with Title 8 of the UGMFP prior to adoption of this ordinance, or requests and receives such an extension; and

WHEREAS, this ordinance amends the RFP text to recognize that initial acknowledgment of Metro's RFP will be a component by component approach; and

WHEREAS, the Metro Council has included a severability clause in this ordinance in the event that any part of this ordinance is invalidated to allow severance of any invalidated provision leaving as much of the ordinance as possible enforceable consistent with the strong public policy to do so; now therefore

**THE METRO COUNCIL ORDAINS:**

1. Ordinance No. 98-730C is hereby readopted with amendments as follows:

Section 1. Ordinances No. 96-647C and No. 97-715B, Appendix A, Sections 3.07.310 through 3.07.340 are hereby replaced to read as shown in Exhibit A which is attached and incorporated by reference into this ordinance.

Section 2. Ordinances No. 96-647C and No. 97-715B, Appendix A, Sections 3.07.350 through 3.07.370 are hereby amended to read as shown in Exhibit B which is attached and incorporated by reference into this ordinance.

Section 3. As required by Ordinances No. 96-647C and No. 97-715B, Appendix A, as amended, the Model Ordinance at Exhibit C, and the Water Quality and Flood Management Area maps at Exhibit D are hereby adopted to ~~implement Title 3 of the Urban Growth Management Functional Plan.~~

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

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 by January \_\_\_\_\_, 2000. ~~within 18 months after the Metro Council has adopted the Model Ordinance and Water Quality and Flood Management Areas Map"~~

Section 5. Title 8 of Appendix A of the Regional Framework 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, except Title 3, 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 apply Sections 1-4 of Title 3 of this Regional Framework Plan within one year of acknowledgment of this plan."

Section 65. Section 2A of Title 8 of the Urban Growth Management Functional Plan at Metro Code Section 3.07.820 is hereby replaced to read:

- "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 76. Section 2 of Title 8 of the Urban Growth Management Functional Plan 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 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.”

Section 87. Section 2 of Title 8 of the Urban Growth Management Functional Plan at Metro Code Section 3.07.820 is hereby amended to add a new subsection as follows:

“G. On or before six months prior to the 18 month deadline established in Section 1B, cities and counties shall transmit to Metro the following:

1. An evaluation of their local plans, including any relevant existing regulations and the amendments necessary to comply with Title 3 of this functional plan;

2. Copies of all applicable comprehensive plans, maps and implementing ordinances as proposed to be amended;
3. Findings that explain how the amended city and county comprehensive plans, maps and implementing ordinances will achieve the standards required in Title 3 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 98. In accordance with Title 8, Section 3 of the Urban Growth Management Functional Plan, Ordinances No. 96-647C, ~~and No. 97-715B, Appendix A,~~ any amendment of city or county comprehensive plans or implementing ordinances shall be consistent with Ordinances No. 96-647C ~~and No. 97-715B, Appendix A,~~ Sections 3.07.310 through 3.07.370 of the Metro Urban Growth Management Functional Plan as amended after the date this ordinance becomes effective.

Section 109. ~~Each C~~ities and ~~countyies~~ isare hereby required to comply with Title 3, Section 1-4 of the Urban Growth Management Functional Plan, ~~as amended herein, within 18 months of the adoption of this ordinance by January~~ , 2000 unless the Metro has granted an extension to that city or county prior to adoption of this ordinance.

Section 1140. Ordinances No. 96-647C and No. 97-715B, Appendix A, Section 3.07.1000 is hereby amended to add and replace definitions shown in Exhibit E which is attached and incorporated by reference into this ordinance.

Section 1211. The provisions of this ordinance are separate and severable. The invalidity of any clause, sentence, paragraph, section, subsection, or portion of this ordinance or the invalidity of the application thereof to any city, county, person or circumstance shall not affect the validity of the remaining provisions of this ordinance or its application to other cities, counties, persons or circumstances.

2. Ordinance 98-730C is hereby amended to add a Section 13 to clarify that the Title 8, Section 3 requirement of consistency for local amendments of plans and implementing ordinances in Appendix A of the RFP does not apply until one year after acknowledgment of the RFP. The requirements of Title 8, Section 3 of the Urban Growth Management Functional Plan continues to apply to local adoption of comprehensive plans and implementing ordinances to comply with the Urban Growth Management Functional Plan. That new section reads as follows:

**“Section 13.** Notwithstanding the requirements of Title 8, 3.07.810(A), of Appendix A of Ordinance No. 97-715B, the provisions of Title 8, 3.07.830, of Appendix A of Ordinance No. 97-715B shall not apply until one year after acknowledgment of the Regional Framework Plan. Local governments must continue to comply with Title 8, 3.07.830, of the Urban Growth Management Functional Plan until local adoption of comprehensive plan and implementing ordinances to comply with the Urban Growth Management Functional Plan.”

3. Ordinance 97-715B is hereby amended to add the following provision to Chapter 7.3 of the Regional Framework Plan:

“Consistent with ORS 197.015(16) which defines the Regional Framework Plan in terms of components, the Regional Framework Plan shall be considered for acknowledgment in components as determined by LCDC.”

4. Ordinance No. 97-715B is hereby amended to add the following provisions to Chapter 8 (Implementation) of the Regional Framework Plan consistent with ORS 268.390(5):

**“Administration:**

Subsequent to acknowledgment of the Regional Framework Plan, Metro shall adopt implementing ordinances to administer this plan as follows:

Establish a procedure for each city and county to make land use decisions which apply the Regional Framework Plan beginning one year after the Regional Framework Plan is acknowledged.

Establish a process to assure that local plans and regulations comply with the Regional Framework Plan within two years of acknowledgment by LCDC.

**Enforcement:**

Subsequent to acknowledgment of the Regional Framework Plan, Metro shall adopt implementing ordinances to enforce this plan as follows:

Establish a process for Metro to adjudicate and determine consistency of local comprehensive plans and implementing ordinances with the Regional Framework Plan.

Establish a process for Metro to determine whether changes in local land use standards and procedures are necessary to remedy patterns and practices of decision-making inconsistent with the Regional Framework Plan.”

5. The provisions of this ordinance are separate and severable. The invalidity of any clause, sentence, paragraph, section, subsection, or portion of this ordinance or the invalidity of the application thereof to any city, county, person or circumstance shall not affect the validity of the remaining provisions of this ordinance or its application to other cities, counties, persons or circumstances.
6. The Council designates the entire record before LUBA in Case No. 98-116 and any written or oral evidence submitted at the January \_\_\_\_\_, 2000, Growth Management hearings and January \_\_\_\_\_, 2000, Metro Council hearings as the record for this ordinance.
7. This ordinance is necessary for the immediate preservation of public health, safety and welfare due to the need to protect water quality and improve flood management; an emergency is therefore declared to exist, and this ordinance shall take effect immediately, pursuant to Metro Charter Section 39(1).

ADOPTED by the Metro Council this \_\_\_\_\_ day of January 2000.

\_\_\_\_\_  
Rod Monroe, Presiding Officer

ATTEST:

Approved as to Form:

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Daniel B. Cooper, General Counsel

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OGC/KDH/kvw (01/06/2000)

**EXHIBIT A**

## **TITLE 3: WATER QUALITY, FLOOD MANAGEMENT AND FISH AND WILDLIFE CONSERVATION**

### **Section 1. Intent**

To protect the beneficial water uses and functions and values of resources within the Water Quality and Flood Management Areas by limiting or mitigating the impact on these areas from development activities, protecting life and property from dangers associated with flooding and working toward a regional coordination program of protection for Fish and Wildlife Habitat Areas.

### **Section 2. Applicability**

#### **A. This Title applies to:**

1. Development in Water Quality Resource and Flood Management Areas.
2. Development which may cause temporary or permanent erosion on any property within the Metro Boundary.
3. Development in Fish and Wildlife Habitat Conservation Areas when Metro's Section 5 analysis and mapping are completed.

B. This title does not apply to work necessary to protect, repair, maintain, or replace existing structures, utility facilities, roadways, driveways, accessory uses and exterior improvements in response to emergencies provided that after the emergency has passed, adverse impacts are mitigated in accordance with the performance standards in Section 4.

### **Section 3. Implementation Alternatives for Cities and Counties**

#### **A. Cities and counties shall comply with this Title in one of the following ways:**

1. Amend their comprehensive plans and implementing ordinances to adopt all or part of the Title 3 Model Ordinance or code language that substantially complies with the performance standards in Section 4 and the intent of this Title, and adopt either the Metro Water Quality and Flood Management Area Map or a map which substantially complies with the Metro map. Cities and counties may choose one of the following options for applying this section:
  - a. Adopt code language implementing this Title which prevails over the map and uses the map as reference; or

- b. **Adopt a city or county field verified map of Water Quality and Flood Management Areas based on the Metro Water Quality and Flood Management map, updated according to Section 7, implementing this Title which prevails over adopted code language.**

**Field verification is a process of identifying or delineating Protected Water Features, Water Quality Resource Areas and Flood Management Areas shown on the Metro Water Quality and Flood Management Areas map. This process includes examination of information such as site visit reports, wetlands inventory maps, aerial photographs, and public input and review. The field verification process shall result in a locally adopted Water Quality and Flood Management Areas map which:**

1. **Applies the Title 10 definitions of Protected Water Feature, Water Quality Resource Areas and Flood Management Areas to all those protected areas on the Metro Water Quality and Flood Management Areas map to show the specific boundaries of those protected areas on the locally adopted Water Quality and Flood Management Areas map; and**
  2. **Is subject to amendment by applying adopted code language to add Protected Water Features, Water Quality Resource Areas and Flood Management Areas and to correct errors in the local Water Quality and Flood Management Areas map as required by Section 7 and consistent with Section 3.D.**
2. **Demonstrate that existing city and county comprehensive plans and implementing ordinances substantially comply with the performance standards in Section 4 and the intent of this Title.**
  3. **Any combination of 1. and 2. above that substantially complies with all performance standards in Section 4.**

- B. **Cities and counties shall hold at least one public hearing prior to adopting comprehensive plan amendments, ordinances and maps implementing the performance standards in Section 4 of this Title or demonstrating that existing city or county comprehensive plans and implementing ordinances substantially comply with Section 4, to add Protected Water Features, and wetlands which meet the criteria in Section 7.C., to their Water Quality and Flood Management Area**

map. The proposed comprehensive plan amendments, implementing ordinances and maps shall be available for public review at least 45 days prior to the public hearing.

- C. Cities and counties shall conduct a review of their Water Quality and Flood Management Areas map concurrent with local periodic review required by ORS 197.633 (1997).
- D. Some areas which would otherwise be mapped as Protected Water Features, Water Quality Resource Areas and Flood Management Areas do not appear on the Metro Water Quality and Flood Management Areas map because streams had been culverted, wetlands had been filled or a fill permit had been approved, or the area was demonstrated to have existing conflicting water dependent uses, or existing plans or agreements for such uses, or the area was developed or committed to other uses.

Notwithstanding any other provision of this Title, cities and counties are not required to establish Protected Water Features, Water Quality Resource Areas and Flood Management Areas through adopted code provisions or mapping for areas which were examined but not included on the Water Quality and Flood Management Areas map adopted by the Metro Council.

#### Section 4. Performance Standards

##### A. Flood Management Performance Standards.

1. The purpose of these standards is to reduce the risk of flooding, prevent or reduce risk to human life and property, and maintain functions and values of floodplains such as allowing for the storage and conveyance of stream flows through existing and natural flood conveyance systems.
2. All development, excavation and fill in the Flood Management Areas shall conform to the following performance standards:
  - a. Development, excavation and fill shall be performed in a manner to maintain or increase flood storage and conveyance capacity and not increase design flood elevations.
  - b. All fill placed at or below the design flood elevation in Flood Management Areas shall be balanced with at least an equal amount of soil material removal.
  - c. Excavation shall not be counted as compensating for fill if such areas will be filled with water in non-storm winter conditions.

- d. Minimum finished floor elevations for new habitable structures in the Flood Management Areas shall be at least one foot above the design flood elevation.
  - e. Temporary fills permitted during construction shall be removed.
  - f. Uncontained areas of hazardous materials as defined by DEQ in the Flood Management Area shall be prohibited.
3. The following uses and activities are not subject to the requirements of Subsection 2:
- a. Excavation and fill necessary to plant new trees or vegetation.
  - b. Excavation and fill required for the construction of detention facilities or structures, and other facilities such as levees specifically designed to reduce or mitigate flood impacts. Levees shall not be used to create vacant buildable lands.
  - c. New culverts, stream crossings, and transportation projects may be permitted if designed as balanced cut and fill projects or designed to not significantly raise the design flood elevation. Such projects shall be designed to minimize the area of fill in Flood Management Areas and to minimize erosive velocities. Stream crossing shall be as close to perpendicular to the stream as practicable. Bridges shall be used instead of culverts wherever practicable.

**B. Water Quality Performance Standards**

- 1. The purpose of these standards is to: 1) protect and improve water quality to support the designated beneficial water uses as defined in Title 10, and 2) protect the functions and values of the Water Quality Resource Area which include, but are not limited to:
  - a. providing a vegetated corridor to separate Protected Water Features from development;
  - b. maintaining or reducing stream temperatures;
  - c. maintaining natural stream corridors;
  - d. minimizing erosion, nutrient and pollutant loading into water;
  - e. filtering, infiltration and natural water purification;

- f. stabilizing slopes to prevent landslides contributing to sedimentation of water features.
2. Local codes shall require all development in Water Quality Resource Areas to conform to the following performance standards:
- a. The Water Quality Resource Area is the vegetated corridor and the Protected Water Feature. The width of the vegetated corridor is specified in the table below. At least three slope measurements along the water feature, at no more than 100-foot increments, shall be made for each property for which development is proposed. Depending on the width of the property, the width of the vegetated corridor will vary.

**Table 1.**

<b>Protected Water Feature Type (see definitions)</b>	<b>Slope Adjacent to Protected Water Feature</b>	<b>Starting Point for Measurements from Water Feature</b>	<b>Width of Vegetated Corridor</b>
<b>Primary Protected Water Features<sup>1</sup></b>	<b>&lt; 25%</b>	<ul style="list-style-type: none"> <li>• Edge of bankful flow or 2-year storm level;</li> <li>• Delineated edge of Title 3 wetland</li> </ul>	<b>50 feet</b>
<b>Primary Protected Water Features<sup>1</sup></b>	<b>≥ 25% for 150 feet or more<sup>5</sup></b>	<ul style="list-style-type: none"> <li>• Edge of bankful flow or 2-year storm level;</li> <li>• Delineated edge of Title 3 wetland</li> </ul>	<b>200 feet</b>
<b>Primary Protected Water Features<sup>1</sup></b>	<b>≥ 25% for less than 150 feet<sup>5</sup></b>	<ul style="list-style-type: none"> <li>• Edge of bankful flow or 2-year storm level;</li> <li>• Delineated edge of Title 3 wetland</li> </ul>	<b>Distance from starting point of measurement to top of ravine (break in ≥25% slope)<sup>3</sup>, plus 50 feet.<sup>4</sup></b>
<b>Secondary Protected Water Features<sup>2</sup></b>	<b>&lt; 25%</b>	<ul style="list-style-type: none"> <li>• Edge of bankful flow or 2-year storm level;</li> <li>• Delineated edge of Title 3 wetland</li> </ul>	<b>15 feet</b>
<b>Secondary Protected Water Features<sup>2</sup></b>	<b>≥ 25%<sup>5</sup></b>	<ul style="list-style-type: none"> <li>• Edge of bankful flow or 2-year storm level;</li> <li>• Delineated edge of Title 3 wetland</li> </ul>	<b>50 feet</b>

<sup>1</sup> **Primary Protected Water Features include: all perennial streams and streams draining greater than 100 acres, Title 3 wetlands, natural lakes and springs**

<sup>2</sup> **Secondary Protected Water Features include intermittent streams draining 50-100 acres.**

<sup>3</sup> **Where the Protected Water Feature is confined by a ravine or gully, the top of ravine is the break in the ≥ 25% slope (see slope measurement in Appendix).**

<sup>4</sup> **A maximum reduction of 25 feet may be permitted in the width of vegetated corridor beyond the slope break if a geotechnical report demonstrates that slope is stable. To establish the width of the vegetated corridor, slope should be measured in 25-foot increments away from the water feature until slope is less than 25% (top of ravine).**

<sup>5</sup> **Vegetated corridors in excess of 50-feet for primary protected features, or in excess of 15-feet for secondary protected features, apply on steep slopes only in the uphill direction from the protected water feature.**

- b. Water Quality Resource Areas shall be protected, maintained, enhanced or restored as specified in Section 4.B.2.
- c. Prohibit development that will have a significant negative impact on the functions and values of the Water Quality Resource Area, which cannot be mitigated in accordance with 2.f.
- d. Vegetative cover native to the Portland metropolitan region shall be maintained, enhanced or restored, if disturbed, in the Water Quality Resource Area. Invasive non-native vegetation may be removed from the Water Quality Resource Area and replaced with native cover. Only native vegetation shall be used to enhance or restore the Water Quality Resource Area. This shall not preclude construction of energy dissipaters at outfalls consistent with watershed enhancement, and as approved by local surface water management agencies.
- e. Uncontained areas of hazardous materials as defined by DEQ in the Water Quality Resource Area shall be prohibited.
- f. Cities and counties may allow development in Water Quality Resource Areas provided that the governing body, or its designate, implement procedures which:
  - 1. Demonstrate that no practicable alternatives to the requested development exist which will not disturb the Water Quality Resource Area; and
  - 2. If there is no practicable alternative, limit the development to reduce the impact associated with the proposed use; and
  - 3. Where the development occurs, require mitigation to ensure that the functions and values of the Water Quality Resource Area are restored.
- g. Cities and counties may allow development for repair, replacement or improvement of utility facilities so long as the Water Quality Resource Area is restored consistent with Section 4.B.2(d).
- h. The performance standards of Section 4.B.2 do not apply to routine repair and maintenance of existing structures, roadways, driveways, utilities, accessory uses and other development.

3. For lots or parcels which are fully or predominantly within the Water Quality Resource Area and are demonstrated to be unbuildable by the vegetative corridor regulations, cities and counties shall reduce or remove vegetative corridor regulations to assure the lot or parcel will be buildable while still providing the maximum vegetated corridor practicable. Cities and counties shall encourage landowners to voluntarily protect these areas through various means, such as conservation easements and incentive programs.

**C. Erosion and Sediment Control**

1. The purpose of this section is to require erosion prevention measures and sediment control practices during and after construction to prevent the discharge of sediments.
2. Erosion prevention techniques shall be designed to prevent visible and measurable erosion as defined in Title 10.
3. To the extent erosion cannot be completely prevented, sediment control measures shall be designed to capture, and retain on-site, soil particles that have become dislodged by erosion.

**D. Implementation Tools to protect Water Quality and Flood Management Areas**

1. Cities and counties shall either adopt land use regulations, which authorize transfer of permitted units and floor area to mitigate the effects of development restrictions in Water Quality and Flood Management Areas, or adopt other measures that mitigate the effects of development restrictions.
2. Metro encourages local governments to require that approvals of applications for partitions, subdivisions and design review actions be conditioned upon one of the following:
  - a. Protection of Water Quality and Flood Management Areas with a conservation easement;
  - b. Platting Water Quality and Flood Management Areas as common open space; or
  - c. Offer of sale or donation of property to public agencies or private non-profits for preservation where feasible.

3. Additions, alterations, rehabilitation or replacement of existing structures, roadways, driveways, accessory uses and development in the Water Quality and Flood Management Area may be allowed provided that:
  - a. The addition, alteration, rehabilitation or replacement is not inconsistent with applicable city and county regulations, and
  - b. The addition, alteration, rehabilitation or replacement does not encroach closer to the Protected Water Feature than the existing structures, roadways, driveways or accessory uses and development, and
  - c. The addition, alteration, rehabilitation or replacement satisfies section 4.C. of this Title.
  - d. In determining appropriate conditions of approval, the affected city or county shall require the applicant to:
    1. Demonstrate that no reasonably practicable alternative design or method of development exists that would have a lesser impact on the Water Quality Resource Area than the one proposed; and
    2. If no such reasonably practicable alternative design or method of development exists, the project should be conditioned to limit its disturbance and impact on the Water Quality Resource to the minimum extent necessary to achieve the proposed addition, alteration, restoration, replacement or rehabilitation; and
    3. Provide mitigation to ensure that impacts to the functions and values of the Water Quality Resource Area will be mitigated or restored to the extent practicable.
4. Cities and counties may choose not to apply the Water Quality and Flood Management Area performance standards of Section 4 to development necessary for the placement of structures when it does not require a grading or building permit.
5. Metro encourages cities and counties to provide for restoration and enhancement of degraded Water Quality Resource Areas through conditions of approval when development is proposed, or through incentives or other means.

6. Cities and counties shall apply the performance standards of this Title to Title 3 Wetlands as shown on the Metro Water Quality and Flood Management Areas map and locally adopted Water Quality and Flood Management Areas maps. Cities and counties may also apply the performance standards of this Title to other wetlands.

**E. Map Administration**

Cities and counties shall amend their comprehensive plans and implementing ordinances to provide a process for each of the following:

1. Amendments to city and county adopted Water Quality and Flood Management Area maps to correct the location of Protected Water Features, Water Quality Resource Areas and Flood Management Areas. Amendments shall be initiated within 90 days of the date the city or county receives information establishing a possible map error.
2. Modification of the Water Quality Resource Area upon demonstration that the modification will offer the same or better protection of water quality, the Water Quality and Flood Management Area and Protected Water Feature.
3. Amendments to city and county adopted Water Quality and Flood Management Area maps to add Title 3 wetlands when the city or county receives significant evidence that a wetland meets any one of the following criteria:
  - a. The wetland is fed by surface flows, sheet flows or precipitation, and has evidence of flooding during the growing season, and has 60 percent or greater vegetated cover, and is over one-half acre in size;  
  
or the wetland qualifies as having "intact water quality function" under the 1996 Oregon Freshwater Wetland Assessment Methodology; or
  - b. The wetland is in the Flood Management Area, and has evidence of flooding during the growing season, and is five acres or more in size, and has a restricted outlet or no outlet;  
  
or the wetland qualifies as having "intact hydrologic control function" under the 1996 Oregon Freshwater Wetland Assessment Methodology; or

- c. The wetland or a portion of the wetland is within a horizontal distance of less than one-fourth mile from a water body which meets the Department of Environmental Quality definition of "water quality limited water body" in OAR Chapter 340, Division 41 (1996).

