

A G E N D A

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METRO

Agenda

MEETING: METRO COUNCIL REGULAR MEETING
DATE: October 6, 2005
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. **INTRODUCTIONS**
2. **CITIZEN COMMUNICATIONS**
3. **COUNCIL DIRECTION TO HOUSING CHOICE ADVISORY COMMITTEE** Uba
4. **SMITH AND BYBEE STUDY** Hart
5. **COOPER MOUNTAIN MASTER PLAN PRESENTATION** Desmond/
Carlson
6. **CONSENT AGENDA**
- 6.1 Consideration of Minutes for the September 29, 2005 Metro Council Regular Meeting.
7. **RESOLUTIONS**
- 7.1 **Resolution No. 05-3620**, For the Purpose of Entering an Order Relating To an Application by Clackamas County for an Exception from Title 3 Of the Urban Growth Management Functional Plan.
8. **EXECUTIVE SESSION HELD PURSUANT TO ORS 192.660(1)(e). DELIBERATIONS WITH PERSONS DESIGNATED TO NEGOTIATE REAL PROPERTY TRANSACTIONS.**
9. **CHIEF OPERATING OFFICER COMMUNICATION**
10. **COUNCILOR COMMUNICATION**

ADJOURN

Television schedule for Oct. 6, 2005 Metro Council meeting

Clackamas, Multnomah and Washington counties, and Vancouver, Wash. Channel 11 -- Community Access Network www.yourtv.org -- (503) 629-8534 2 p.m. Thursday, Oct. 6	Washington County Channel 30 -- TVC-TV www.tvctv.org -- (503) 629-8534 11 p.m. Saturday, Oct. 8 11 p.m. Sunday, Oct. 9 6 a.m. Tuesday, Oct. 11 4 p.m. Wednesday, Oct. 12
Oregon City, Gladstone Channel 28 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.	West Linn Channel 30 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.
Portland Channel 30 (CityNet 30) -- Portland Community Media www.pcmtv.org -- (503) 288-