Examples of significant evidence that a wetland exists that may meet the criteria above are a wetland assessment conducted using the 1996 Oregon Freshwater Wetland Assessment Methodology, or correspondence from the Division of State Lands that a wetland determination or delineation has been submitted or completed for property in the city or county.

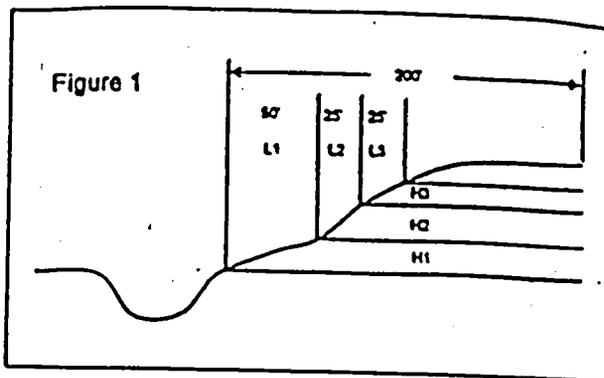
4. Cities and counties are not required to apply the criteria in Section 4.E.3. to water quality or stormwater detention facilities.

APPENDIX

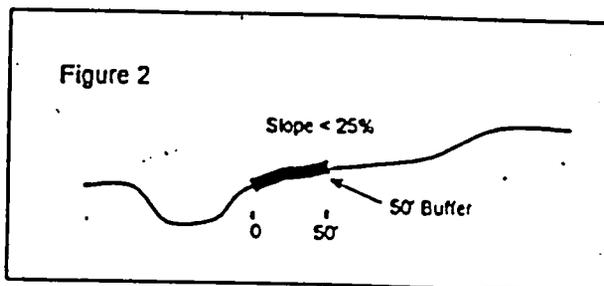
# Proposed Method for Determining Vegetated Corridors Next to Primary Protected Water Features

## How measure slope (Figure 1)

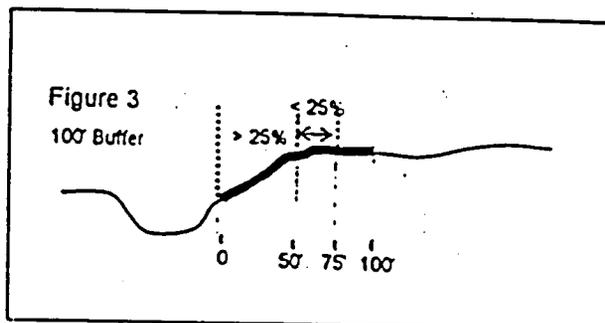
Measure 50 feet horizontally (L1) from the stream (top of bank) and determine the slope (H1/L1 - the difference in elevation divided by the difference in horizontal distance multiplied by 100).



If the slope in this 50-foot area is less than 25%, the corridor width is 50 feet from the top of bank (see Figure 2).



If the slope in the 50-foot area is 25% or greater, measure another 25 feet horizontally. If the slope in this incremental 25-foot area is now less than 25% ( $H2/L2 < 25\%$ ), the vegetated corridor width would be 100 feet (50 feet for the horizontal distance from the top of bank with slope greater than 25% PLUS an additional 50 feet). (See Figure 3.)

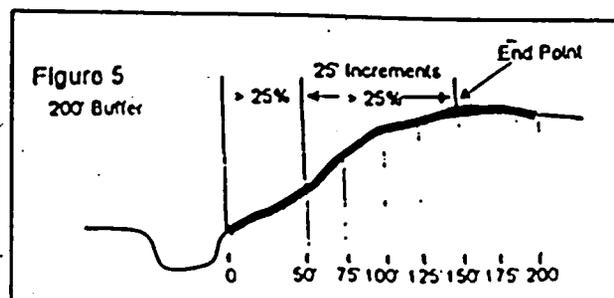
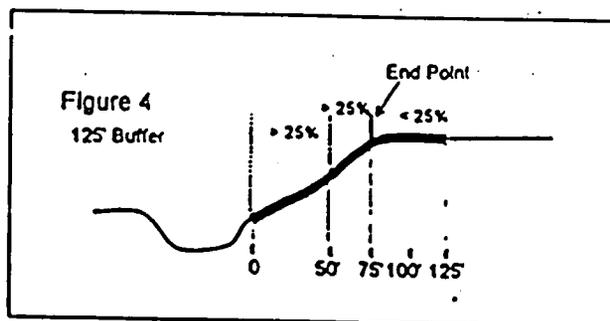


If the slope is greater than 25% in this incremental 25-foot area, continue measuring the slope every 25 feet (H/L) until you either:

- (a) find a slope less than 25% (see Figure 4), or

(When you find a slope less than 25%, the vegetated corridor equals the distance from the stream's top of bank to the *end point* of the last surveyed 25-foot increment with a slope greater than 25% PLUS an additional 50 feet).

- (b) reach 200 feet (the maximum corridor width). (See Figure 5.)



**Advantages:**

- Provides protection for most steep slopes, yet corridor widths can be varied to fit a number of different situations (corridor widths include 50 feet to 100 feet, 125 feet, 150 feet, 175 feet, and 200 feet)
- Provides flexibility.

**Disadvantages:**

- Does not protect slopes that rise steeply after a gradual "floodplain" area.

EXHIBIT B

## Section 5. Fish and Wildlife Habitat Conservation Area

A. The purpose of these standards is to conserve, protect, and enhance fish and wildlife habitat within the fish and wildlife habitat conservation areas to be identified on the water quality and flood management area map by establishing performance standards and promoting coordination by Metro of regional urban water sheds.

### B. Fish and Wildlife Habitat Conservation Area Recommendations

These areas shall be shown on the Water Quality and Flood Management Area Map. Fish and Wildlife Habitat Conservation Areas generally include and/or go beyond the Water Quality and Flood Management Areas. These areas to be shown on the map are will be Metro's initial inventory of significant fish and wildlife habitat conservation areas. Metro hereby recommends that local jurisdictions adopt the following temporary standards:

1. ~~Prohibit development in the Fish and Wildlife Conservation Areas~~ that adversely impacts fish and wildlife habitat.

Exceptions: It is recognized that urban development will, at times, necessitate development activities within or adjacent to Fish and Wildlife Habitat Conservation Areas. The following Fish and Wildlife Habitat Conservation Mitigation Policy, except for emergency situations, applies to all the following exceptions:

A project alternatives analysis, where public need for the project has been established, will be required for any of the exceptions listed below. The alternatives analysis must seek to avoid adverse environmental impacts by demonstrating there are no practicable, less environmentally damaging alternatives available. In those cases where there are no practicable, less environmentally damaging alternatives, the project proponent will seek alternatives which reduce or minimize adverse environmental impacts. Where impacts are unavoidable, compensation, by complete replacement of the impacted site's ecological attributes or, where appropriate, substitute resources of equal or greater value will be provided in accordance with the Metro Water Quality and Flood Management model ordinance.

- a. Utility construction within a maximum construction zone width established by cities and counties.
- b. Overhead or underground electric power, telecommunications and cable television lines within a sewer or stormwater right-of-way or within a maximum construction zone width established by cities and counties.

- c. Trails, boardwalks and viewing areas construction.
  - d. Transportation crossings and widenings. Transportation crossings and widenings shall be designed to minimize disturbance, allow for fish and wildlife passage and crossings should be preferably at right angles to the stream channel.
2. Limit the clearing or removal of native vegetation from the Fish and Wildlife Habitat Conservation Area to ensure its long term survival and health. Allow and encourage enhancement and restoration projects for the benefit of fish and wildlife.
  3. Require the revegetation of disturbed areas with native plants to 90 percent cover within three years. Disturbed areas should be replanted with native plants on the Metro Plant List or an approved locally adopted plant list. Planting or propagation of plants listed on the Metro Prohibited Plant List within the Conservation Area shall be prohibited.
  4. Require compliance with Oregon Department of Fish and Wildlife (ODFW) seasonal restrictions for in-stream work. Limit development activities that would impair fish and wildlife during key life-cycle events according to the guidelines contained in ODFW's "Oregon Guidelines for Timing of In-water Work to Protect Fish and Wildlife Resources."

**C. Fish and Wildlife Habitat Protection**

Within eighteen (18) months from the effective date of this functional plan, Metro shall complete the following regional coordination program by adoption of functional plan provisions.

1. Metro shall establish criteria to define and identify regionally significant fish and wildlife habitat areas.
2. Metro shall adopt a map of regionally significant fish and wildlife areas after (1a) examining existing Goal 5 data, reports and regulation from cities and counties, and (2b) holding public hearings.
3. Metro shall identify inadequate or inconsistent data and protection in existing Goal 5 data, reports and regulations on fish and wildlife habitat. City and county comprehensive plan provisions where inventories of significant resources were completed and accepted by a LCDC Periodic Review Order after January 1, 1993, shall not be required to comply until their next periodic review.

4. Metro shall complete Goal 5 economic, social, environmental and energy (ESEE) analyses for mapped regionally significant fish and wildlife habitat areas only for those areas where inadequate or inconsistent data or protection has been identified.
5. Metro shall establish performance standards for protection of regionally significant fish and wildlife habitat that must be met by the plans implementing ordinances of cities and counties.

#### Section 6. Metro Model Ordinance Required

Metro shall adopt a Water Quality and Flood Management Areas Model Ordinance and map. ~~for use by local jurisdictions to comply with this section.~~ The Model Ordinance shall represent one method of complying with this Title. The Model Ordinance shall be advisory, and cities and counties are not required to adopt the Model Ordinance, or any part thereof, to substantially comply with this Title. However, cities and counties which adopt the Model Ordinance in its entirety and a Water Quality and Flood Management Areas Map shall be deemed to have substantially complied with the requirements of this Title.

~~Sections 1-4 of this Title shall not become effective until 2418 months after the Metro Council has adopted a Model Code the Model Ordinance and map Water Quality and Flood Management Areas Map that addresses all of the provisions of this title. Section 5 of this Title shall be implemented by adoption of new functional plan provisions. The Metro Council may adopt a Model Code and Fish and Wildlife Habitat Conservation Areas Model Ordinance and a Map for protection of regionally significant fish and wildlife habitat. Section 5 of this title shall be implemented by adoption of new functional plan provisions.~~

#### Section 7. Variances

City and county comprehensive plans and implementing regulations are hereby required to include procedures to consider claims of map error and hardship variances to reduce or remove ~~stream corridor~~ Fish and Wildlife Habitat ~~p~~Protection for any property demonstrated to be converted to an unbuildable lot by application of Fish and Wildlife Habitat Protection regulations.

EXHIBIT C

# Title 3 Model Ordinance

Growth Management Committee  
May 28, 1998



**METRO**

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Appendix

## EXHIBIT C

### Metro Water Quality and Flood Management Area Model Ordinance

#### Introduction

Attached is the model ordinance required by Title 3, Section 6 of Metro's *Urban Growth Management Functional Plan*.

The purpose of this model ordinance is to provide a specific example of provisions approved by the Metro Council that can be used by a city or county to comply with the performance standards for *Title 3: Water Quality, Flood Management, and Fish and Wildlife Conservation* described in the *Metro Urban Growth Management Functional Plan*. Title 3 describes specific performance standards and practices for floodplain and water quality protection. It also requires that Metro adopt a Water Quality and Flood Management Model Ordinance and map for use by local jurisdictions to comply with Title 3. This model ordinance fulfills the Title 3 requirement. It is also consistent with Metro's policies in the 1995 *Future Vision Report*, in the 1995 *Regional Urban Growth Goals and Objectives* (RUGGOs) in the 1992 *Greenspaces Master Plan*, and in the 1997 *Regional Framework Plan*.

The purpose of Title 3 is to protect water quality and floodplain areas. Floodplains protect the region's health and public safety by reducing flood and landslide hazards and pollution of the region's waterways. This Model Ordinance and Map address that purpose. Another purpose of Title 3 is to protect fish and wildlife habitat. Statewide land use Goal 5 measures, which include fish and wildlife habitat protection, will be addressed in a Metro study that will be conducted within the next 18 months. Title 3 will apply to development in Fish and Wildlife Habitat Conservation Areas when Metro's Section 5 analysis and mapping are completed. As additional issues are addressed, further regulations may be imposed on areas contained within or outside of the Water Quality Resource Area and Flood Management Area Overlay Zones addressed in this Model Ordinance.

The *Metro Future Vision, Greenspaces Master Plan, Regional Urban Growth Goals and Objectives* (RUGGOs), and *Regional Framework Plan* identify water quality protection, floodplain management, fish and wildlife habitat protection, development of recreational trails, acquisition of open space and maintenance of biodiversity as critical elements of maintaining healthy, livable communities.

This Model Ordinance, however, only provides specific examples of local ordinance provisions for a portion of the issues identified in Title 3: protection of the region's floodplains, water quality and reduction of flood hazards and the implementation of erosion control practices throughout the Portland metropolitan region. Other issues

including fish and wildlife habitat, watershed-wide stormwater management, steep slopes, landslide hazards and biodiversity are addressed in the December 1997 Metro *Regional Framework Plan*.

The approach in Sections 2, 3 and 4 of Title 3 is to implement Oregon Statewide Goal 6 and Goal 7. *Goal 6: Air, Water and Land Resources Quality* and *Goal 7: Areas Subject to Natural Disasters and Hazards* are addressed by protecting streams, rivers, wetlands, and areas adjacent to streams and floodplains within the Water Quality Resource and Flood Management Areas.

Cities and counties are required to amend their plans and implementing ordinances, if necessary, to ensure that they comply with Title 3 in one of the following ways:

Adopt the applicable provisions of the Metro Water Quality and Flood Management Area model ordinance and map, which is entitled the Metro Water Quality and Flood Management Area Map.

Local jurisdictions have two options with regard to their adoption of code language and a map (either the Metro Water Quality and Flood Management Area Map or a city or county field verified map that substantially complies with the Metro map):

The code language that describes the affected area prevails and the map is a reference; or the field verified map prevails and the descriptive code language is used to correct map errors when they are discovered and for delineating and marking the overlay zone boundary in the field. This map must be reviewed concurrently with local periodic review.

The advantage of the first approach above is that the final boundary is determined at the time of the development application, based on a detailed survey of the site. If a large scale, precise boundary can be mapped, the official map should prevail. This method allows for a more efficient permit process and more certainty for the property owner. In this case, the language is used to correct mapping errors when they are discovered. A map, however, should only be used if it has a level of detail and clarity equal to or better than 1" = 300 feet, and has been field-checked for accuracy.

Adopt plans and implementing ordinances and maps that substantially comply with the performance standards of Title 3.

Any combination of the above that substantially complies with all performance standards in Title 3, Section 4 (see Title 3, Section 3).

The purpose of the map adopted by Metro is to provide the performance standard for the location of Water Quality Resource and Flood Management Areas. Therefore, the map is the basis for evaluation of substantial compliance of local maps for those jurisdictions that choose to develop their own field verified map of Water Quality Resource and Flood Management Areas. "Substantial compliance" means that the city and county

comprehensive plans and implementing ordinances, on the whole, conform with the purposes of the performance standards in the functional plan and any failure to meet individual performance standard requirements is technical or minor in nature.

## Water Quality and Flood Management Area Model Ordinance

### Section 1. Intent

The purpose of this ordinance is to comply with Sections 1-4 of Title 3 of Metro's Urban Growth Management Functional Plan.

- A. To protect and improve water quality, to support the designated beneficial water uses and to protect the functions and values of existing and newly established Water Quality Resource Areas, which include, but are not limited to:
1. Provide a vegetated corridor to separate Protected Water Features from development;
  2. Maintain or reduce stream temperatures;
  3. Maintain natural stream corridors;
  4. Minimize erosion, nutrient and pollutant loading into water;
  5. Provide filtration, infiltration and natural water purification;
  6. Stabilize slopes to prevent landslides contributing to sedimentation of water features.
- B. To protect Flood Management Areas, which provide the following functions:
1. Protect life and property from dangers associated with flooding;
  2. Flood storage, reduction of flood velocities, reduction of flood peak flows and reduction of wind and wave impacts;
  3. Maintain water quality by reducing and sorting sediment loads, processing chemical and organic wastes and reducing nutrients;
  4. Recharge, store and discharge groundwater;
  5. Provide plant and animal habitat, and support riparian ecosystems.
- C. To establish two overlay zones for Water Quality Resource Areas and Flood Management Areas, which operate contemporaneously with the base zone and implement the performance standards of Title 3 of the Urban Growth Management Functional Plan.

## Section 2. Applicability

### A. This ordinance applies to:

1. Development in the Water Quality Resource Area and Flood Management Area Overlay Zones. The overlay zones restrict the uses that are allowed in the base zone by right, with limitations, or as conditional uses.
2. Development that may cause visible or measurable erosion on any property within the Metro Boundary.

### B. This ordinance does not apply to work necessary to protect, repair, maintain, or replace existing structures, utility facilities, roadways, driveways, accessory uses and exterior improvements in response to emergencies provided that after the emergency has passed, adverse impacts are mitigated in accordance with Table 2 standards for restoring marginal existing vegetated corridors.

## Section 3. Administration

### A. Title 3 of the Urban Growth Management Functional Plan allows for two methods for applying the provisions of this ordinance to applications to allow development in the Water Quality Resource Areas and Flood Management Areas Overlay Zones. The purpose of this section is to show how this ordinance is applied under each method.

Alternative 1 requires the text of this ordinance, including definitions, to describe and regulate the protected areas shown on the city/county Water Quality and Flood Management Areas map using the map as a reference.

Alternative 2 requires the city/county Water Quality and Flood Management Areas map to describe and regulate the areas shown on the map after the city or county has field verified the protected areas on Metro's map and identified or delineated those areas, and other Protected Water Features, Water Quality Resource Areas and Flood Management Areas the city/county may identify, on the city/county map.

### B. Map as Reference (Alternative 1)

1. The text provisions of this ordinance shall be used to determine whether applications to allow development in the Water Quality Resource Area and Flood Management Area Overlay Zones are subject to the requirements of this ordinance.
2. The Water Quality and Flood Management Areas map shall be a reference for identifying areas subject to the Water Quality Resource Area or Flood Management Area Overlay Zones.

3. Applicants are required to provide the city/county with a delineation of the Water Quality Resource Areas and Flood Management Areas on the subject property as part of their application. An application shall not be complete until this delineation is submitted to the city/county.
4. Wetlands which meet the criteria in Section 10.D.2 shall be subject to the standards which apply to the Water Quality Resource Areas and Flood Management Areas Overlay Zones.

**C. Field Verified Map (Alternative 2)**

1. A field verified Water Quality and Flood Management Areas map shall be used to determine whether applications to allow development in the Water Quality Resource Areas and Flood Management Areas Overlay Zones are subject to the requirements of this ordinance.
2. The city/county shall identify and delineate the areas shown on the Metro Water Quality and Flood Management Areas map by:
  - a. Conducting a site visit, with the owner's permission, of the property where a Water Quality Resource Area or Flood Management Area is shown on Metro's map to delineate the resource area; and
  - b. Gathering and reviewing other information such as wetland inventory maps, aerial photographs and other significant evidence submitted by citizens; and
  - c. Mapping the specific boundaries of the Water Quality Resource Areas and Flood Management Areas on the city/county Water Quality and Flood Management Areas map.
3. The city/county Water Quality and Flood Management Areas map shall be amended to add wetlands which meet the requirements of Section 10.D.2 and to correct the locations of Protected Water Features, Water Quality Resource Areas and Flood Management Areas in accordance with Section 10.B.

- D. The city/county shall review the Water Quality and Flood Management Areas Map during periodic review as required by ORS 197.633 (1997).**

#### **Section 4. Water Quality Resource Areas**

- A. The purpose of this section is to protect and improve the beneficial water uses and functions and values of Water Quality Resource Areas.
- B. This ordinance establishes a Water Quality Resource Area Overlay Zone, which is delineated on the Water Quality and Flood Management Area map attached and incorporated by reference as part of this ordinance.

*(Note: If it has been determined during local public review that the code language is to prevail, adoption of these standards as written is appropriate. If a map is to prevail, this section should be used for map correction and interpretation, and the definition of areas should be by adopting an official map by reference.)*

- C. The Water Quality Resource Area is the vegetated corridor and the Protected Water Feature. The width of the vegetated corridor is specified in the Table One. At least three slope measurements along the water feature, at no more than 100-foot increments, shall be made for each property for which development is proposed. Depending on the width of the property, the width of the vegetated corridor will vary.

Table 1

Protected Water Feature Type (see definitions)	Slope Adjacent to Protected Water Feature	Starting Point for Measurements from Water Feature	Width of Vegetated Corridor
Primary Protected Water Features <sup>1</sup>	< 25%	<ul style="list-style-type: none"> <li>Edge of bankful flow or 2-year storm level;</li> <li>Delineated edge of Title 3 wetland</li> </ul>	50 feet
Primary Protected Water Features <sup>1</sup>	≥ 25% for 150 feet or more <sup>5</sup>	<ul style="list-style-type: none"> <li>Edge of bankful flow or 2-year storm level;</li> <li>Delineated edge of Title 3 wetland</li> </ul>	200 feet
Primary Protected Water Features <sup>1</sup>	≥ 25% for less than 150 feet <sup>5</sup>	<ul style="list-style-type: none"> <li>Edge of bankful flow or 2-year storm level;</li> <li>Delineated edge of Title 3 wetland</li> </ul>	Distance from starting point of measurement to top of ravine (break in ≥25% slope) <sup>3</sup> , plus 50 feet. <sup>4</sup>
Secondary Protected Water Features <sup>2</sup>	< 25%	<ul style="list-style-type: none"> <li>Edge of bankful flow or 2-year storm level;</li> <li>Delineated edge of Title 3 wetland</li> </ul>	15 feet
Secondary Protected Water Features <sup>2</sup>	≥ 25% <sup>5</sup>	<ul style="list-style-type: none"> <li>Edge of bankful flow or 2-year storm level;</li> <li>Delineated edge of Title 3 wetland</li> </ul>	50 feet

<sup>1</sup> Primary Protected Water Features include: all perennial streams and streams draining greater than 100 acres, Title 3 wetlands, natural lakes and springs

<sup>2</sup> Secondary Protected Water Features include intermittent streams draining 50-100 acres.

<sup>3</sup> Where the Protected Water Feature is confined by a ravine or gully, the top of ravine is the break in the ≥ 25% slope (see slope measurement in Appendix).

<sup>4</sup> A maximum reduction of 25 feet may be permitted in the width of vegetated corridor beyond the slope break if a geotechnical report demonstrates that slope is stable. To establish the width of the vegetated corridor, slope should be measured in 25-foot increments away from the water feature until slope is less than 25% (top of ravine).

<sup>5</sup> Vegetated corridors in excess of 50-feet for primary protected features, or in excess of 15-feet for secondary protected features, apply on steep slopes only in the uphill direction from the protected water feature.

*(Note: The following methodology is an alternative for the purposes of substantial compliance: a jurisdiction can meet the performance standards in Title 3 by applying the following method to the water quality resource area: for areas with zero slope (as measured parallel to the ground) the buffer will be 50 feet from top of waterway bank, but for every one percent (1%) slope after that point, add six (6) feet.)*

**D. Uses Permitted Outright**

1. Stream, wetland, riparian and upland enhancement or restoration projects; and farming practices as defined in ORS 30.930 and farm uses, excluding buildings and structures, as defined in ORS 215.203.

2. Placement of structures that do not require a grading or building permit.

*(Note: City and Counties have the option of choosing to apply the Water Quality and Flood Management Area performance standards of Table 1 to all structures.)*

3. Routine repair and maintenance of existing structures, roadways, driveways, utility facilities, accessory uses and other development.

*(Note: Local jurisdictions may choose to place this subsection – D3 – in subsection E as item 3, Uses under Prescribed Conditions, and prescribe those conditions.)*

**E. Uses Under Prescribed Conditions**

1. Repair, replacement or improvement of utility facilities where:

a. The disturbed portion of the Water Quality Resource Area is restored; and

b. Non-native vegetation is removed from the Water Quality Resource Area and replaced with vegetation from the Metro Native Plant List.

2. Additions, alterations, rehabilitation, or replacement of existing structures that do not increase existing structural footprint in the Water Quality Resource Area where the disturbed portion of the Water Quality Resource Area is restored using native vegetative cover.

**F. Conditional Uses**

The following uses are allowed in the Water Quality Resource Area Overlay Zone subject to compliance with the Application Requirements and Development Standards of subsections H and I:

1. Any use allowed in the base zone, other than those listed in subsection D and E above.

2. Measures to remove or abate nuisances, or any other violation of State statute, administrative agency rule or city or county ordinance.

3. Roads to provide access to Protected Water Features or necessary ingress and egress across Water Quality Resource Areas.
4. New public or private utility facility construction.
5. Walkways and bike paths. (Subsection I.5).
6. New stormwater pre-treatment facilities (Subsection I.6).
7. Widening an existing road adjacent to or running parallel to a Water Quality Resource Area.
8. Additions, alterations, rehabilitation or replacement of existing structures, roadways, accessory uses and development that increase the structural footprint within the Water Quality Resource Area consistent with Subsection I.7.

**G. Prohibited Uses**

1. Any new structures, development, other than those listed in subsection D, E and F, construction activities, gardens, lawns, dumping of any materials of any kind.
2. Uncontained areas of hazardous materials as defined by the Department of Environmental Quality.

**H. Application Requirements**

Applications for Conditional Uses in the Water Quality Resource Area Overlay Zone must provide the following information in addition to the information required for the base zone:

1. A topographic map of the site at contour intervals of five feet or less showing a delineation of the Water Quality Resource Area, which includes areas shown on the city/county Water Quality and Flood Management Area map, and that meets the definition of Water Quality Resource Areas in Table 1.
2. The location of all existing natural features including, but not limit to, all trees of a caliper greater than six (6) inches diameter at breast height (DBH), natural drainages on the site, springs, seeps and outcroppings of rocks, or boulders within the Water Quality Resource Area.
3. Location of Title 3 wetlands. Where Title 3 wetlands are identified, the applicant shall follow the Division of State Lands recommended wetlands

delineation process. The delineation shall be prepared by a professional wetlands specialist.

4. An inventory and location of existing debris and noxious materials.
5. An assessment of the existing condition of the Water Quality Resource Area in accordance with Table 2.
6. An inventory of vegetation, including percentage ground and canopy coverage.
7. Alternatives analysis demonstrating that:
  - a. No practicable alternatives to the requested development exist that will not disturb the Water Quality Resource Area; and
  - b. Development in the Water Quality Resource Area has been limited to the area necessary to allow for the proposed use; and
  - c. The Water Quality Resource Area can be restored to an equal or better condition in accordance with Table 2; and
  - d. It will be consistent with a Water Quality Resource Area Mitigation Plan.
  - e. An explanation of the rationale behind choosing the alternative selected, including how adverse impacts to resource areas will be avoided and/or minimized.
  - f. For applications seeking an alteration, addition, rehabilitation or replacement of existing structures:
    1. Demonstrate that no reasonably practicable alternative design or method of development exists that would have a lesser impact on the Water Quality Resource Area than the one proposed; and
    2. If no such reasonably practicable alternative design or method of development exists, the project should be conditioned to limit its disturbance and impact on the Water Quality Resource to the minimum extent necessary to achieve the proposed addition, alteration, restoration, replacement or rehabilitation; and

3. Provide mitigation to ensure that impacts to the functions and values of the Water Quality Resource Area will be mitigated or restored to the extent practicable.
8. A Water Quality Resource Area Mitigation Plan shall contain the following information:
- a. A description of adverse impacts that will be caused as a result of development.
  - b. An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated in accordance with, but not limited to, Table 2.
  - c. A list of all responsible parties including, but not limited to, the owner, applicant, contractor or other persons responsible for work on the development site.
  - d. A map showing where the specific mitigation activities will occur.
  - e. An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting and a contingency plan. All in-stream work in fish-bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife in-stream timing schedule.

**I. Development Standards**

Applications for Conditional Uses in the Water Quality Resource Area Overlay Zone shall satisfy the following standards:

1. The Water Quality Resource Area shall be restored and maintained in accordance with the mitigation plan and the specifications in Table 2.
2. To the extent practicable, existing vegetation shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage to the Water Quality Resource Area. Trees in the Water Quality Resource Area shall not be used as anchors for stabilizing construction equipment.
3. Where existing vegetation has been removed, or the original land contours disturbed, the site shall be revegetated, and the vegetation shall be established as soon as practicable. Nuisance plants, as identified in the Metro Native Plant List, may be removed at any time. Interim erosion control measures such as mulching shall be used to avoid erosion on bare

areas. Nuisance plants shall be replaced with non-nuisance plants by the next growing season.

4. Prior to construction, the Water Quality Resource Area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as allowed in Subsection F. Such markings shall be maintained until construction is complete.
5. Walkways and bike paths:
  - a. A gravel walkway or bike path shall not be constructed closer than 10 feet from the boundary of the Protected Water Feature. Walkways and bike paths shall be constructed so as to minimize disturbance to existing vegetation. Where practicable, a maximum of 10 percent of the trail may be within 30 feet of the Protected Water Feature.
  - b. A paved walkway or bike path shall not be constructed closer than 10 feet from the boundary of the Protected Water Feature. For any paved walkway or bike path, the width of the Water Quality Resource Area must be increased by a distance equal to the width of the path. Walkways and bike paths shall be constructed so as to minimize disturbance to existing vegetation. Where practicable, a maximum of 10 percent of the trail may be within 30 feet of the Protected Water Feature; and
  - c. A walkway or bike path shall not exceed 10 feet in width.
6. Stormwater pre-treatment facilities:
  - a. The stormwater pre-treatment facility may only encroach a maximum of 25 feet into the outside boundary of the Water Quality Resource Area of a primary water feature; and
  - b. The area of encroachment must be replaced by adding an equal area to the Water Quality Resource Area on the subject property.
7. Additions, alterations, rehabilitation and replacement of lawful structures.
  - a. For existing structures, roadways, driveways, accessory uses and development which are nonconforming, this ordinance shall apply in addition to the nonconforming use regulations of the city/county zoning ordinance.

- b. Additions, alterations, rehabilitation or replacement of existing structures, roadways, driveways, accessory uses and development shall not encroach closer to the Protected Water Feature than the existing structures, roadways, driveways, accessory uses and development

8. Off-site Mitigation:

- a. Where the alternatives analysis demonstrates that there are no practicable alternatives for mitigation on site, off-site mitigation shall be located as follows:
  - 1. As close to the development as is practicable above the confluence of the next downstream tributary, or if this is not practicable;
  - 2. Within the watershed where the development will take place or as otherwise specified by the city or county in an approved Wetland Mitigation Bank.
- b. In order to ensure that the mitigation area will be protected in perpetuity, proof that a deed restriction has been placed on the property where the mitigation is to occur is required.

Table 2

**WATER QUALITY RESOURCE AREA REQUIREMENTS**

EXISTING CONDITION OF WATER QUALITY RESOURCE AREA	REQUIREMENTS IF WATER QUALITY RESOURCE AREA REMAINS <u>UNDISTURBED</u> DURING CONSTRUCTION	REQUIREMENTS IF WATER QUALITY RESOURCE AREA IS <u>DISTURBED</u> DURING CONSTRUCTION
<p><u>Good Existing Corridor:</u> Combination of trees, shrubs and groundcover are 80% present, and there is more than 50% tree canopy coverage in the vegetated corridor.</p>	<p><i>Provide certification by registered professional engineer, landscape architect, or biologist or other person trained or certified in riparian or wetland delineation that vegetated corridor meets the standards of this ordinance.</i></p> <p><i>Inventory and remove debris and noxious materials.</i></p>	<p>Prior to construction, a biologist or landscape architect shall prepare and submit an inventory of vegetation in areas proposed to be disturbed and a plan for mitigating water quality impacts related to the development, including: sediments, temperature and nutrients sediment control temperature control or addressing any other condition that may have caused the Protected Water Feature to be listed on DEQ's 303 (d) list.</p> <p>Inventory and remove debris and noxious materials.</p>

**Note:** The middle column, being italicized, indicates that it is an option for consideration in the development review process.

EXISTING CONDITION OF WATER QUALITY RESOURCE AREA	REQUIREMENTS IF WATER QUALITY RESOURCE AREA REMAINS <u>UNDISTURBED</u> DURING CONSTRUCTION	REQUIREMENTS IF WATER QUALITY RESOURCE AREA IS <u>DISTURBED</u> DURING CONSTRUCTION
<p><u>Marginal Existing Vegetated Corridor:</u> Combination of trees, shrubs and groundcover are 80% present, and 25-50 percent canopy coverage in the vegetated corridor.</p>	<p><i>Provide certification by registered professional engineer, landscape architect, or biologist or other person trained or certified in riparian or wetland delineation that vegetated corridor meets the standards of this ordinance.</i></p> <p><i>Inventory and remove debris and noxious materials.</i></p>	<p>Vegetate disturbed and bare areas with, non-nuisance plantings from Native Plants List.</p> <p>Inventory and remove debris and noxious materials.</p> <p>Revegetate with native species using a City/County approved plan developed to represent the vegetative composition that would naturally occur on the site. Seeding may be required prior to establishing plants for site stabilization.</p> <p>Revegetation must occur during the next planting season following site disturbance. Annual replacement of plants that do not survive is required until vegetation representative of natural conditions is established on the site.</p> <p>Restore and mitigate according to approved plan using non-nuisance plantings from Native Plants List.</p> <p>Inventory and remove debris and noxious materials.</p>

**Note:** The middle column, being italicized, indicates that it is an option for consideration in the development review process.

EXISTING CONDITION OF WATER QUALITY RESOURCE AREA	REQUIREMENTS IF WATER QUALITY RESOURCE AREA REMAINS <u>UNDISTURBED</u> DURING CONSTRUCTION	REQUIREMENTS IF WATER QUALITY RESOURCE AREA IS <u>DISTURBED</u> DURING CONSTRUCTION
<p><u>Degraded Existing Vegetated Corridor:</u>  Less vegetation and canopy coverage than Marginal Vegetated Corridors, and/or greater than 10% surface coverage of any non-native species.</p>	<p><i>Vegetate bare areas with plantings from approved Native Plant List.</i></p> <p><i>Remove non-native species and revegetate with plantings from approved Native Plants List.</i></p> <p><i>Inventory and remove debris and noxious materials.</i></p>	<p>Vegetate disturbed and bare areas with appropriate plants from Native Plants List.</p> <p>Remove non-native species and revegetate with non-nuisance plantings from Native Plants List.</p> <p>Plant and seed to provide 100 percent surface coverage.</p> <p>Restore and mitigate according to approved plan using non-nuisance plantings from Native Plants List.</p> <p>Inventory and remove debris and noxious materials.</p>

Note: The middle column, being italicized, indicates that it is an option for consideration in the development review process.

## **Section 5. Flood Management**

- A. The purpose of these standards is to reduce the risk of flooding, prevent or reduce risk to human life and property, and maintain the functions and values of floodplains, such as allowing for the storage and conveyance of stream flows through existing and natural flood conveyance systems.
- B. This ordinance establishes a Flood Management Area Overlay Zone, which is delineated on the Water Quality and Flood Management Area Map attached and incorporated by reference as a part of this ordinance.
- C. The Flood Management Areas mapped include:
1. Land contained within the 100-year floodplain, flood area and floodway as shown on the Federal Emergency Management Agency Flood Insurance maps and the area of inundation for the February 1996 flood; and
  2. Lands that have physical or documented evidence of flooding within recorded history. Jurisdictions shall use the most recent and technically accurate information available to determine the historical flood area, such as the aerial photographs of the 1996 flooding and digitized flood elevation maps.
  3. The standards that apply to the Flood Management Areas apply in addition to local, state or federal restrictions governing floodplains or flood hazard areas.
- D. Uses Permitted Outright:
1. Excavation and fill required to plant any new trees or vegetation.
  2. Restoration or enhancement of floodplains, riparian areas, wetland, upland and streams that meet federal and state standards.
- E. Conditional Uses:
- All uses allowed in the base zone or existing flood hazard overlay zone are allowed in the Flood Management Overlay Zone subject to compliance with the Development Standards of subsection H.

**F. Prohibited Uses:**

1. Any use prohibited in the base zone or existing flood hazard overlay zone.
2. Uncontained areas of hazardous materials as defined by the Department of Environmental Quality.

**G. Development Standards**

All development, excavation and fill in the floodplain shall conform to the following balanced cut and fill standards:

1. No net fill in any floodplain is allowed. All fill placed in a floodplain shall be balanced with at least an equal amount of soil material removal.
2. Excavation areas shall not exceed fill areas by more than 50 percent of the square footage.
3. Any excavation below bankful stage shall not count toward compensating for fill.

*(Note: These areas would be full of water in the winter and not available to hold stormwater.)*

4. Excavation to balance a fill shall be located on the same parcel as the fill unless it is not reasonable or practicable to do so. In such cases, the excavation shall be located in the same drainage basin and as close as possible to the fill site, so long as the proposed excavation and fill will not increase flood impacts for surrounding properties as determined through hydrologic and hydraulic analysis.
5. For excavated areas identified by the city or county to remain dry in the summer, such as parks or mowed areas, the lowest elevation of the excavated area shall be at least 6 inches above the winter "low water" elevation, and sloped at a minimum of two percent towards the Protected Water Feature. One percent slopes will be allowed in smaller areas.
6. For excavated areas identified by the city or county to remain wet in the summer, such as a constructed wetland, the grade shall be designed not to drain into the Protected Water Feature.
7. Minimum finished floor elevations must be at least one foot above the design flood height or highest flood of record, whichever is higher, for new habitable structures in the Flood Area.

8. Short-term parking in the floodplain may be located at an elevation of no more than one foot below the ten-year floodplain so long as the parking facilities do not occur in a Water Quality Resource Area. Long-term parking in the floodplain may be located at an elevation of no more than one foot below the 100-year floodplain so long as the parking facilities do not occur in a Water Quality Resource Area.
9. Temporary fills permitted during construction shall be removed.
10. New culverts, stream crossings and transportation projects shall be designed as balanced cut and fill projects or designed not to significantly raise the design flood elevation. Such projects shall be designed to minimize the area of fill in Flood Management Areas and to minimize erosive velocities. Stream crossings shall be as close to perpendicular to the stream as practicable. Bridges shall be used instead of culverts wherever practicable.
11. Excavation and fill required for the construction of detention facilities or structures, and other facilities, such as levees, specifically shall be designed to reduce or mitigate flood impacts and improve water quality. Levees shall not be used to create vacant buildable lands.

**Section 6. Subdivisions and Partitions (*optional*)**

- A. The purpose of this section is to amend the city/county regulations governing land divisions to require that new subdivision and partition plats delineate and show the Water Quality Resource Area as a separate tract.
- B. The standards for land divisions in Water Quality Resource Areas Overlay Zone shall apply in addition to the requirements of the city/county land division ordinance and zoning ordinance.
- C. Prior to preliminary plat approval, the Water Quality Resource Area shall be shown as a separate tract, which shall not be a part of any parcel used for construction of a dwelling unit.
- D. Prior to final plat approval, ownership of the Water Quality Resource Area tract shall be identified to distinguish it from lots intended for sale. The tract may be identified as any one of the following:
  1. Private open space held by the owner or homeowners association; or
  2. For residential land divisions, private open space subject to an easement conveying storm and surface water management rights to the city/county and preventing the owner of the tract from activities and uses inconsistent with the purpose of this ordinance; or

3. At the owner's option, public open space where the tract has been dedicated to the city/county or other governmental unit; or
  4. Any other ownership proposed by the owner and approved by the Director.
- E. Where the Water Quality Resource Area tract is dedicated to the city/county or other governmental unit, development shall be subject to a minimum 3-foot setback from the Water Quality Resource Area.

#### **Section 7. Density Transfers**

- A. The purpose of this section is to allow density accruing to portions of a property within the Water Quality Resource Area and Flood Management Area Overlay Zones to be transferred outside the overlay zones.
- B. Development applications that request a density transfer must provide the following information:
1. A map showing the net buildable area to which the density will be transferred.
  2. Calculations justifying the requested density increase.
- C. Density transfers shall be allowed if the applicant demonstrates compliance with the following standards:
1. The density proposed for the lot receiving the density is not increased to more than two (2) times the permitted density of the base zone. Fractional units shall be rounded down to the next whole number.  
  
*(Note: This is one way of restricting density.)*
  2. Minimum density standards will not increase due to the density transfers.
- D. The area of land contained in a Water Quality Resource Area may be excluded from the calculations for determining compliance with minimum density requirements of the zoning code.
- E. All standards of the base zone other than density requirements continue to apply.
- F. Density transfers shall be recorded on the title of the lot in the Water Quality Resource Area and on the title of the transfer lot.

- G. Once density is transferred from a lot in the Water Quality Resource Area, the density increase allocated to the transfer lot may not be transferred to any other lot.

## Section 8. Erosion Prevention and Sediment Control

- A. The purpose of this section is to require erosion prevention measures and sediment control practices for all development inside and outside the Water Quality Resource Area and Flood Management Area Overlay Zones during construction to prevent and restrict the discharge of sediments, and to require final permanent erosion prevention measures, which may include landscaping, after development is completed. Erosion prevention techniques shall be designed to protect soil particles from the force of water and wind so that they will not be transported from the site. Sediment control measures shall be designed to capture soil particles after they have become dislodged by erosion and attempt to retain the soil particles on site.
- B. Prior to, or contemporaneous with, approval of an application that may cause visible or measurable erosion, the applicant must obtain an Erosion and Sediment Control Permit.
- C. An application for an Erosion and Sediment Control Permit shall include an Erosion and Sediment Control Plan, which contains methods and interim measures to be used during and following construction to prevent or control erosion. The plan shall demonstrate the following:
1. The Erosion and Sediment Control Plan meets the requirements of the *Erosion Prevention and Sediment Control Plans, Technical Guidance Handbook (Handbook)* attached and incorporated by reference as part of this ordinance;
  2. The Erosion and Sediment Control Plan will:
    - a. Prevent erosion by employing prevention practices such as non-disturbance, construction schedules, erosion blankets and mulch covers; or
    - b. Ensure that where erosion cannot be completely avoided, the sediment control measures will be adequate to prevent erosion from entering the public stormwater system, surface water system, and Water Quality Resource Areas; and
    - c. Allow no more than a ten percent cumulative increase in natural stream turbidities, as measured relative to a control point immediately upstream of the turbidity causing activity. However, limited duration activities necessary to address an emergency or to accommodate essential dredging, construction or other legitimate

activities, and that cause the standard to be exceeded may be authorized provided all practicable turbidity control techniques have been applied.

3. The applicant will actively manage and maintain erosion control measures and utilize techniques described in the Permit to prevent or control erosion during and following development. Erosion and sediment control measures required by the Permit shall remain in place until disturbed soil areas are permanently stabilized by landscaping, grass, approved mulch or other permanent soil stabilizing measures;
  4. No mud, dirt, rock or other debris will be deposited upon a public street or any part of the public stormwater system, surface water system, Water Quality Resource Area, or any part of a private stormwater system or surface water system that drains or connects to the public stormwater or surface water system.
- D. The Erosion and Sediment Control Plan shall be reviewed in conjunction with the requested development approval. If the development does not require review under Sections 3 and 4 of this ordinance, the Director may approve or deny the permit with notice of the decision to the applicant.
- E. The city or county may inspect the development site to determine compliance with the Erosion and Sediment Control Plan and Permit.
- F. Erosion that occurs on a development site that does not have an Erosion and Sediment Control Permit, or that results from a failure to comply with the terms of such a Permit, constitutes a violation of this ordinance.
- G. If the Director finds that the facilities and techniques approved in an Erosion and Sediment Control Plan and Permit are not sufficient to prevent erosion, the Director shall notify the permittee. Upon receiving notice, the permittee shall immediately install interim erosion and sediment control measures as specified in the *Handbook*. Within three days from the date of notice, the permittee shall submit a revised Erosion and Sediment Control Plan to the city or county. Upon approval of the revised plan and issuance of an amended Permit, the permittee shall immediately implement the revised plan.

## Section 9. Variances

- A. The purpose of this Section is to ensure that compliance with this ordinance does not cause unreasonable hardship. To avoid such instances, the requirements of this ordinance may be varied. Variances are also allowed when strict application of this ordinance would deprive an owner of all economically viable use of land.

- B. This Section applies in addition to the standards governing proposals to vary the requirements of the base zone.
- C. The Director shall provide the following notice of variance applications:
1. Upon receiving an application to vary the requirements of this ordinance, the Director shall provide notice of the request to all property owners within (100) feet inside the urban growth boundary, (250) feet outside the urban growth boundary and Metro.
  2. Within (7) days of a decision on the variance, the Director shall provide notice of the decision to all property owners within (100) feet inside the urban growth boundary, (250) feet outside the urban growth boundary and Metro.
- D. Development may occur on lots located completely within the Water Quality Resource Overlay Zone that are recorded with the county assessor's office on or before the date this ordinance is adopted. Development shall not disturb more than 5,000 square feet of the vegetated corridor, including access roads and driveways, subject to the erosion and sediment control standards of this ordinance.
- E. Hardship Variance

Variations to avoid unreasonable hardship caused by the strict application of this ordinance are permitted subject to the criteria set forth in this section. To vary from the requirements of this ordinance, the applicant must demonstrate the following:

1. The variance is the minimum necessary to allow the proposed use or activity;
2. The variance does not increase danger to life and property due to flooding or erosion;
3. The impact of the increase in flood hazard, which will result from the variance, will not prevent the city or county from meeting the requirements of this ordinance. In support of this criteria the applicant shall have a qualified professional engineer document the expected height, velocity and duration of flood waters, and estimate the rate of increase in sediment transport of the flood waters expected both downstream and upstream as a result of the variance;
4. The variance will not increase the cost of providing and maintaining public services during and after flood conditions so as to unduly burden public agencies and taxpayers;

5. Unless the proposed variance is from Section 4.H.8 (mitigation) or Section 8 (erosion control), the proposed use will comply with those standards; and
6. The proposed use complies with the standards of the base zone.

**F. Buildable Lot Variance**

A variance to avoid the loss of all economically viable use of a lot that is partially inside the Water Quality Resource Overlay Zone is permitted. Development on such lots shall not disturb more than 5,000 square feet of the vegetated corridor, including access roads and driveways, subject to the erosion and sediment control standards in Section 8 of this ordinance. Applicants must demonstrate the following:

1. Without the proposed variance, the applicant would be denied economically viable use of the subject property. To meet this criterion, the applicant must show that:
  - a. The proposed use cannot meet the standards in Section 9.E (hardship variance); and
  - b. No other application could result in permission for an economically viable use of the subject property. Evidence to meet this criterion shall include a list of uses allowed on the subject property.
2. The proposed variance is the minimum necessary to allow for the requested use;
3. The proposed variance will comply with Section 4.H.8 (mitigation) and Section 8 (erosion control); and
4. The proposed use complies with the standards of the base zone.

**G. Variance Conditions**

The Director may impose such conditions as are deemed necessary to limit any adverse impacts that may result from granting relief. If a variance is granted pursuant to subsections E. 1-6, the variance shall be subject to the following conditions:

1. The minimum width of the vegetated corridor shall be 15 feet on each side of a Primary Protected Water Feature, except as allowed in Section 4F;

2. No more than 25 percent of the length of the Water Quality Resource Area for a Primary Protected Water Feature within a development site can be less than 30 feet in width on each side of the water feature; and
3. In either case, the average width of the Water Quality Resource Area shall be a minimum of 15 feet on each side for Secondary Protected Water Features, a minimum of 50 feet on each side for Primary Protected Water Features; or up to 200 feet on each side in areas with slopes greater than 25 percent. The stream shall be allowed to meander within this area, but in no case shall the stream be less than 10 feet from the outer boundary of the Water Quality Resource Area.

## **Section 10. Map Administration**

- A. The purpose of this section is to provide a process for amending the Water Quality and Flood Management Areas map to add wetlands and correct the location of Protected Water Features and the Water Quality Resource Areas and Flood Management Area Overlay Zones.
- B. **Map Corrections**
  1. Within 90 days of receiving information establishing a possible error in the existence or location of a Protected Water Feature, Water Quality Resource Area Overlay Zone or Flood Management Area Overlay Zone, the city/county shall provide notice to interested parties of a public hearing at which the city/county will review the information.
  2. The city/county shall amend the Water Quality and Flood Management Areas map if the information demonstrates:
    - a. That a Primary or Secondary Protected Water Feature no longer exists because the area has been legally filled, culverted or developed prior to the adoption of this ordinance; or
    - b. The boundaries of the Water Quality Resource Area Overlay Zone or Flood Management Area Overlay Zone have changed since adoption of the Water Quality and Flood Management Areas map.
- C. **Modification of the Water Quality Resource Area**

To modify the Water Quality Resource Area Overlay Zone, the applicant shall demonstrate that the modification will offer the same or better

protection of the Protected Water Feature, Water Quality Resource Area and Flood Management Area by:

1. Preserving a vegetated corridor that will separate the Protected Water Feature from proposed development; and
2. Preserving existing vegetated cover or enhancing the Water Quality Resource Area sufficient to assist in maintaining or reducing water temperatures in the adjacent Protected Water Feature; and
3. Enhancing the Water Quality Resource Area sufficient to minimize erosion, nutrient and pollutant loading into the adjacent Protected Water Feature; and
4. Protecting the vegetated corridor sufficient to provide filtration, infiltration and natural water purification for the adjacent Protected Water Feature; and
5. Stabilizing slopes adjacent to the Protected Water Feature.

**D. Adding Title 3 Wetlands**

1. Within 90 days of receiving evidence that wetland meets any of one of the criteria in D.2., the city/county shall provide notice to interested parties of a public hearing at which the city/county will review the evidence.
2. A wetland shall be protected by the standards set forth in this ordinance if the wetland meets any one of the following criteria:
  - a. The wetland is fed by surface flows, sheet flows or precipitation, and has evidence of flooding during the growing season, and has 60 percent or greater vegetated cover, and is over one-half acre in size;  
  
or the wetland qualifies as having "intact water quality function" under the 1996 Oregon Freshwater Wetland Assessment Methodology; or
  - b. The wetland is in the Flood Management Area, and has evidence of flooding during the growing season, and is five acres or more in size, and has a restricted outlet or no outlet;  
  
or the wetland qualifies as having "intact hydrologic control function" under the 1996 Oregon Freshwater Wetland Assessment Methodology; or

- c. The wetland or a portion of the wetland is within a horizontal distance of less than one-fourth mile from a water body which meets the Department of Environmental Quality definition of "water quality limited water body" in OAR Chapter 340, Division 41 (1996).

#### **Section 11. Consistency**

Where the provisions of this ordinance are less restrictive or conflict with comparable provisions of the zoning ordinance, regional, state or federal law, the provisions that are more restrictive shall govern. Where this ordinance imposes restrictions that are more stringent than regional, state and federal law, the provisions of this ordinance shall govern.

#### **Section 12. Warning and Disclaimer of Liability**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damage. This ordinance shall not create liability on the part of the City or County, any officer or employee thereof, or the Federal Insurance Administration, for any damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

#### **Section 13. Severability**

The provisions of this ordinance are severable. If any section, clause or phrase of this ordinance is adjudged to be invalid by a court of competent jurisdiction, the decision of that court shall not affect the validity of the remaining portions of this ordinance.

#### **Section 14. Enforcement**

- A. No person shall engage in or cause to occur any development, use or activity that fails to meet the standards and requirements of this ordinance. Development, uses or activities that are not specifically allowed within the Water Quality Resource Area are prohibited. All activities that may cause visible or measurable erosion are prohibited prior to the applicant obtaining an Erosion and Sediment Control Permit.
- B. In addition to other powers the city or county may exercise to enforce this ordinance, the city or county may:
  1. Establish a cooperative agreement between the (enforcement authority) and the applicant (or responsible party) to remedy the violation.

2. Issue a stop work order.
  3. Impose a civil penalty of not more than \$\_\_\_ for each violation upon the permittee, contractor or person responsible for carrying out the development work. Each day of violation shall constitute a separate offense.
  4. Cause an action to be instituted in a court of competent jurisdiction.
  5. Authorize summary abatement and subsequent recovery of costs incurred by the city or county.
- C. Upon notification by the city or county of any violation of this ordinance the applicant, permittee, contractor or person responsible for carrying out development work may be required to immediately install emergency erosion and sediment control measures that comply with Section 8.

## **Section 15. Definitions**

**Definitions.** Unless specifically defined below, words or phrases used in this section shall be interpreted to give them the same meaning as they have in common usage and to give this classification its most reasonable application.

**Architect** - An architect licensed by the State of Oregon.

**Bankful Stage** - Defined in OAR 141-85-010 (definitions for Removal/Fill Permits) as the stage or elevation at which water overflows the natural banks of a stream or other waters of the state and begin to inundate upland areas. In the absence of physical evidence, the two-year recurrent flood elevation may be used to approximate the bankful stage.

**Created Wetlands** - Those wetlands developed in an area previously identified as a non-wetland to replace, or mitigate wetland destruction or displacement. A created wetland shall be regulated and managed the same as an existing wetland.

**Constructed Wetlands** - Those wetlands developed as a water quality or quantity facility, subject to change and maintenance as such. These areas must be clearly defined and/or separated from naturally occurring or created wetlands.

**Debris** - discarded man-made objects that would not occur in an undeveloped stream corridor or wetland. Debris includes, but is not limited to, tires, vehicles, litter, scrap metal, construction waste, lumber, plastic or styrofoam. Debris does not include objects necessary to a use allowed by this ordinance, or ornamental and recreational structures. Debris does not include existing natural plant materials or natural plant materials which are left after flooding, downed or standing dead trees or trees which have fallen into protected water features.

**Department of Environmental Quality (DEQ) Water Quality Standards** - The numerical criteria or narrative condition needed in order to protect an identified beneficial use.

**Design Flood Elevation** - the elevation of the 100-year storm as defined in FEMA Flood Insurance Studies or, in areas without FEMA floodplains, the elevation of the 25-year storm, or the edge of mapped flood prone soils or similar methodologies.

**Development** - any man-made change defined as buildings or other structures, mining, dredging, paving, filling, or grading in amounts greater than ten (10) cubic yards on any lot or excavation. In addition, any other activity that results in the removal of more than 10 percent of the vegetation in the Water Quality Resource Area on the lot is defined as development, for the purpose of Title 3 except that more than 10 percent removal of vegetation on a lot must comply with Section 4C - Erosion and Sediment Control. Development does not include the following: a) Stream enhancement or restoration projects approved by cities and counties; b) Farming practices as defined in ORS 30.930

and farm use as defined in ORS 215.203, except that buildings associated with farm practices and farm uses are subject to the requirements of Title 3; and c) Construction on lots in subdivisions meeting the criteria of ORS 92.040(2) (1995).

**Disturb** - man-made changes to the existing physical status of the land, which are made in connection with development. The following uses are excluded from the definition:

enhancement or restoration of the Water Quality Resource Area;

planting native cover identified in the Metro Native Plant List.

**Division of State Lands Wetland Determinations** - As defined in OAR 141-86-200 (1997) (definitions for Local Wetland Inventory Standards and Guidelines), "wetland determination" means identifying an area as wetland or non-wetland.

**Emergency** - any man-made or natural event or circumstance causing or threatening loss of life, injury to person or property, and includes, but is not limited to, fire, explosion, flood, severe weather, drought earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation disruptions, and disease.

**Engineer** - A registered professional engineer licensed by the State of Oregon.

**Enhancement** - the process of improving upon the natural functions and/or values of an area or feature which has been degraded by human activity. Enhancement activities may or may not return the site to a pre-disturbance condition, but create/recreate processes and features that occur naturally.

**Engineering Geologist** - A registered professional engineering geologist licensed by the State of Oregon.

**Erosion** - Erosion is the movement of soil particles resulting from actions of water or wind.

**Fill** - any material such as, but not limited to, sand, gravel, soil, rock or gravel that is placed in a Title 3 wetland or floodplain for the purposes of development or redevelopment.

**Floodway Fringe** - The area of the floodplain, lying outside the floodway, which does not contribute appreciably to the passage of flood water, but serves as a retention area.

**Floodplain** - The land area identified and designated by the United States Army Corps of Engineers, the Oregon Division of State Lands, FEMA, or (identify name) county/city that has been or may be covered temporarily by water as a result of a storm event of identified frequency. It is usually the flat area of land adjacent to a stream or river formed by floods.

**Floodway** - The portion of a watercourse required for the passage or conveyance of a given storm event as identified and designated by the (identify name) city/county pursuant to this Ordinance. The floodway shall include the channel of the watercourse and the adjacent floodplain that must be reserved in an unobstructed condition in order to discharge the base flood without flood levels by more than one foot.

**Flood Management Areas** - all lands contained within the 100-year floodplain, flood area and floodway as shown on the Federal Emergency Management Agency Flood Insurance Maps and the area of inundation for the February 1996 flood. In addition, all lands which have documented evidence of flooding.

**Invasive Non-native or Noxious Vegetation** - plant species that have been introduced and due to aggressive growth patterns and lack of natural enemies in the area where introduced, spread rapidly into native plant communities, or which are not listed on the Metro Native Plant List as adopted by Metro Council resolution.

**Lot** - Lot means a single unit of land that is created by a subdivision of land. (ORS 92.010(3)).

**Mitigation** - the reduction of adverse effects of a proposed project by considering, in the order: a) avoiding the impact all together by not taking a certain action or parts of an action; b) minimizing impacts by limiting the degree or magnitude of the action and its implementation; c) rectifying the impact by repairing, rehabilitating or restoring the effected environment; d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and e) compensating for the impact by replacing or providing comparable substitute water quality resource areas.

**Native Vegetation** -any vegetation native to the Portland metropolitan area or listed on the Metro Native Plant list as adopted by Metro Council resolution.

**ODFW Construction Standards** - Oregon Department of Fish and Wildlife construction guidelines for building roads, bridges and culverts or any transportation structure within a waterway.

**Open Space** - Land that is undeveloped and that is planned to remain so indefinitely. The term encompasses parks, forests and farm land. It may also refer only to land zoned as being available to the public, including playgrounds, watershed preserves and parks.

**Ordinary Mean High Water Line** - As defined in OAR 141-82-005 as the line on the bank or shore to which water ordinarily rises in season; synonymous with Mean High Water (ORS 274.005).

**Ordinary Mean Low Water Line** - As defined in OAR 141-82-005 as the line on the bank or shore to which water ordinarily recedes in season; synonymous with Mean Low Water (ORS 274.005).

**Owner or Property Owner** - The person who is the legal record owner of the land, or where there is a recorded land sale contract, the purchaser thereunder.

**Parcel** - Parcel means a single unit of land that is created by a partitioning of land. (ORS 92.010(7)).

**Perennial Streams** - means all primary and secondary perennial water ways mapped by the U.S. Geological Survey.

**Plans** - The drawings and designs that specify construction details as prepared by the Engineer.

**Post-Construction Erosion Control** - Consists of re-establishing groundcover or landscaping prior to the removal of temporary erosion control measures.

**Practicable** - means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose.

#### **Protected Water Features**

*Primary Protected Water Features* shall include:

- a. Title 3 wetlands; and
- b. rivers, streams, and drainages downstream from the point at which 100 acres or more are drained to that water feature (regardless of whether it carries year-round flow); and
- c. streams carrying year-round flow; and
- d. springs which feed streams and wetlands and have year-round flow and
- e. natural lakes.

*Secondary Protected Water Features* shall include intermittent streams and seeps downstream of the point at which 50 acres are drained and upstream of the point at which 100 acres are drained to that water feature.

**Restoration** - the process of returning a disturbed or altered area or feature to a previously existing natural condition. Restoration activities reestablish the structure, function, and/or diversity to that which occurred prior to impacts caused by human activity.

**“Resource” versus “Facility”** - The distinction being made is between a “resource,” a functioning natural system such as a wetland or stream; and a “facility” which refers to a created or constructed structure or drainage way that is designed, constructed and maintained to collect and filter, retain, or detain surface water run-off during and after a storm event for the purpose of water quality improvement.

**Riparian** - Those areas associated with streams, lakes and wetlands where vegetation communities are predominately influenced by their association with water.

**Routine Repair and Maintenance** - activities directed at preserving an existing allowed use or facility, without expanding the development footprint or site use.

**Set-back Adjustment** - The placement of a building a specified distance away from a road, property line or protected resource.

**Significant Negative Impact** - an impact that affects the natural environment, considered individually or cumulatively with other impacts on the Water Quality Resource Area, to the point where existing water quality functions and values are degraded.

**Statewide Planning Goal 5** - Oregon’s statewide planning goal that addresses open space, scenic and historic areas, and natural resources. The purpose of the goal is to conserve open space and protect natural and scenic resources.

**Statewide Planning Goal 6** - Oregon’s statewide planning goal that addresses air, water and land resources quality to “maintain and improve the quality of the air, water and land resources of the state” as implemented by the Land Conservation and Development Commission (LCDC).

**Statewide Planning Goal 7** - Oregon’s statewide planning goal that addresses areas subject to natural disasters and hazards to “protect life and property from natural disasters and hazards” as implemented by the Land Conservation and Development Commission (LCDC).

**Steep slopes** - Steep slopes are those slopes that are equal to or greater than 25%. Steep slopes have been removed from the “buildable lands” inventory and have not been used in calculations to determine the number of acres within the urban growth boundary which are available for development.

**Stormwater Pre-treatment Facility** – any structure or drainage way that is designed, constructed, and maintained to collect and filter, retain, or detain surface water run-off during and after a storm event for the purpose of water quality improvement.

**Stream** - a body of running water moving over the earth’s surface in a channel or bed, such as a creek, rivulet or river. It flows at least part of the year, including perennial and

intermittent streams. Streams are dynamic in nature and their structure is maintained through build-up and loss of sediment.

**Structure** - A building or other major improvement that is built, constructed or installed, not including minor improvements, such as fences, utility poles, flagpoles or irrigation system components, that are not customarily regulated through zoning codes.

**Substantial Compliance** - city and county comprehensive plans and implementing ordinances, on the whole, conform with the purposes of the performance standards in the functional plan and any failure to meet individual performance standard requirements is technical or minor in nature.

**Title 3 Wetlands** - wetlands of metropolitan concern as shown on the Metro Water Quality and Flood Management Area Map and other wetlands added to city or county adopted Water Quality and Flood Management Area maps consistent with the criteria in Title 3, Section 7.C. Title 3 wetlands do not include artificially constructed and managed stormwater and water quality treatment facilities.

**Top of Bank** - The same as "bankful stage" defined in OAR 141-85-010(2).

**Utility Facilities** - buildings, structures or any constructed portion of a system which provides for the production, transmission, conveyance, delivery or furnishing of services including, but not limited to, heat, light, water, power, natural gas, sanitary sewer, stormwater, telephone and cable television. Utility facilities do not include stormwater pre-treatment facilities.

**Variance** - means a discretionary decision to permit modification of the terms of an implementing ordinance based on a demonstration of unusual hardship or exceptional circumstances unique to a specific property.

**Vegetated Corridor** - the area of setback between the top of bank of a Protected Water Feature and the delineated edge of the Water Quality Resource Area as defined in Table 1.

**Visible or Measurable Erosion** - Visible or measurable erosion includes, but is not limited to:

Deposits of mud, dirt sediment or similar material exceeding one-half cubic foot in volume on public or private streets, adjacent property, or onto the storm and surface water system, either by direct deposit, dropping discharge, or as a result of the action of erosion.

Evidence of concentrated flows of water over bare soils; turbid or sediment-laden flows; or evidence of on-site erosion such as rivulets on bare soil slopes, where the flow of water is not filtered or captured on the site.

Earth slides, mudflows, earth sloughing, or other earth movement that leaves the property.

**Water Quality Resource Areas** - vegetated corridors and the adjacent water feature as established in Title 3.

**Water Quality and Floodplain Management Area** - The area that identifies where the Water Quality Resource Area and Floodplain Management Area Overlay Zone is applied.

**Water Quality Facility** - Any structure or drainage way that is designed, constructed and maintained to collect and filter, retain, or detain surface water run-off during and after a storm event for the purpose of water quality improvement. It may also include, but is not limited to, existing features such as constructed wetlands, water quality swales, and ponds that are maintained as stormwater quality control facilities.

**Watershed** - A watershed is a geographic unit defined by the flows of rainwater or snowmelt. All land in a watershed drains to a common outlet, such as a stream, lake or wetland.

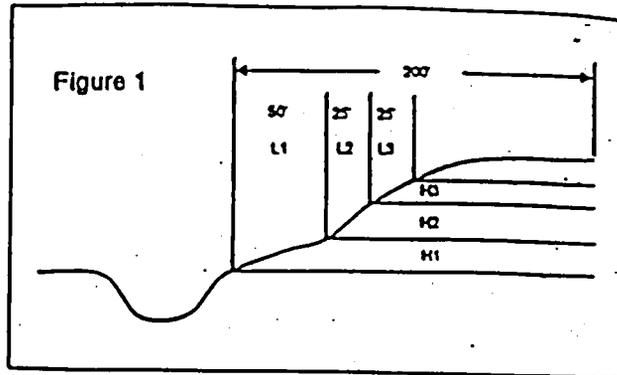
**Wetlands** - Wetlands are those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support and under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands are those areas identified and delineated by a qualified wetland specialist as set forth in the 1987 Corps of Engineers Wetland Delineation Manual.

## APPENDIX

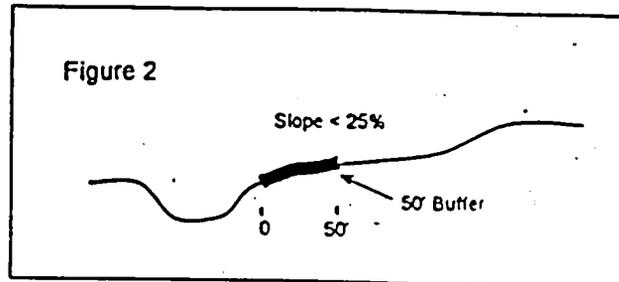
# Proposed Method for Determining Vegetated Corridors Next to Primary Protected Water Features

How measure slope (Figure 1)

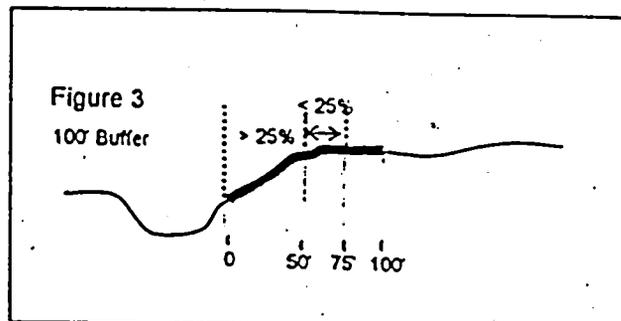
Measure 50 feet horizontally (L1) from the stream (top of bank) and determine the slope (H1/L1 - the difference in elevation divided by the difference in horizontal distance multiplied by 100).



If the slope in this 50-foot area is less than 25%, the corridor width is 50 feet from the top of bank (see Figure 2).



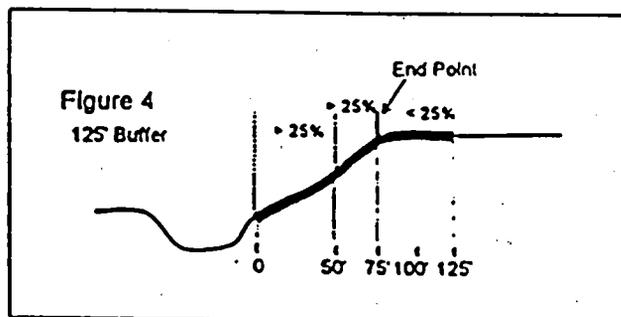
If the slope in the 50-foot area is 25% or greater, measure another 25 feet horizontally. If the slope in this incremental 25-foot area is now *less than 25%* ( $H2/L2 < 25\%$ ), the vegetated corridor width would be 100 feet (50 feet for the horizontal distance from the top of bank with slope greater than 25% *PLUS* an additional 50 feet). (See Figure 3.)



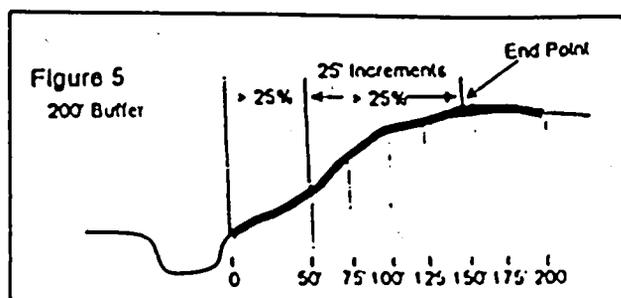
If the slope is greater than 25% in this incremental 25-foot area, continue measuring the slope every 25 feet (H/L) until you either:

(a) find a slope less than 25% (see Figure 4), or

(When you find a slope less than 25%, the vegetated corridor equals the distance from the stream's top of bank to the *end point* of the last surveyed 25-foot increment with a slope greater than 25% *PLUS* an additional 50 feet).



(b) reach 200 feet (the maximum corridor width). (See Figure 5.)



**Advantages:**

- Provides protection for most steep slopes, yet corridor widths can be varied to fit a number of different situations (corridor widths include 50 feet to 100 feet, 125 feet, 150 feet, 175 feet, and 200 feet)
- Provides flexibility.

**Disadvantages:**

- Does not protect slopes that rise steeply after a gradual "floodplain" area.

**EXHIBIT D**

**The Metro Water Quality and Flood Management Areas map consists of quadrangle maps which were adopted by the Metro Council on June 18, 1998, as part of Ordinance 98-730C. The maps are available for review and may be copied at the Metro Regional Headquarters.**

**EXHIBIT E**

## **DEFINITIONS (Title 10)**

**Design Flood Elevation** -the elevation of the 100-year storm as defined in FEMA Flood Insurance Studies or, in areas without FEMA floodplains, the elevation of the 25-year storm, or the edge of mapped flood prone soils or similar methodologies.

**Development** - any man-made change defined as buildings or other structures, mining, dredging, paving, filling, or grading in amounts greater than ten (10) cubic yards on any lot or excavation. In addition, any other activity that results in the removal of more than 10 percent of the vegetation in the Water Quality Resource Area on the lot is defined as development, for the purpose of Title 3 except that more than 10 percent removal of vegetation on a lot must comply with Section 4C - Erosion and Sediment Control. Development does not include the following: a) Stream enhancement or restoration projects approved by cities and counties; b) Farming practices as defined in ORS 30.930 and farm use as defined in ORS 215.203, except that buildings associated with farm practices and farm uses are subject to the requirements of Title 3; and c) Construction on lots in subdivisions meeting the criteria of ORS 92.040(2) (1995).

**Emergency** - any man-made or natural event or circumstance causing or threatening loss of life, injury to person or property, and includes, but is not limited to, fire, explosion, flood, severe weather, drought earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation disruptions, and disease.

**Enhancement** - the process of improving upon the natural functions and/or values of an area or feature which has been degraded by human activity. Enhancement activities may or may not return the site to a pre-disturbance condition, but create/recreate processes and features that occur naturally.

**Fill** - any material such as, but not limited to, sand, gravel, soil, rock or gravel that is placed in a wetland or floodplain for the purposes of development or redevelopment.

**Flood Management Areas** - all lands contained within the 100-year floodplain, flood area and floodway as shown on the Federal Emergency Management Agency Flood Insurance Maps and the area of inundation for the February 1996 flood. In addition, all lands which have documented evidence of flooding.

**Invasive Non-native or Noxious Vegetation** - plant species that have been introduced and due to aggressive growth patterns and lack of natural enemies in the area where introduced, spread rapidly into native plant communities, or which are not listed on the Metro Native Plant List as adopted by Metro Council resolution.

**Mitigation** - the reduction of adverse effects of a proposed project by considering, in the following order: a) avoiding the impact all together by not taking a certain action or parts of an action; b) minimizing impacts by limiting the degree or magnitude of the action and its implementation; c) rectifying the impact by repairing, rehabilitating or restoring the

effected environment; d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and e) compensating for the impact by replacing or providing comparable substitute water quality resource areas.

**Native Vegetation** - any vegetation native to the Portland metropolitan area or listed on the Metro Native Plant list as adopted by Metro Council resolution.

### **Protected Water Features**

*Primary Protected Water Features* shall include:

- a. Title 3 wetlands; and
- b. rivers, streams, and drainages downstream from the point at which 100 acres or more are drained to that water feature (regardless of whether it carries year-round flow); and
- c. streams carrying year-round flow; and
- d. springs which feed streams and wetlands and have year-round flow and
- e. natural lakes.

*Secondary Protected Water Features* shall include intermittent streams and seeps downstream of the point at which 50 acres are drained and upstream of the point at which 100 acres are drained to that water feature.

**Restoration** - the process of returning a disturbed or altered area or feature to a previously existing natural condition. Restoration activities reestablish the structure, function, and/or diversity to that which occurred prior to impacts caused by human activity.

**Routine Repair and Maintenance** - activities directed at preserving an existing allowed use or facility, without expanding the development footprint or site use.

**Significant Negative Impact** - an impact that affects the natural environment, considered individually or cumulatively with other impacts on the Water Quality Resource Area, to the point where existing water quality functions and values are degraded.

**Stream** - a body of running water moving over the earth's surface in a channel or bed, such as a creek, rivulet or river. It flows at least part of the year, including perennial and intermittent streams. Streams are dynamic in nature and their structure is maintained through build-up and loss of sediment.

**Substantial Compliance** - city and county comprehensive plans and implementing ordinances, on the whole, conform with the purposes of the performance standards in the functional plan and any failure to meet individual performance standard requirements is technical or minor in nature.

**Title 3 Wetlands** - wetlands of metropolitan concern as shown on the Metro Water Quality and Flood Management Area Map and other wetlands added to city or county adopted Water Quality and Flood Management Area maps consistent with the criteria in Title 3, Section 7.C. Title 3 wetlands do not include artificially constructed and managed stormwater and water quality treatment facilities.

**Visible or Measurable Erosion** - visible or measurable erosion includes, but is not limited to:

- a. Deposits of mud, dirt sediment or similar material exceeding one-half cubic foot in volume on public or private streets, adjacent property, or onto the storm and surface water system, either by direct deposit, dropping discharge, or as a result of the action of erosion.
- b. Evidence of concentrated flows of water over bare soils; turbid or sediment laden flows; or evidence of on-site erosion such as rivulets on bare soil slopes, where the flow of water is not filtered or captured on the site.
- c. Earth slides, mudflows, earth sloughing, or other earth movement that leaves the property.

**Utility Facilities** - buildings, structures or any constructed portion of a system which provides for the production, transmission, conveyance, delivery or furnishing of services including, but not limited to, heat, light, water, power, natural gas, sanitary sewer, stormwater, telephone and cable television.

**Water Quality Resource Areas** - vegetated corridors and the adjacent water feature as established in Title 3.

**Wetlands** - Wetlands are those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support and under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands are those areas identified and delineated by a qualified wetland specialist as set forth in the 1987 Corps of Engineers Wetland Delineation Manual.

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# M E M O R A N D U M

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736  
TEL 503 797 1700 | FAX 503 797 1794



**METRO**

DATE: January 6, 2000  
TO: Metro Council  
FROM: Ken Helm  
Office of General Counsel  
SUBJECT: Staff Report - Ordinance No. 00-839

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In June 1998, the Metro Council adopted Ordinance No. 98-730C amending Title 3 of the Urban Growth Management Functional Plan ("UGMFP") and amending the restatement of Title 3 in Appendix A of the Regional Framework Plan (RFP).<sup>1</sup> This action partially completed work that the Metro Council identified when it initially adopted the UGMFP in November, 1996. Ordinance 98-730C was appealed by the Commercial Real Estate Economic Coalition, Home Builders of Metropolitan Portland, Columbia Corridor Association and the City of Tigard. On November 10, 1999, the Land Use Board of Appeals ("LUBA") issued an order remanding Ordinance No. 98-730C sustaining one of the petitioners' claims of error. The petitioners in the case then appealed the decision to the Court of Appeals. Metro and the petitioners subsequently agreed to dismiss the appeal.

Proposed Ordinance No. 00-839 responds to the LUBA remand of Ordinance 98-730C. LUBA reasoned that the 18 month deadline for local governments to comply with Title 3 was inconsistent with ORS 268.390(5) which is the statute governing the time for compliance with the RFP. ORS 268.390(5) states that pursuant to the RFP, Metro may adopt "implementing ordinances" requiring changes in local comprehensive plans and implementing regulations. Local governments have one year after the Land Conservation and Development Commission acknowledges the RFP before land use decisions must be made consistent with the RFP, and two years before their comprehensive plans and implementing regulations must comply with the RFP. At the same time, LUBA reaffirmed that Metro has broad authority to require compliance with any of its functional plans and impose compliance timelines that the Council deems necessary. LUBA held that had Metro only amended Title 3 of the UGMFP, the Board would have found no

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<sup>1</sup> The UGMFP was added as Appendix A of the RFP when the RFP was adopted in 1997. In Appendix A, all of the UGMFP, including Title 3, is restated as part of the plan.

error. However, LUBA believes that by making identical amendments to both the UGMFP and Appendix A of the RFP imposing an 18 month compliance deadline, Metro accelerated the required compliance for the RFP which it ruled was a substantive violation of ORS 268.390(5).

The Office of General Counsel disagrees with LUBA's reasoning. There was significant confusion by LUBA as to what constitutes "implementing ordinances" as that term is used in ORS 268.390(5). LUBA assumed that since Ordinance 98-730C amended both the UGMFP and the RFP that it must be an RFP "implementing ordinance" instead of part of the RFP itself. Although OGC believes this is an incorrect interpretation, language in the Metro Charter, the RUGGO and RFP may have contributed to LUBA's confusion. In any case, LUBA's remand can be remedied by eliminating references to the 18 month compliance timeline from Appendix A of the RFP and clarifying the meaning of "implementing ordinances" for the purposes of the RFP.

Proposed Ordinance No. 00-839 accomplishes a surgical fix like the operation of a severability clause by readopting Ordinance No. 98-730C and its exhibits with amendments to address LUBA's remand. The proposed ordinance also amends the RFP to explain Metro's approach to adopting "implementing ordinances" pursuant to the RFP in the future. The proposed changes are as follows:

Ordained 1 readopts Ordinance No. 98-730C and its exhibits. This section also amends Ordinance No. 98-730C as follows:

- Section 2, Exhibit B is amended to remove the reference to the 18 month compliance timeline in Title 3 of both the UGMFP and Appendix A of the RFP. None of the other exhibits to Ordinance No. 98-730C are amended.
- Sections 3-8 are generally amended and a new section 5 is added to explicitly state and clarify that compliance timelines for Title 3 of the UGMFP do not apply to the Title 3 component of Appendix A of the RFP.
- Section 9 (renumbered to section 10) is amended to state that local governments must comply with Title 3 of the UGMFP by January, 2000.

Ordained 2 adds a new "Section 13" to Ordinance No.98-730C to establish when local land use decisions must be made consistent with the Title 3 component of the RFP.

Ordained 3 amends the RFP to reflect LCDC's approach to acknowledging the RFP in components which is consistent with the approach described in state statute.

Ordained 4 amends the RFP to explain the type of "implementing ordinances" that are anticipated to be adopted "pursuant to" the RFP under ORS 268.390(5) subsequent to acknowledgement by LCDC.

*Agenda Item Number 8.3*

**Ordinance No. 00-840, For the Purpose of Amending Metro Code Chapter 7.01 to Change the Metro Excise Tax on Solid Waste to a Tax Levied Upon Tonnage Accepted at Solid Waste Facilities, and Making Other Related Amendments.**

***First Reading***

**Metro Council Meeting  
Thursday, January 13, 2000  
Council Chamber**

*Agenda Item Number 9.1*

**Resolution No. 00-2879, For the Purpose of Authorizing a Personal Services Contract for the Provision  
of Legal Services.**

***Contract Review Board***

**Metro Council Meeting  
Thursday, January 13, 2000  
Council Chamber**

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING A ) RESOLUTION NO. 00-2879  
PERSONAL SERVICES CONTRACT FOR )  
THE PROVISION OF LEGAL SERVICES ) Introduced by Executive Officer Mike Burton

WHEREAS, Metro has been named as a defendant in the case named *Waste Connections, Inc., et al v. Metro*, filed in the United States District Court for the District of Oregon; and

WHEREAS, the Metro General Counsel has recommended the retention of outside legal counsel to assist and advise in the vigorous defense of the aforementioned law suit; and

WHEREAS, the Metro General Counsel has recommended the retention of Jacob Tanzer and the law firm of Ball Janik LLP; now, therefore be it

RESOLVED,

That the Metro Counsel authorizes the execution of a Personal Services Contract with Jacob Tanzer and Ball Janik LLP in a form substantially similar to that attached hereto as Exhibit "A."

ADOPTED by the Metro Contract Review Board this \_\_\_\_ day of January 2000.

\_\_\_\_\_  
David Bragdon, Presiding Officer

APPROVED AS TO FORM:

\_\_\_\_\_  
Daniel B. Cooper, General Counsel

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OGC\MDF\kvw\sm 1/04/2000

## STAFF REPORT

### FOR THE PURPOSE OF AUTHORIZING A PERSONAL SERVICES CONTRACT FOR THE PROVISION OF LEGAL SERVICES

#### FACTUAL BACKGROUND AND ANALYSIS

Resolution No. 00-2879 authorizes the execution of a personal service contract with Jacob Tanzer, attorney at law, and Ball Janik LLP to represent Metro in defense of the case *Waste Connection, Inc., et al v. Metro* filed in the United States District Court for the District of Oregon.

On September 29, 1999, Metro was served with summons and complaint in this matter. Plaintiff Waste Connections and its subsidiaries challenges the provision of Metro Code Chapter 5.05, the Metro flow control ordinance. Plaintiff claims that the Metro ordinance is unconstitutional because it violates the Commerce Clause of the United States Constitution. Additionally, plaintiffs claim that the existence of the ordinance resulted in damages to them in an unspecified amount. After conferring with representatives of several law firms and conducting interviews with others, the General Counsel reached a conclusion that the vigorous defense of the government would be best achieved by utilizing the services of Mr. Tanzer, a former Oregon Supreme Court Justice and the law firm with which he is affiliated, Ball Janik LLP. Mr. Tanzer and Ball Janik have assisted Metro in filing its answer in federal district court and will assist Metro in the defense of the matter under the terms of the attached agreement. The terms of the contract require Metro's Office of General Counsel to participate fully in all decisions regarding significant aspects of the matter and to otherwise control the litigation.

#### EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 00-2879.

# EXHIBIT A

Project \_\_\_\_\_

Contract No. \_\_\_\_\_

## PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located at 600 N.E. Grand Avenue, Portland, OR 97232-2736, and Jacob Tanzer, attorney at law, and Ball Janik LLP, each located at 101 SW Main Street, Suite 1100, Portland, OR 97204 referred to herein as "Contractors."

In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. Duration. This personal services agreement shall be effective December 17, 1999 and shall remain in effect until and including June 30, 2001, unless terminated or extended as provided in this Agreement.

2. Scope of Work. Contractor shall provide all services and materials specified in the attached "Exhibit A -- Scope of Work," which is incorporated into this Agreement by reference as if set forth in full. All services and materials shall be provided by Contractor in accordance with the Scope of Work, in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.

3. Payment. Metro shall pay Contractor for services performed and materials delivered in the amount(s), manner and at the time(s) specified in the Scope of Work for a maximum sum not to exceed ONE HUNDRED THOUSAND AND 00/100THS DOLLARS (\$100,000.00).

4. Insurance.

a. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:

(1) Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and

(2) Automobile bodily injury and property damage liability insurance.

b. Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.

c. Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.

d. Contractor, its subcontractors, if any, and all employers working under this Agreement that are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Contractor shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Contractor has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as Exhibit B, in lieu of the certificate showing current Workers' Compensation.

e. If required by the Scope of Work, Contractor shall maintain for the duration of this Agreement professional liability insurance covering personal injury and property damage arising from errors, omissions, or malpractice. Coverage shall be in the minimum amount of \$500,000. Contractor shall provide to Metro a certificate of this insurance, and 30 days' advance notice of material change or cancellation.

5. Indemnification. Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of Contractor's designs or other materials by Metro and for any claims or disputes involving subcontractors.

6. Maintenance of Records. Contractor shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow Metro the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor for three years after Metro makes final payment and all other pending matters are closed.

7. Ownership of Documents. All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such documents.

8. Project Information. Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects.

Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

9. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

10. Right to Withhold Payments. Metro shall have the right to withhold from payments due to Contractor such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage, or claim which may result from Contractor's performance or failure to perform under this Agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

11. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

12. Situs. The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the state of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

13. Assignment. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party.

14. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor seven days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

15. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

16. Modification. Notwithstanding and succeeding any and all prior agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties.

**JACOB TANZER**

**METRO**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**BALL JANIK LLP**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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OGC/MDF/kvw/sm 1/04/2000

**OUTSIDE COUNSEL – OFFICE OF GENERAL COUNSEL  
COORDINATION AND BILLING PROTOCOLS**

**A. Coordination.**

The Metro General Counsel has ultimate responsibility and authority for decisions made in handling all legal matters. As soon possible after outside counsel is retained, the Metro General Counsel or his designee (the Metro attorney) shall discuss their respective degree of involvement, division of responsibility, and strategy. At a minimum, the Metro attorney shall participate fully in all decisions regarding significant aspect of the matter. Unless there is a valid reason for his or her not appearing, the Metro General Counsel and Metro attorney shall enter an appearance in any lawsuit as attorneys of record.

Except for quickly obtainable routine factual information (*e.g.*, telephone numbers, addresses), all communications by outside counsel with Metro personnel shall be through the Metro attorney, unless the Metro attorney agrees in a specific instance that direct communication would be more efficient.

Outside counsel shall forward a copy of all documents to the Metro attorney with sufficient time for meaningful review before dissemination or filing. If time does not permit forwarding a document, it shall be reviewed with the Metro attorney by telephone.

Outside counsel shall promptly furnish the Metro attorney with copies of all legal opinions, memoranda of law, or other research, pleadings and correspondence.

All settlement overtures shall be reported immediately to the Metro attorney.

Outside counsel shall avoid contact with media representatives covering Metro matters, whether or not on subject of the matter for which outside counsel is retained. If media representatives contact outside counsel concerning matters being handled for Metro, outside counsel shall decline any comment beyond confirming factual matters that are already a matter of public record. All media calls shall be referred to the Office of General Counsel.

**B. Billing.**

All billings by outside counsel are subject to the approval of Metro's General Counsel. It is expected that outside counsel will adhere to the following billing procedures, and that any significant deviation from them will be discussed with the General Counsel or the Metro attorney in advance.

Prior to entering into a personal services agreement on any matter, outside counsel shall provide an estimate of hours and costs for identifiable phases of the claim, and a statement of its hourly rates and billing policies.

Any major research projects will be discussed and approved in advance.

Because the outside counsel is being retained, at least in part, because of its expertise in this area of law, no basic legal research shall be billed to Metro.

There shall be a primary contact at the law firm who is aware of the status of the matter at all times. The primary contact will be personally involved in and responsible for all aspects of the matter, including billing.

Neither other counsel nor experts may be retained on Metro's behalf without prior approval by the responsible Metro attorney. Only one outside counsel attorney should attend meetings, arguments and depositions, unless otherwise authorized.

Outside counsel shall not bill for start-up time of educating a lawyer when a matter has been transferred to another attorney unless the transfer and billing is pre-approved by the Metro Attorney.

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OGC/MDF/kvw (12/06/99)

# MINUTES OF THE METRO COUNCIL MEETING

December 16, 1999

Metro Council Chamber

Councilors Present: Rod Monroe (Presiding Officer), Susan McLain, Ed Washington, Rod Park, Bill Atherton, David Bragdon, Jon Kvistad

Councilors Absent: None

Presiding Officer Monroe convened the Regular Council Meeting at 2:05pm

## 1. INTRODUCTIONS

None.

## 2. CITIZEN COMMUNICATION

Art Lewellan, 3205 SE 8<sup>th</sup> #9, Portland OR, said he lived in the SE neighborhood of Brooklyn. He spoke to the council concerning his support of the 2040 Growth Concept (a copy of his testimony was included in the record, which may be found in the permanent record of this meeting)

## 3. EXECUTIVE OFFICER COMMUNICATIONS

None.

## 4. AUDITOR COMMUNICATIONS

None.

## 5. MPAC COMMUNICATION

None.

## 6. CONSENT AGENDA

6.1 Consideration meeting minutes of the December 9, 1999 Regular Council Meeting.

**Motion:** Councilor McLain moved to adopt the meeting minutes of December 9, 1999 Regular Council Meeting.

**Seconded:** Councilor Bragdon seconded the motion.

**Vote:** The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed.

## 7. ORDINANCES - SECOND READING

7.1 Held until time certain of 2:30pm

7.2 **Ordinance No. 99-829, For the Purpose of Annexing Lands within Urban Reserve Area 41 to the Metro Jurisdictional Boundary.**

**Motion:** **Councilor McLain** moved to adopt Ordinance No. 99-829.

**Seconded:** **Councilor Kvistad** seconded the motion.

**Councilor McLain** reviewed the ordinance and asked Counsel to describe it.

**Dan Cooper**, General Counsel, said that annexations to the jurisdictional boundaries were now under the jurisdiction of Metro Council. As part of the transition away from the Boundary Commission, Council had adopted criteria for all annexations to any governmental body within the Metro jurisdictional area. The primary criterion was whether or not Council found it appropriate to add the lands to the Urban Growth Boundary (UGB). Annexations under Oregon law were a quasi-judicial process and required the process to begin by petition from more than 50% of the land owners plus a petition from 50% of the registered voters in the area to be annexed. He advised that a parallel action for an ordinance to add this land to the UGB was also on the agenda. Any Councilor who planned to vote yes on that ordinance should vote yes for this ordinance; or conversely, anyone who planned to vote no on one should vote no on the other.

**Presiding Officer Monroe** opened a public hearing on Ordinance No. 99-829.

**Craig Flynn**, 12048 NE Fargo Ct., Portland, said that over 98% of Oregon was open space, with about 3 million people residing in the State. Affordable housing had decreased as the Urban Growth Boundary (UGB) filled up. Local control no longer existed. Neighborhoods no longer could decide if they were to be developed or not. Small groups of anti-auto and new urbanists seemed to control the debate. Those living within the UGB were forced to densify; while those living outside the UGB could not densify even if they wanted to. He said it was time to abolish the UGB and allow neighborhoods to decide if they wanted to develop or not. He grew up in East County when farmland was everywhere; now it was an inter-city neighborhood. He believed that the control Metro exercised over citizens' lives was excessive and it was time to rein Metro in.

**Presiding Officer Monroe** closed the public hearing as there was no further testimony.

**Councilor Atherton** supported this ordinance because it was very different than other ordinances currently before the Council. While Mr. Flynn just testified that local communities did not have control, that was not true in this case. The City of Wilsonville wanted this and it fit in Metro's regional scheme. He urged a yes vote.

**Councilor Kvistad** said that Wilsonville had been a terrific partner to Metro in terms of master planning for the Dammasch site. He recommended an aye vote.

**Councilor McLain** urged the Council to vote yes on this ordinance.

**Vote:** The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed.

**7.3 Ordinance No. 99-830, For the Purpose of Annexing Lands within Urban Reserve Area 39 to the Metro Jurisdictional Boundary.**

**Motion:** Councilor McLain moved to adopt Ordinance No. 99-830.

**Seconded:** Councilor Kvistad seconded the motion.

Councilor McLain said this ordinance was identical to the previous one. She found it to be an appropriate annexation to the UGB.

Presiding Officer Monroe opened a public hearing on Ordinance No. 99-830. No one came forward. Presiding Officer Monroe closed the public hearing.

**Vote:** The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed.

**7.4 Ordinance No. 99-834, For the Purpose of Amending the Metro Urban Growth Boundary and the 2040 Growth Concept Map in Ordinance No. 95-625A in Urban Reserve Area 39 and 41 in Clackamas County.**

**Motion:** Councilor McLain moved to adopt Ordinance No. 99-834.

**Seconded:** Councilor Kvistad seconded the motion.

Councilor McLain found that Wilsonville's application and supporting data, along with staff reports, supported their request. All issues raised had been resolved. This was a case where a UGB amendment would help build a complete community; she urged an aye vote.

Presiding Officer Monroe opened a public hearing on Ordinance No. 99-834. No one came forward. Presiding Officer Monroe closed the public hearing.

**Vote:** The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed.

Councilor Kvistad offered thanks to the City of Wilsonville, its leaders, land owners and citizens who fought long and hard to use this property to better their community. He congratulated them for doing a terrific job of staying on point and building a spectacular project for the region.

Presiding Officer Monroe said he echoed all that Councilor Kvistad had said. Metro was about to take the appropriate action for the appropriate development of the site. He looked forward to seeing the project when it was completed.

**7.5 Ordinance No. 99-812A, For the Purpose of Amending Metro Urban Growth Boundary and the 2040 Growth Concept Map in Ordinance No. 95-625A in Urban Reserve Area 65 of Washington County.**

**Motion:** Councilor Bragdon moved to adopt Ordinance No. 99-812A.

**Seconded:**     **Councilor Kvistad** seconded the motion.

**Councilor Bragdon** asked staff to present this ordinance.

**Lydia Neill**, Growth Management Services, presented the staff report that was included in the public record. She stated that in answer to a previous question in committee the Bethany Town Center was located near this site and pretty well built out. Washington County anticipated very little future development within that town center area. Conditions were included in the ordinance based on 200-foot buffers within this area that reflected Washington County's comprehensive plan amendments that were pending Metro's action

**Ms. Neill** responded to Councilor Atherton's question that the applicant was Ryland Homes.

**Councilor Atherton** asked Ms. Neill about the parcel in the north portion of the UGB – why was that area green rather than yellow like its surrounding areas.

**Ms. Neill** responded that this decision was made when the Urban Reserve (UR) was designated previously by the Council. The area was also designated Exclusive Farm Use (EFU) land.

**Councilor Atherton** asked what the basis of the URA decision was.

**Elaine Wilkerson**, Growth Management Services Director, said that while neither she nor Ms. Neill were involved at the time of Council's decision, she believed that the land on either side was exception land and as a result that one piece was an isolated EFU area. She said it was basically a combination of data provided and submissions at the public hearings that drove the decision process.

**Councilor Atherton** asked for clarification of the governance issue. Washington County was doing the planning work, yet they had stated many times that they were no longer in the city planning business. Given that, how could they be driving this process?

**Ms. Neill** responded that Washington County had coordinated extensively with the City of Beaverton on how this area should be planned. Washington County was responsible for the transportation system in the area and through public involvement and feedback it was decided that it was more appropriate for the agency administering the transportation aspect to also coordinate the planning.

**Ms. Wilkerson** added that joint efforts were not unusual with these entities. In this particular case, County and City have agreed that when the area was urbanized it would be as a part of the City of Beaverton.

**Councilor Atherton** asked if there were active neighborhood associations in this area.

**Ms. Neill** responded that she was not aware of neighborhood forums, but that there was an active CPO; she had received several calls from residents that pertained to the site.

**Councilor Atherton** asked if the CPO had had meetings regarding this site.

**Ms. Neill** said she had no knowledge of how active they had been with the City and County. She then corrected the record regarding the applicant: technically Ryland Homes was not an applicant, but rather a proponent that had provided the materials staff had analyzed.

**Councilor Park** noted that in the Jobs/Housing balance report prepared by Dennis Yee and Sonny Conder, their analysis of URA 65 showed an unusually low ratio compared to the Wilsonville site. As the numbers presented by the proponents and Metro staff were in dispute he asked staff for help in resolving the disparity.

**Ms. Wilkerson** explained that each group approached the analysis from a different direction. She also noted that staff was working on a comprehensive jobs/housing balance report complete with interactive models. The completion date was June 2000. In the meantime the Growth Management Committee had asked staff to address 3 concerns: 1. What would be considered a "significant" imbalance in the jobs/housing ratio, 2. How to treat overlapping areas and 3. Validate the data Metro had received from the various proponents. Staff determined the best way to deal with these directives in the interim was to update data gathered for the Urban Reserve decision four years ago. The data had not changed significantly since then; the average ratio for the area, excluding the CVD, was 1.48 jobs per housing unit. Staff determined that the significant figure was a range from 1.75-2.0. The proponent's analysis was based on different but equally valid geographies. Staff's conclusion was that in the short as well as long term there was an imbalance that could be considered significant.

**Councilor Park** asked how would the commuter shed be used when Metro moves on to the next property.

**Ms. Wilkerson** replied that staff employed an interim approach while awaiting the comprehensive study results. If the new and old areas overlapped the model would be updated to include the additional housing potential. Staff's number was significantly different because the Beaverton Regional Center included more housing and fewer employment areas. As a result the ratio was lower and appeared to be housing rich. In the proponent's analysis they looked at the commuter shed around the site in question. Metro tended to focus on the historic relationships of the regional centers. However, in the planned study staff would look at the question from different perspectives and might well modify their approach based on study results.

**Councilor Park** asked if the jurisdiction from which these jobs were taken had agreed that those jobs be used for this purpose.

**Ms. Wilkerson** suggested that Councilor Park ask the proponents that question. She believed that Hillsboro was aware of the study, as no concerns had been raised to Metro staff.

**Councilor Park** asked Mr. Cooper if there was an overall regional need today related to fish and wildlife habitat protection.

**Mr. Cooper** said that Goal 14 contained two factors to be applied in considering whether or not to move the UGB: 1. The overall regional need, and 2. The subregional livability issue. Council could make a determination based on Factor 2 provided that the action was not inconsistent with Factor 1. He believed this was not inconsistent with Factor 1.

**Councilor Atherton** asked if there was sufficient transit guaranteed for this area.

**Ms. Neill** replied that the proponent had provided a transportation study for the site that recognized the need for some street system improvements and that further transportation analysis would be required as the rest of this URA developed. Currently there was public transit to the Rock Creek PCC campus adjacent to this area.

**Councilor Atherton** asked if this development would exacerbate current transportation problems.

**Ms. Neill** responded no, to her knowledge it would merely extend the current street system in a logical manner. She believed it would enhance the connectivity in this area, including a better pedestrian and bike network as the street system was improved.

**Presiding Officer Monroe** opened a public hearing on Ordinance No. 99-812A.

**Dotty Quinn**, 14342 NW Meadowridge Dr. Portland, said she was here representing hundreds of families in the area north of Hwy. 26. They had sent hundreds of letters to Metro as follows: (a copy of which may be found in the permanent record).

**Greg Malinowski**, 13450 NW Springville Ln., Portland, read his letter into the record (a copy of which may be found in the permanent record).

**Mary Kyle McCurdy**, 1000 Friends of Oregon, 534 SW 3<sup>rd</sup> Ave. Suite 300, Portland, said they believed that there was no legal or policy reason to bring this land into the UGB now and it would set a sad precedent. It was farmland, the best piece of URA 65. Metro had just adopted a resolution accepting the Urban Growth Report and its update that concluded there was no need to expand the UGB at this time. Speculation as to what might happen after Title 3 work was done was not legally viable in terms of whether there was a regional need today; no subregional need had been shown. Metro's staff report showed that this area was housing rich. Council was on a slippery slope in basing a decision on the proponent's work rather than on its own staff report. She recommended that Council wait until the regional needs analysis, the jobs/housing work from MPAC on affordable housing and the RTP work was integrated into Metro staff's work due in June 2000. She urged Council to complete the work Metro has pledged to do during the extension period before making a decision on this area.

**Mike Fishback**, 1313 Clarendon St., Durham, NC 27705, stated that he was visiting Portland, which he said was held up as a paragon in the way that this region had handled suburban sprawl, urban renewal, light rail development, etc. He asked for help in obtaining documents regarding Metro's work on these issues. Presiding Officer Monroe asked staff from Growth Management to help him.

**Councilor Atherton** said he had just received an email from RKCZ that he read into the record (a copy of which may be found in the permanent record).

**Mr. Cooper** said the record for this ordinance had closed as of last Thursday. Testimony today was for the purpose of persuasion only and was argument rather than evidence.

**Presiding Officer Monroe** closed the public hearing.

**Councilor Park** asked Mr. Cooper if they could table this ordinance until a date certain in January.

**Mr. Cooper** responded that it could be postponed to a date certain in January, without notice within a relatively short time frame. If the Council picked a date staff would take care of the notice issue.

**Presiding Officer Monroe** believed that if a councilor moved to postpone action until date certain, that motion would be debatable. **Councilor Kvistad** agreed that it was at the discretion of the Chair and was debatable.

**Motion:** **Councilor Park** moved to postpone consideration of this ordinance until January 13, 2000.

**Seconded:** **Councilor Atherton** seconded the motion.

**Councilor Park** said that many things had been brought up in discussion and he wished to have some proponent and HTAC numbers clarified. Tomorrow's meeting of Land Conservation and Development Commission (LCDC) would decide on Metro's request for extension. The affordable housing portion of the plan presented was good, but not binding; if circumstances changed, i.e. the property were sold, a different developer took over, etc. between now and the time that development actually began, that portion might disappear. He would like to have additional time to evaluate some of the issues raised.

**Councilor Atherton** asked Mr. Cooper why this decision must be made today.

**Mr. Cooper** said this was a legislative matter that the Council could decide any time it wanted to.

**Councilor Bragdon** said he agreed that Council would have more information available in 6-months, but was not persuaded that they would have more or better information in 4-weeks and would not support a delay.

**Councilor Park** urged an aye vote.

**Vote to**

**Postpone:** The vote was 2 aye/ 4 nay/ 1 abstain. The motion failed with Councilor Atherton and Park voting aye, Councilors Washington, Kvistad, Bragdon and Monroe voting nay and Councilor McLain abstaining from the vote.

**Councilor McLain** said she could not support this ordinance due to: 1. Timing - the vote would be on Needs Assessment alone and that was inconclusive, using either approach. Additional work was needed and she saw no reason to make that decision now; 2. It was farm use land and the only part of URA 65 that was good farm use land. She felt it set bad precedent while appeals were still pending; 3. Metro sets a precedent every time subregional needs are dealt with. She

did not believe this precedent had enough support for staff to defend it in court; and 4. Not one of the 75 district citizens that contacted the Council wrote in support of this UGB amendment. While she believed that the plan itself was excellent, she felt that the transportation issues would cause more problems. Every time Metro moved the UGB more stress was put on the infrastructure needed to maintain it.

**Councilor Atherton** applauded Councilor McLain's words and echoed them. This was the antithesis of what regionalism and regional planning was about. This agency's mission was not to keep land in production for developers or steamroller over neighborhood groups and their wishes for their communities. When there was a case for expansion and a good concept plan, Metro should move ahead, but only when the community was in favor of that move. He urged a no vote.

**Councilor Kvistad** said he heard citizens say that they wanted Metro to stop putting density in their neighborhood, stop jamming the roads and building row houses next to single homes. Metro should stop ruining what they already have in the UGB. He believed that the Council had not begun to focus on the real issue. It was not the urban edge, it was the fact that the Council was not working to build and help the local communities redevelop inside the boundary. Cramming density where it does not belong was what was destroying the transportation system. He had supported URA 65 for nearly 7 years and supported it now. Once this UGB work was done he felt that the Council should deal with what had already been done and protect communities, not continue to fight over parcels on the edge.

**Councilor Washington** shared his written comments that were included in the meeting record.

**Councilor Park** said that URA 65 was farmland surrounded by exception areas. He accepted the argument that this land should be brought in first so that the other areas could be served. Probably he would be able to support bringing this area in when more information was available in 6 months. At this point it was putting outcome before process. The Council had not gone through the process, not protected the lands in the Goal 5 areas, not identified the subregional needs. He felt that this decision was political, pure and simple, and not based on the technical merits. Metro was the referee on these decisions and the referee should be considered creditable and fair. This decision should be defensible for technical reasons when the next group came forward with a plan using this approval as justification for the next approval. He felt this decision did not meet those criteria.

**Councilor Atherton** spoke to the edge issues. He saw this proposed addition of EFU land as exploitation of others' investment in their community. On top of the need and transportation issues the Council must begin to focus on how communities build livable communities. He said that this was not the answer; it was wrong and urged a no vote.

**Councilor Kvistad** said Council should not turn into a debate between members, rather that each Councilor should speak to his/her own beliefs. He had spent 7-years on the Council in an attempt to build a better community, connect transit and make the 2040 Growth Concept work. He believed Metro had played the political correctness game with urban lands on the edge. His position was that the edge was the wrong focus; focus should be on the center in order to make a better community and correct any past mistakes.

**Presiding Officer Monroe** said this was an issue on which reasonable people could disagree. From his 20 years teaching history he had found that the Supreme Court had decided many important issues on a 5-4 vote. A close vote did not mean a vote was wrong. The Council had been contacted by Washington County and by the City of Beaverton in support of the ordinance. He also noted a letter from the school district in support Ordinance No. 99-812A. Four of the current Councilors were a part of developing the current 2040 design and determining what made a good design concept in the new world the Metro was trying to create. Mr. Guthrie's development proposal met every inch of criteria for the kind of design Metro was trying to promote. It had a park, a school site, riparian protection of 200 feet along streams, bikeways, transportation improvements, and a major component of affordable housing. He thanked Councilor Washington for consistently bringing the region's need for affordable housing to the Council's attention. He said he also looked at the property in question in terms of whether or not it was viable, farmable land, and it was not. It was currently zoned farmland, but it was broken up into relatively small parcels. The question of whether or not this property would ultimately come into the urban growth boundary was beyond question; certainly it would. Therefore, the question was when. Should the Council do it now, as requested by the local governments in the area, or should the Council wait six or eight months until it made other decisions this summer. He said supported adding the land into the UGB now for several reasons. First, it was the request of Metro's local partners. Second, there was virtual certainty that the land would come into the UGB at some point, so why not now? Third, it was planned, it was planned to go now, and the plan was a marvelous plan that met all of Metro's criteria. For these reasons, he would support Ordinance No. 99-812A.

**Councilor Bragdon** closed by saying that he thought of this as the "Nixon goes to China" part of the program. Just as nobody expected Nixon, an anti-Communist, to go to China, if he thought six months ago that he would be voting for a UGB expansion, let alone making the closing statement, he would have been surprised. He thought some of his friends were surprised too, so he wanted to explain his position. First, he wanted to make a disclosure. He said Councilor Atherton quite rightly mentioned the quote in the newspaper, and he actually corrected it. Councilor Bragdon said he was quoted in the paper as saying, "It is difficult to expand the urban growth boundary." What he actually said was the same as Councilor Atherton's statement, "It should be," and it was difficult for him. The disclosure also related to that same article in which references were made to money. While he did not mean to be gouache, but he thought that was a very important point which all of the Councilors should have out in the open in every degree of detail. He looked back at his campaign records and he wanted to disclose that, in terms of donations, Ryland Home's donation to his campaign was zero, Mr. Guthrie's donation to his campaign was zero, Mr. Bachrach gave \$25 as well as some snide comments. He said Mr. Bachrach had become more polite with him since he won. He noted with some irony that Mr. Bachrach's donation was \$10 less than Ms. McCurdy's donation of \$35. So in terms of personal financial or political gain, this was definitely a loser for him, but he had to do what he felt was right. He noted that those records were available at the County, and he urged the audience to review them over the course of his career.

**Councilor Bragdon** said for him, the question came down to, what was the urban growth boundary about? The UGB was not about stopping growth, because the area was growing. People were having children, and people were moving here. He noted that someone moved here six months ago from Seattle, and then sent an email to the Council implying that no one else should now move here, which he found ironic. So test then for him was, was the urban growth

boundary something that shaped the community, both inside the existing UGB and in those places where the Council made small, modest modifications to it. Did the UGB shape the neighborhood in which he lived, where they were revitalizing things, and the neighborhoods in Councilor Washington's district, where new life was coming in because of the urban growth boundary? He thought the plan presented to the Council was justified, as the record showed, and it would make the region a better place to live, not just for the people who lived there.

**Councilor Bradgon** addressed what those features were. First, in terms of the effect on agriculture, it was correct. There was a state classification in terms of the soils, there was a zoning classification for exclusive farm use. But the testimony from the people in the industry was that it was marginal land, it was not valuable agricultural land. The second important point for him, and one of the points he was most skeptical about when this came up, was the natural resources on the site. Rock Creek was there, and it was part of the very fragile Tualatin system. The urban reserve plan protected those resources to a greater extent than the existing regulations currently in that area. Affordable housing was mentioned, and undertaking to provide affordable housing needed by the area. In terms of whether that agreement was binding on somebody, if it did not happen, he would make that person's life miserable for the next three years. He thought the affordable housing would happen, and that there needed to be some element of trust in one another. The plan provided school sites, trail sites, and parks. In short, the plan did not perpetuate the sprawl that got the region, and the country, into its current mess. This was part of reversing that sprawl, and making the region a better place. Finally, the issue that tipped the scales for him was the testimony with regard to access to jobs in the Hillsboro/Beaverton area, in terms. He added that the proponent testified at Growth Management and said they believed they met Metro Code and met what the Council wanted for urban reserve plans. He did think they met Metro's test, but that was not really the point. The real test was the people who would live there, use those parks, be able to bike to school, and watch the waterfowl. They would not know if they passed that test for another 10 or 15 years, but he thought this was a step towards that. Therefore, he would support Ordinance No. 99-812A.

**Councilor Bragdon** said that at the same time, he had some reservations. Some of those reservations had been expressed, and he thought it was incumbent on the Council to work on some of those reservations so that it would be done more smoothly in the future. When he said in the paper that it should be difficult to move the UGB, he meant that it should be difficult, but not Kafkaesque, and sometimes it was. He noted his concerns and said he hoped the Council would address them in its work plan for 2000. First, while the use of private consultants brought a lot of value to the process, such as establishing the jobs/housing need in the Bethany area, Metro needed to ensure that there was public sector oversight. Secondly, there was the danger of double dipping with regards to the jobs/housing imbalance. If one developer claimed that jobs in Hillsboro would be satisfied with a particular development, he did not want to see another developer come to Metro the next year and try to count those same jobs to justify a different housing development. In addition, no one should be able to come back the next year and say industrial land was needed, when the year before they said more housing land was needed. In addition, the Council needed to look at how to do exception lands better, to stay off of more of the farm land, and at how to fund the infrastructure. In closing, he said he did not like to give up an inch of farmland, but in terms of perspective, Metro had spent hours over the last year talking about 109 acres. He said it was important, and all of the factors needed to be considered very carefully. But at the same time, the relationship between buildable livable communities and hours that were spent by attorney was not clear to him. The hours spent on Ordinance No. 99-

812A were hours that Metro did not spend on other issues, such as making downtown Beaverton and the Gateway District work, making the Rivergate area work for freight transportation, or revitalizing interior areas. In contrast, Metro had acquired 5,184 acres of greenspaces in the region, but he had not heard radio stories about those 5,000 acres, he heard stories about these 109 acres. He said he would support Ordinance No. 99-812A. He did have reservations, which he mentioned, and he would like to move ahead with the work of building communities.

**Vote:** The vote was 4 aye/ 3 nay/ 0 abstain. The motion passed with Councilors Park, McLain and Atherton voting no.

7.1 **Ordinance No. 99-833**, For the Purpose of Amending the Section of the Metro Code, Chapter 3.08 on the Work Program of the Affordable Housing Technical Advisory Committee to Complete its Recommendation for the Regional Affordable Housing Strategy Plan.

**Motion:** Councilor Washington moved to adopt Ordinance No. 99-833.

**Seconded:** Councilor McLain seconded the motion.

Councilor Washington reviewed Ordinance No. 99-833. A staff report to the ordinance includes information presented by Councilor Washington and is included in the meeting record. He said H-TAC had been doing an outstanding job trying to pull together the components of affordable housing. H-TAC needed some additional time, and he asked the Council to support the ordinance.

Presiding Officer Monroe opened a public hearing on Ordinance No. 99-833.

Mary Jean Bey, League of Women Voters of Columbia River Region, 5315 North Greeley, Portland, OR 97217, read her comments into the record (a copy of which may be found in the permanent record of this meeting).

Sarah Buckley, Community Alliance of Tenants, 2732 S.E. Belmont, Portland, OR 97214, read her letter into the record (a copy of which may be found in the permanent record of this meeting).

Councilor Atherton noted that one of H-TAC's goals was to provide a plan that included fair share targets for each jurisdiction. He asked Ms. Buckley how she defined fair share.

Ms. Buckley said she was not thoroughly familiar with the issue, but her understanding of fair share was that people could live and work in the same community. For example, if someone pumps gas in Lake Oswego, he or she should be able to live there, too. Fair share meant that there should be affordable housing for low- and moderate-income families in any area where they may choose to live and work.

Councilor Atherton asked if that was a regional decision or a decision of the community. He asked why a community would not want to have affordability for its residents.

Ms. Buckley said she did not know.

**Councilor Atherton** said he needed an answer to his question, because without it, he could not understand when fair share meant. The definition of fair share had been a constant debate in this committee. He asked if Ms. Buckley knew what an unfair share would be.

**Ms. Buckley** said yes, she did. If people were living in one area, and they were forced to commute an extended length of time in order to work in another area because they could not afford to live in that area, that was unfair. She did not see why it was not a regional issue.

**Councilor Atherton** said they were wrestling with a idea that no one had been able to define and understand. The approach that he had observed was that someone there would be a black box that lots of numbers would be plugged into, that would result in more regional mandates on communities. He said they were presupposing a strategy when the directive was to look at a strategy. He asked why it was necessary to have a fair share strategy, when it could not even be defined.

**Ms. Buckley** said fair share was necessary because communities were not taking it upon themselves to provide the housing that everybody, of all socio-economic levels, needed to live there. If the communities were not taking it upon themselves, then somebody needed to. She said she understood Councilor Atherton's point, and she thought there were different angles from which the problem could be addressed. Overall, her basic point was that they needed support for affordable housing. As an extremely low-income renter, she wanted affordable housing where ever she chose to live. She was currently unemployed, and she would like to be able to choose where she worked and be able to live nearby and ride her bike to work, and not have to purchase a car or ride public transportation for two hours to commute to work.

**Councilor Washington** said he appreciated Ms. Buckley's answers to Councilor Atherton's questions. He said when H-TAC first looked at fair share as one of many available tools for affordable housing, fair share was not demanding, but asking, that every jurisdiction have a share of affordable housing. Metro could not make a jurisdiction do that, but the purpose of H-TAC was to work toward a system in which every jurisdiction would take a fair share of affordable housing. He said they were talking about affordable housing, not low-income housing. Everybody needed to do a little bit; that was fair share.

**Councilor Atherton** summarized that Councilor Washington and Ms. Buckley said that communities were not doing what they needed to do, therefore Metro would force them to do it.

**Councilor Washington** said he did not think that was the intent at all. The intent was to have that regional discussion with and among those communities to see what could be done collectively to address the issue of fair share. It was not H-TAC's intention to try to shove fair share down anyone's throat. It was an important need, and the way to address it was by thinking collectively to find ways that would work. He said he would love to continue this discussion and share his thoughts on the matter with Councilor Atherton over a cup of coffee.

**Councilor Atherton** said he appreciated that, but they needed to have this discussion in public because many people were concerned about it, and it really went to heart of what regionalism and community was about. He said he definitely supported this effort, but he was concerned about the fair share targets and all that they implied. He thought the Council could strike part of the sentence in the ordinance. He said he would like to make a motion for an amendment.

**Presiding Officer Monroe** said it was not an appropriate time for a motion as the Council was in the middle of a public hearing. After the public hearing the Council would go to Council debate, at which time it would be appropriate for a motion.

**Charles Shi**, Chair of the Elders in Action Housing Task Force, 4417 NE 70<sup>th</sup> Avenue, Portland, OR 97218, spoke about rent costs for mobile home owners. He said the situation was very serious. In the past, owning a home but not the land was considered advantageous because it was much cheaper and people could move their homes to different locations. But after a few years, the homes were no longer mobile; they stayed at the same site. Many mobile home owners were elderly or retired. Currently, rent increases for mobile homes was about five times the cost of living increase. The rent had increased 50% since 1992. The average rent for the land under a mobile home was \$430 a month. About 85% of mobile home owners were over the age of 60. The biggest problem was the increase in rent. There was no indication that the increases would stop. In addition, when ever ownership of a mobile home park changed, the new owner would raise the rents again. He said mobile home owners were like sitting ducks. They were not able to do anything. In the tri-county area, there were 283 mobile home parks, and 17,658 mobile home sites. The Elders in Action Housing Task Force had thought of three ways to address the problem. First, to lobby for rent stabilization. Second, establish a connection with the land bank facility, at a state or county level, to stabilize the rent. Third, encourage non-profit developers to buy and improve the land and stabilize the rent. However, it did not work because the mobile owners were bickering among themselves. Therefore, they needed help from H-TAC to find a solution. He said some mobile home owners were unable to afford regular groceries because of the rent increases.

**Presiding Officer Monroe** closed the public hearing. He called for additional discussion and debate.

**Councilor McLain** said she supported this ordinance. She thanked Councilor Washington for continuing to bring issues of affordable housing before the committee. It was important to remember that the Council was extending its own goals. In the Regional Framework Plan, under Housing and Affordable Housing, the Council asked for a fair share strategy for a diverse range of housing types for specific goals for low and moderate income housing and housing densities to help the people who testified before Council. It was not a matter of Metro telling local communities what to do. It was Metro's local partners in MPAC, who reviewed and approved the Regional Framework Plan, saying to each other that they all needed to be part of the solution. She thanked Gerry Uba, Program Supervisor, and the members of H-TAC for their work. She commended the diverse members of H-TAC for continuing their discussion for six months, and said the Council should honor their request to allow them to continue their work.

**Councilor Bragdon** said as someone who sometimes became impatient with the pace of activities at Metro, he wanted to say that H-TAC was moving quickly, was in the real world, and included a diversity of viewpoints. He supported giving H-TAC an additional six months to continue its work.

**Councilor Atherton** said he was also impressed by H-TAC's work, and would like to see it continue for another six months. However, there was a section in the ordinance about fair share and targets for each jurisdiction. All of that language was against what regionalism really was.

It was not appropriate for a regional government to override local jurisdictions to accommodate anything. The Council just finished that debate on moving the urban growth boundary and the 20-year land law, which was set up to force Metro to override local jurisdictions to keep land in production. In Ordinance No. 99-833, Metro was setting itself up for another big problem.

**Motion to Amend:** **Councilor Atherton** moved to amend Ordinance No. 99-833, page 4, first paragraph, to strike the language "shall make a recommendation to the Council for the adoption of fair share affordable housing targets for each jurisdiction."

**Seconded:** **Councilor Kvistad** seconded the amendment.

**Councilor Atherton** said the language about fair share added nothing to the effort, and created a serious, potential pitfall, and he asked that the Council remove it.

**Mr. Cooper** suggested for technical reasons that Councilor Atherton consider moving to amend the language to read, "shall make a recommendation to the Council for the adoption of the affordable housing fair share targets for each jurisdiction, and." By doing so, H-TAC would then be making a recommendation to the Council for the adoption of the Regional Affordable Housing Strategy Plan.

**Councilor Atherton**, and Councilor Kvistad as the second, accepted Mr. Cooper's recommendation.

**Councilor Washington** urged the Council not to support Councilor Atherton's motion to amend. This issue had been before the Council before, and the language had been in the ordinance since the inception of H-TAC. The proper time for amending the language was some months ago.

**Councilor Park** asked for clarification from Mr. Cooper. He said he recalled that historically, this came from a lawsuit against Metro which was filed by certain locations. At that point, there was a mandatory amount per jurisdiction, which was the cause of the lawsuit. He asked how this changed or addressed that, or was any part of the current language part of the agreed upon settlement that occurred two years ago.

**Mr. Cooper** responded that there was history to how the language came into place, that related to language that was originally adopted into the Framework Plan by the Council. A Land Use Board of Appeals (LUBA) appeal was filed and mediation occurred with the petitioners (the Cities of Hillsboro and Gresham and Multnomah County), and the multiple parties that intervened both on behalf of Metro and the petitioners. There was lengthy mediation, and the resulting agreement was that the appeal would be dismissed if the Council adopted this version of the text, as well as parallel provisions in the Regional Framework Plan. The Council took that action and the case was dismissed. The Council was not precluded from further legislation in this area by that settlement, although it might lead to separate appeals of this action.

**Councilor Park** asked if, on the moral side, the Council would be breaking faith with the agreement at that time.

**Mr. Cooper** said he tried to avoid giving advice to Councilors that sounded like taking sides on a policy debate, but the answer to Councilor Park's question was, he thought, yes.

**Councilor Washington** thought that to change this ordinance at this time would be a bad precedent. He made a concerted effort to bring the ordinance before committee and the Council/Executive Officer Informal meetings, and to change it now would show bad faith. He said the issue could be discussed further at H-TAC, so that no one would be surprised. He said Councilor Atherton's motion was an inappropriate surprise for H-TAC.

**Councilor Bragdon** said if this was a matter of the Council or someone else at Metro unilaterally making up regulations and imposing them on jurisdictions, he would be open to supporting the amendment. He did not think that was the case, however, because H-TAC was composed of mayors, county commissioners, representatives from the housing authorities in each of the local jurisdictions, as did the subcommittee on fair share. There were plenty of opportunities for local jurisdictions to influence the process, and they were eager to be part of it. To preclude their participation would have the opposite effect of the Council's intention. Ultimately, anything coming out of H-TAC would be reviewed by MPAC, which consisted of local elected officials.

**Councilor McLain** said she would be voting no on the amendment. She said the Regional Framework Plan sections 1.3, 1.3.1, 1.3.2, 1.3.3, and a little bit of 1.3.4, were all relevant to the current conversation, and were all reviewed by Metro's partners. MPAC went over the document carefully in 1997, and it would be inappropriate to change the language. She urged the Council to go forward without the amendment today. If Councilor Atherton still had concerns, those concerns should be addressed in other conversations in the future.

**Councilor Kvistad** said he voted against the fair share language in the Regional Framework Plan the first time also. To be clear and to be consistent, the section on fair share targets was a problem for him. He had not been comfortable with H-TAC's approach from the beginning because it was convoluted and not clear. He said he would support Ordinance No. 99-833, regardless of the Council's action on Councilor Atherton's amendment. He said he did think that H-TAC had made strides in terms of moving ahead. In honor of Ms. Buckley standing up to Councilor Atherton, he would vote in favor of the ordinance whether it was amended or not.

**Councilor Atherton** told Ms. Buckley that he hoped it had not appeared that anyone had been "getting on her," as Councilor Kvistad had stated. It was important for the Council to have public conversations about the issues and try to achieve clarity. He said his major problem with the fair share language was that it presupposed a solution without allowing H-TAC to go through and create a regional affordable housing strategy. Instead, it focused on pushing one strategy. Fair share was controversial and had not been defined. He apologized if he was not in lockstep with everybody, or misinterpreted some of the messages that came from other groups, because he understood that the fair share language was being dropped. Regardless of whether his interpretation had been wrong, he sat on the Council as the representative of his district, and it was his best wisdom to take out the language referring to fair share and allow H-TAC to come back with a true strategy, without highlighting fair share, which he felt went against what regionalism ought to be. He urged a yes vote on his amendment.

Vote to

**Amend:** The vote was 2 aye/ 5 nay/ 0 abstain. The motion failed with Councilors Bragdon, Park, McLain, Washington, and Monroe voting no.

**Councilor Washington** closed by saying that there were no easy issues at Metro. He invited Ms. Buckley to come back anytime. He said Councilor Atherton was tough, but they would take care of him over a cup of coffee. He urged the Council's aye vote on the main motion.

**Vote on the**

**Main Motion:** The vote was 6 aye/ 0 nay/ 1 abstain. The motion passed with Councilor Park abstaining from the vote.

**8. RESOLUTIONS**

**8.1 Resolution No. 99-2876, For the Purpose of Granting a Time Extension to Washington County and the Cities of Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, Sherwood, Tigard and Tualatin for Compliance with Title 3 of the Urban Growth Management Functional Plan.**

**Motion:** Councilor McLain moved to adopt Resolution No. 99-2876.

**Seconded:** Councilor Kvistad seconded the motion.

**Councilor McLain** presented Resolution No. 99-2876. A staff report to the resolution includes information presented by Councilor McLain and is included in the meeting record. She personally thanked the many people who have worked on Title 3 compliance. She said she was confident of the work by the United Sewerage Agency (USA).

**Councilor Bragdon** said John Jackson, USA, gave him a tour of the facilities. Sometimes regardless of the amount of good staff work, if there were issues of overlapping jurisdictions, it was sometimes necessary for an executive to step in and pull it together. He commended Tom Brian, Chair, Washington County Commission, for taking the lead in terms of marshalling support.

**Councilor McLain** thanked Delna Jones, Washington County Commission, as well for her work on Title 3 compliance.

**Councilor Park** asked for clarification on the timeline. He understood that with the intergovernmental agreement (IGA) that there were some concerns in Washington County that as soon as it was signed, they would have 30 to 40 days to comply. He asked if that was correct.

**Councilor McLain** said that in the new work, they did recognize that there would have to be some staff training and that there would be a delay of four to five weeks until Metro assumed that it would be ready to go. She asked legal counsel if she was correct.

**Ken Helm**, Office of General Counsel, said that was his understanding as well. He recommended that the Council invite Mr. Noren of USA to come forward to answer any specific questions.

**Councilor Park** asked for clarification. From the time it was adopted to the time that the IGA was signed, at that point then, within the four to five weeks, it takes effect. It was his understanding that it might be sooner than that, depending on the sequence of events.

**Mr. Helm** suggested that those questions be directed to Mr. Noren.

**David Noren**, USA, said there had been discussion about when the effective date of USA's regulations would be, and there was a second question about the adoption of new intergovernmental agreements that would have the individual cities implementing USA's regulations for them. That may not happen for a little bit, but in the meantime, USA would be implementing its own regulations when they went into effect. The current proposal was to have the Board of Directors adopt regulation amendments on December 21, but they would not go into effect until late January. Those new regulations would then apply to any development that occurred. There was discussion about language to tailor it to having the same effectiveness as land use regulations, and there was discussion about when that would go into effect. If someone did not have a complete land use application submitted or was not qualified to proceed with a land use application under a local jurisdiction when these rules went into effect, that person would be subject to the rules, regardless of whether there was action by a local government. It would be USA's authority that would kick in at that point.

**Councilor Park** asked if he was correct that, if USA Board took action on December 21, and the rules went into effect in late January, and then the IGAs would potentially go into effect the first part of March.

**Mr. Noren** said that timeline was possible. Some of the IGAs may be more complicated than others. It depended on what degree of responsibility the individual city was going to take on.

**Councilor Park** asked if this was on a faster timeline than what Metro had requested in working through its original concerns about when this would all go into effect with the extension.

**Mr. Noren** said he thought that was accurate, in that it was USA's regulations that would control the vegetated corridors and where development could occur adjacent to the protected areas, not land use regulations. USA's regulations would go into effect in January, and even though it may be March, May, or as late as October for some conforming amendments in comprehensive plans to recognize USA's role, in the meantime USA's standards would be in effect. That was sooner than would have happened under the extensions that had been afforded to a number of other jurisdictions.

**Councilor Park** said he wanted to clarify that this would be faster than anything else that could have been done.

**Councilor Kvistad** said he appreciated the Council looking at this and the extensions. He thought the work done by USA and Washington County was exceptional. He consistently had problems with all of the hoops that had to be jumped through in terms of the way stormwater was treated in Washington County. Councilor Bragdon went out to Washington County to tour the facility; in Portland you could take a tour by walking out to the seawall, and Metro never addressed that. It was a bit flip and humorous, but in reality, the communities were working

hard to comply with Title 3, and he thought there were other, bigger issues to address. He thanked the committee and Council for looking favorably at the extension request.

**Presiding Officer Monroe** added his appreciation of County Commissioners Brian and Jones, who met with him and Councilor McLain and who worked very hard in a cooperative mode to make sure this happened.

**Councilor McLain** closed by adding that the Council was being asked once again to grant an extension, not an exception, to Title 3. It was a win-win situation for everyone, and continued to work toward the goal of water quality and flood mitigation.

**Vote:** The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed.

8.2 **Resolution No. 99-2878B, For the Purpose of Approving 1999 Update to the Regional Transportation Plan.**

**Motion:** **Councilor Kvistad** moved to adopt Resolution No. 99-2878B.

**Seconded:** **Councilor Washington** seconded the motion.

**Councilor Kvistad** reviewed Resolution No. 99-2878B. He first reviewed the history of the Regional Transportation Plan (RTP) and noted that it was the culmination of four years of work by Metro staff; and the 24 cities and 3 counties in the region. It was an ongoing document in the way that it looked at the region, and by Metro's own direction, had been changed to meet Metro's 2040 guidelines many times. The RTP in its current form was about 1½ inches thick, and a very detailed, comprehensive overview of exactly the kinds of programs for 20 years that the region was working on and moving forward to do. He noted that there was another 1½ inch document that contained a partial list of the public testimony. There was a third document with the remaining public testimony. He noted that the RTP came before the Transportation Planning Committee many times, and also was reviewed by the Joint Policy Advisory Committee on Transportation (JPACT) and the Transportation Planning Advisory Committee (TPAC). It was in front of the Council in resolution form, not ordinance form, so that there would be a document in place from which the Council could work. Many times, when working on long-term documents, a document needs to be in place that lists the items necessary or desired for the long-term growth and stability of the community.

**Councilor Kvistad** said in 1996, the first stage involved the Council adoption of a general RTP policy. They had been updated to support and conform to the RTP as well as to the 2040 Guidelines, the Regional Framework Plan, and Functional Plan elements. The second stage was the Functional Plan element, the Title 6 elements of the urban growth master plan and functional plan. The final stage would not occur until the ordinance portion of the RTP was prepared, probably in May, June, or July of 2000. The resolution was the result of four years of intensive staff work and cooperation with every jurisdiction. The principle elements dealt with 700 potential projects over the period of the next 20 years. There were a huge number of projects, and not every one would have funding. But the fact was, they needed to be listed in the documents so that they were there for this council and future councils at Metro and future councils in other jurisdictions, to address. Each of the projects was designed to address future growth in the region and implement 2040. All of the projects had been through the 2040 filter.

All elements of transportation were incorporated in the RTP. The completion of the entire of the entire list of projects, if they were to be built, would cost between \$7-9 billion. Everyone knew that the region did not have \$7-9 billion, it had a fraction of that amount. But the projects needed to be on board. Some people would make the argument that they needed to get the money first and then make decisions about transportation funding. He said the Metro Council ran into some problems recently using that scenario. The Council could not tell the public, give us the money and then we will determine what we want it for. Instead, it needed to present the package of programs and projects. From this package of programs and projects, decisions would be made by the region as a whole with input from the state and federal governments.

**Councilor Kvistad** said the next step was to complete the additional work needed for the ordinance, such as developing a financially constrained network, and air quality conformity. The Council needed to get the resolution form of the RTP in place to accomplish the remaining work. Someone raised the question of outcomes, and what was credible and fair. He asked if Metro was credible if, every time it reached a decision point on a product, it continued to delay because more information would be available in two months, six months, or a year. The answer was no. The Council had to make some deadlines so that it could move forward. The RTP was changeable. The ordinance phase would allow the Council the time and the direction to look at amendments. In addition, there would be an election in May; the Council could not wait until that election or until the 24 cities and 3 counties agreed on a transportation funding package, because that had not been possible in 20 years. He thought a delay of a few months would be imprudent. There was a unanimous vote from JPACT to move the RTP forward, with the understanding that there were placeholders on issues that people wanted to address later. The Council needed to ask the following questions. Did the RTP coordinate with 2040? Yes. Did it look at long-term transportation needs? Absolutely, and they would start that in a separate forum, yet related, after the first of the year. The process they went through was healthy and supported by the region, and there was a lot more to be done. He said that if the Council asked for a delay because it wanted more information or wanted to deal with the projects more, it should remember that the RTP was the result of four years of work, and it was time to make the decision. The Council could have more information later, but it was not relevant to get the information before approving the resolution. The Council would know more about the money issues later, but they were not relevant to the current decision. The public had been involved in years of public debate and testimony to get the region to a unanimous JPACT vote to pass the current RTP by resolution. He said he understood that some of the Councilors had concerns about money or projects. He asked them to rethink those concerns at this time on this particular resolution before the Council. Those concerns were relevant, but this was not the time, nor the resolution, to delay in order to have those debates. The debate would come before the Council adopted the ordinance form of the RTP. He asked the Council not to move to delay or table the resolution because a lot was at stake, including Metro's credibility. He asked for the Council's aye vote. He gave his word that, depending on the Council reorganization, if he were still chair of the Transportation Planning Committee, the committee would have the debate on the funding and prioritization issues.

**Andy Cotugno**, Transportation Planning Director, gave a short presentation on the RTP. A staff report to the resolution includes information presented by Mr. Cotugno and is included in the meeting record.

**Tom Kloster**, Transportation Planner, and **Mr. Cotugno** gave a presentation on the RTP. (See the copy of the presentation materials included in the meeting record. Included is information presented by Mr. Kloster and Mr. Cotugno.)

**Mr. Cotugno** explained that the package under consideration in the document included all of the amendments that had come through JPACT and MPAC.

**Presiding Officer Monroe** opened a public hearing on Resolution No. 99-2878B.

**Walt Hellman**, Meadows Home Owners Assn. and Citizens Against Irresponsible Growth (CAIG), 2451 SW Clover Ct., Hillsboro, OR, commented on Metro's plan to convert TV Highway into a limited-access expressway as a supposed means of accommodating growth caused by bringing the South Hillsboro urban reserve inside the Urban Growth Boundary (Item 3121 North Washington County plan). He said people objected to traffic and looked to move away because of it. He said the people moved there for the quality of life felt betrayed. He felt discussion on Area 65 missed that point. He said it didn't matter if a proposal had beautiful parks, schools, and streamside protection if you got stressed out by debilitating traffic. The best hope was to have a credible regional transportation plan. He said people were disappointed because they saw a document that allowed development because transportation plans were in place. But, he said, the plans were not realizable. He said development occurred because the plans were in place. The worst example of this lack of credibility was the proposed TV Highway Expressway—a keystone of the Sherwood Development. There was not chance the expressway could be realized in the foreseeable future because the logistics were impossible and the highway was not expandable. He said it had no priority for expansion whatsoever at the state level. He brought up the funding issue as well. He recalled that the heavy hitters working on behalf of the West Side Light Rail had been unable to get an overpass over 185th for the light rail and no one was hitting to get the overpass and cloverleaf a few blocks south. He said when the public saw the expressway plan as the official planning document for the area, it would promote public cynicism about the entire planning process and allow anti-government demagogues to make a laughing stock of the planning process. He said the result in either case would be to destroy the only process that offered hope. He felt the answer was to use realistic capacity projections only—not paper solutions that would never happen. He commented that to give this document credibility, item 3121 should be removed.

**James Peterson**, Multnomah Neighborhood Association, 2502 SW Multnomah, Portland, OR 97219, said he had submitted a letter to Council Bragdon requesting 30 copies of this document for the 16 neighborhood associations. He noted a copy of a letter from Mr. Cotugno denying that request. He requested that the neighborhoods get at least one copy each when the next draft of this document was available. He said that was consistent with the Metro Charter, with Title 8, and with Goal 1. He realized that when this coalition reviewed the Southwest plan, they redefined the way the bureau of planning at the city of Portland worked. He said the system was good with community involvement, which showed the weaknesses and strengths of the Bureau of Planning. He also called attention to an information request he had submitted to Deborah Stein at the Bureau of Planning, with a copy of some minutes with Kathleen Larson, declaring that the TAZ numbers used in the RTP were off by 1000 units. He said the response to that letter was not really a response, rather it was a list of TAZ allocations at 2015, which show they were off by 1000 units or more. He said that would cause air quality standard problems. He felt

Metro needed to take another look to make sure the transportation dollars were spent where they were needed so we didn't end up with a big parking lot.

Steve Larrance, CAIG, 20660 SW Kinnaman Rd., Aloha, OR 97007, said Oregon's land-use planning was founded on the principle that growth must follow planned and funded transportation improvements, as it followed all urban services. Substantially lowering the level of service standards to support the 2040 plan as the RTP process proposed was not responsible regional planning. He said institutionalized congestion was a dangerous public investment policy that could severely undermine Metro's plans to gain support for funding. He said CAIG appreciated the opportunity to respond to the RTP issues regarding the TV Highway. He commented that the DKS study distributed to the Council was done for the Washington County Board of Commissioners and had information bearing on the creation of this limited-access expressway for TV Highway. He said CAIG supported an independent study of the TV Highway corridor and felt it needed to be done by an independent consultant and not by Metro staff who seemed to have already reached its conclusion before the study. He noted that the public comment part of the RTP had a request to delete any classification changes to TV Highway until the study was complete, and to delete any references to possible study outcomes. He said the RTP draft contained specific comments as bullet items which predetermined the outcome, one of which was the expressway. The city of Hillsboro had requested other refinements of those items to further predetermine the outcome of the study. He said CAIG also questioned Metro's statements in the RTP that the changes to the RTP were not related to the South Hillsboro UGB proposal. A presentation by a member of the Transportation staff to the Hillsboro planning commission last spring and a memo to Washington county, also last spring, both indicated a different relationship between the radical expressway proposal and the 20,000-person expansion. CAIG had worked hard to obtain an index for each Councilor of the DKS report. It was a valid comparison to the Hillsboro City Developer report. He hoped council would read it and note the much larger traffic impacts described and factually supported by DKS. He said CAIG looked forward to further discussions on this as the RTP adoption process moved forward.

Martie Sucec, Chair Multnomah Neighborhood Association, 7005 SW 34<sup>th</sup> Ave., Portland, OR 97219, said she wanted to address a serious issue that was causing erosion of support for Metro and had caused problems with the southwest plan and with planning in Portland in general. She noted page 332 of the RTP, Barbur Boulevard improvements, and page 338, West Portland Town Center improvements, which was about \$20 million in good improvements. She said the problem was the West Portland Town Center designation made in 1944 by three people wanting to improve the triad at Barbur, Capitol Highway, and Taylor's Ferry. They had asked for a designation of a town center, a new 2040 design concept not fully fleshed out or defined, because they thought it would be a traffic remedy. Since then, the City of Portland had defined it in such a way as to promote massive and intense density at a critical junction. That junction included Woods Park, which was a watershed serving hundreds of acres in that basin, and Tryon and Falling Creek headwaters. She said those environmentally sensitive areas were already threatened by development. The Southwest Community Plan task force had been working with a coalition of 16 neighborhoods to develop a designation that would provide a plan for the whole Barbur corridor. She said this was not the first time the neighborhood associations had asked Metro to remove the designation. One neighborhood, West Portland Park, wanted the designation but there were 20 pages with 20 signatures per page opposing the designation. She commented that a recent letter from Mayor Katz indicated perhaps the designation was made too hastily and that no decisions in the southwest would be based on it. She promised to constitute a

plan for the whole of Barbur to promote the density and development needed without compromising critical areas and neighborhoods. She said this designation had eroded support for Metro and she requested the Council to integrate the West Portland Town Center with the Barbur corridor plan.

**Councilor Atherton** said the staff had made a presentation about how the RTP focused on accommodating growth and how most of the money was going for that. He asked Ms. Sucec how she would feel about an opportunity to vote on who would pay the costs of growth.

**Ms. Sucec** said she would welcome it. She believed lots of other people would welcome it also.

**Mr. Peterson** agreed. He thought people wanted growth to pay for itself.

**Mr. Larrance** said they had examples of that in the region. The traffic impact fee implemented in Washington County about 16 years ago was an example of people's belief that growth should pay at least a portion of its own expenses. But it's always easier to get people to say that someone else should pay. The other side of the coin was that a year after that, the MSTIP process began in Washington County, whereby people agreed that we all own part of the problem and agreed to pay for part of that. He said it had been an ongoing process and that was where the problem with credibility came in, allowing growth based upon planning and not on funded projects. He said Metro needed to create growth where services could be provided.

**Larry Derr**, CAIG, 53 SW Yamhill, Portland, OR 97204, read his memo, which had been faxed to the council that morning into the record. His testimony affirmed the importance of the RTP as a tool to guide planning, but said it needed to put forth a realistic plan that was fiscally responsible. He said the RTP performed a variety of functions, but the most important hadn't been addressed, which was how it worked with growth management decisions and local UGB amendments. He said that function could not be left implied, it needed to be made explicit.

**Recorder's Note:** Gary Katsion, Kittleson & Associates, 610 SW Alder St., Suite 700, Portland, OR 97205 and Mark Whitlow, Retail Task Force, 1211 SW 5<sup>th</sup> Avenue, Suite 1500, Portland, OR 97204, submitted testimony cards in support of referring the RTP back to JPACT but could not stay to testify. Don Baack, 6495 SW Burlingame Pl., Portland, OR also submitted a testimony card but was not present when he was called.

**Deputy Presiding Officer McLain** closed the public hearing.

**Councilor Atherton** asked Mr. Cotugno about Mr. Derr's comments on developing a strategy to deal with existing communities separate from that addressing growth. He asked what it would cost to take care of the people who were here right now.

**Mr. Cotugno** said he did not have that number. The number available was one that addressed all the needs in the region.

**Councilor Atherton** asked how long it would take to break that segment out.

**Mr. Cotugno** said it would be possible to do that but he could not provide a time estimate. He said that would be an essential part of the work during the next six months as the finance plan was developed.

**Councilor Atherton** asked if that kind of strategy had been considered before.

**Mr. Cotugno** said it had always been considered an essential part of the follow-up. He said an MPAC subcommittee had already developed a list of about 25 different funding sources and a methodology for evaluating those sources.

**Councilor Atherton** addressed Mr. Derr's criticism about transportation/land-use planning. He asked if the RTP addressed that issue adequately.

**Mr. Cotugno** said no, it lacked a finance plan to reach the strategic plan. He thought the suggestion was that if land uses were allowed, and a certain set of projects would be needed to serve those uses, then the finance plan was needed to implement those projects. He said that was the finance plan that needed to be done and it was not in the plan right now. He said what was in the plan was a description of the transportation plan that would be needed to serve a particular land use plan.

**Councilor Bragdon** said they were trying something difficult that had not been done anywhere else in the country. He compared it to trying to turn an ocean liner around that had been headed in one direction since the late 1940s. For the first time, policy was trying to make transportation be the servant of land use instead of its master. The document was a good start toward that but the money aspect fell short. He said because of that, he would not be supporting the resolution. He believed having a document to share with the public was good but to base it on four times the foreseeable revenue was too much of a stretch. He said if the zoo were to come before the council with a great plan, it would be asked about its revenue projections. If the projections were based on four times the foreseeable revenues, the council would be skeptical. He was concerned about reaching the realistic strategy. He was also disturbed by the letters received from the Department of Environmental Quality (DEQ) with implications for the federal conformity process saying you can't have too large of a stretch. In addition to the large gap, he was concerned about the role of the Council in the event that the plan was approved but the money never materialized. He said aside from the introduction the plan did not read like a truly regional plan, rather it read like a collection of local wish lists. He understood this reflected the current process. He said a case had been made at JPACT about unanimity. He said that indicated a problem to him. He said a series of unanimous decisions in a democracy suggests a problem of a small group promoting large plans that could not be paid for. He said he would like to see the RTP break out of that pattern and said he would suggest making a strategic system that approximated the existing resources rather than exceeding it by 400%. He said he would like to see the maintenance of existing assets addressed. He would like to see the money tied to the expressed visions of communities themselves in terms of how neighborhoods worked.

He said big projects were not always the answer, sometimes it was a lot of little solutions. He said more streets and a better grid, not bigger roads, were needed. He said he was irritated by the Bicycle Transportation Alliance's list of projects as this was not about lists of projects. He said he would like to make transportation the servant of land use and how communities wanted to function, not the reverse.

**Councilor McLain** said she was voting on a resolution, not an ordinance. The resolution was one that would bring everyone to the table. She said the process began with the 2040 growth concept and the staff had been directed to provide a transportation plan to enable that kind of growth. They had spent two or three years talking with local jurisdictions about regional and local connections that would be needed to build the 2040 concept. She said local jurisdictions knew they had \$7-9 billion worth of projects and the strategic funding was not there to build it. The purpose of the resolution was to set up the conversation to create the constrained list and the constrained funding part. She commented that if this resolution was not passed, the conversation comes to an end as people whose projects were dropped off the list opted out of the conversation. She was concerned about some of the projects on the list, the TV expressway among them, however, she would not vote no on the resolution just to have that conversation. She said there were rural roads that had urban use. She did not believe the RTP furthered the solution for that. She also did not like a couple of the projects Washington County was promoting, and she did not think the County was helping Metro understand how to deal with the inherent conflicts between rural and urban uses of rural roads. She said a no vote would not help that situation and it would not help people focus their discussions on the fiscal constraints.

**Councilor Washington** was sympathetic to Councilor Bragdon's concerns and thought the ocean liner metaphor was a good one as the whole issue had outgrown potential resources. However, he said he would be supporting the resolution to enable the conversation to take place about how to deal with the situation. He knew it would not be easy. He said growth and transportation were inseparable as they took place because of each other and were inextricably bound.

**Councilor Atherton** said if he could understand how approval of this resolution would make things better, he would support it. But he couldn't. He said he had written an alternative method of addressing the issue but it hadn't yet been taken seriously. He thought the financing issue should be at the beginning of the process, not the end. He recommended tabling this issue until Mr. Cotugno could provide a vision of the "constrained" list and how much it would cost. He felt if those numbers were available, people in the community would not be confused. He said he would be bringing a proposal to the Council on how to put it to a vote. He said until the question of whether growth should pay its own way was answered, the little issues would keep coming up. He said he would move to table this item.

**Motion:** Councilor Atherton moved to table Resolution No. 99-2878B

**Second:** Councilor Bragdon seconded the motion.

**Vote:** The vote was 3 aye/4 nay/ 0 abstain. Councilors Atherton, Park, and Bragdon voted aye. Presiding Officer Monroe and Councilors Washington, McLain, and Kvistad voted no. The vote was 3 aye/4 nay/0 abstain and the motion to table failed.

**Councilor Kvistad** said the RTP represented four years of work. He noted that four of the current Councilors had been through the land use and transportation "wars." He said the road projects might be finished as far as the projects themselves, but the overall system would never be finished in a dynamic, growing, urban environment. He said the area had grown faster than anyone had expected, leaving many communities behind in the rush for money. He said the 24

cities and 3 counties that fell within Metro's jurisdiction had come to the table to support a new way of doing transportation business and to support the 2040 plan. He said this RTP was not complete; it was only a proposal of which to build toward the 2040 concept. Everything in the plan had gone through the 2040 filter and would move Metro closer toward that goal. He said money was always a question and no one knew that there would be a ballot measure this May. He said the people needed to put pressure on the legislature.

Councilor Kvistad thanked the transportation staff, the members of JPACT, and all the partners who had contributed to the plan. He urged an aye vote.

**Vote:** Presiding Officer Monroe and Councilors Park, McLain, Washington, and Kvistad voted aye. Councilors Bragdon and Atherton voted no. The vote was 5 aye/ 2 nay/ 0 abstain, and the motion passed.

**Councilor Kvistad** addressed the presence of the cameras in the chamber. He said people from around the region consistently said they did not have enough information about what Metro does. He noted that the Tualatin Valley cable was in the chamber, but no one from *The Oregonian* was present. He said it was unacceptable for decisions of this magnitude to be left uncovered by the newspaper. He thought it reflected poorly on the newspaper and on the reporter assigned to cover Metro affairs.

**8.3 Resolution No. 99-2880, For the Purpose of Authorizing an Intergovernmental Agreement with the City of Portland concerning the Civic Stadium and Center For the Performing Arts.**

**Motion:** Councilor Washington moved to adopt Resolution No. 99-2880.

**Seconded:** Councilor Kvistad seconded the motion.

**Councilor Washington** reviewed the purpose of the amendment by reading the staff report into the record. (The staff report can be found in the agenda packet that is part of the meeting record.)

**Councilor Park** asked Mr. Cooper to verify that this amendment in no way affected the ability of the east county cities to continue their negotiations on how they were dealing with the Civic Stadium and the City of Portland.

**Mr. Cooper** said this would not affect that conversation.

**Vote:** Presiding Officer Monroe and Councilors Atherton, Bragdon, Kvistad, Washington, Bragdon, and Park voted aye. The vote was 7 aye/ 0 nay/ 0 abstain, and the motion passed unanimously.

## **9. CONTRACT REVIEW BOARD**

**9.1 Resolution No. 99-2872, For the Purpose of Providing an Exemption from Competitive Bidding Requirements for a Request for Proposals for Construction Management/General Contractor Services for the Oregon Convention Center Expansion Project.**

**Motion:** Councillor Atherton moved to adopt Resolution No. 99-2872.

**Seconded:** Councillor Washington seconded the motion.

Councillor Atherton explained that this resolution would allow Metro to exempt competitive bidding for expansion of the Convention Center in favor of a construction manager/general contractor process. This did not mean there would be no competitive review of the Request for Proposals (RFP) for this service. He said for large, complex public projects, change orders could cause problems for the project and drive costs up. He said using a construction manager/general contractor arrangement could avoid these problems. He urged an aye vote.

Councillor Washington believed this was the same process that was used on Hall "D" at Expo.

Presiding Officer Monroe opened a public hearing on Resolution No. 99-2872. No one came forward to testify, so he closed the public hearing.

**Vote:** Presiding Officer Monroe and Councillors Atherton, Bragdon, Kvistad, McLain, Washington, and Park voted aye. The vote was 7 aye/ 0 nay/ 0 abstain, and the motion passed unanimously.

Presiding Officer Monroe adjourned the Contract Review Board and reconvened the Council meeting.

## 10. COUNCILOR COMMUNICATION

Councillor Kvistad wished the Council a good holiday from himself and from his family. He noted that Metro spent \$20,000 to \$30,000 putting notices in *The Oregonian*. He asked Mr. Cooper to investigate whether those notices could be placed instead on the Internet.

Presiding Officer Monroe said state law required notification in a newspaper of major circulation.

Councillor Bragdon thanked the Presiding Officer and everyone on the Council for a good first year.

Councillor McLain said it had been pleasant to work with six other people who took their work seriously and who worked diligently.

Councillor Atherton said he had prepared an elections code which would be considered next year.

Councillor Park said the past year had been a learning experience for him. He had not known what to expect before he came. He said passing the ethics code had been a high mark. He thanked the staff for putting up with the changes that happened every year. He appreciated staff's hard work on behalf of the Council. He looked forward to the New Year.

Councillor Kvistad said he had ended every year by saying, "Go Ducks," as they faced a bowl game and this year he could also say, "Go Beavers," as they also faced a bowl game.

**Councilor Washington** said he had conducted interviews with five people for director of REM. He said three finalists had been selected and forwarded to Mr. Warner. He wished everyone a happy holiday season. He thanked Jeff Stone and Chris Billington for their hard work, as well as the rest of the Council staff. He expressed his respect for his fellow Councilors and thanked them for their dedication.

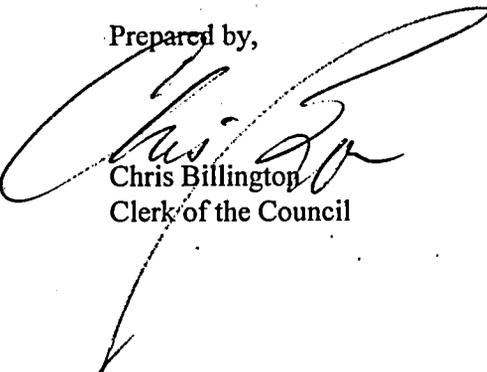
**Jeff Stone**, Chief of Staff, said three legislators, Max Williams, Bruce Starr, and Deborah Kafoury had toured Metro that day. He said their questions had been illuminating. He publicly expressed his appreciation for Metro's generous policy of allowing family leave. He said his daughter, now four months old, was doing well. He appreciated having been able to spend the time with her. He wished everyone a happy holiday season.

**Presiding Officer Monroe** said he appreciated the Councilors' dedication to their work this year. He praised the Council staff and said it was the best it had ever been. He praised Jeff Stone and Chris Billington for their roles in holding it all together.

**11. ADJOURN**

There being no further business to come before the Metro Council, Presiding Officer Monroe adjourned the meeting at 6:40 p.m.

Prepared by,



Chris Billington  
Clerk of the Council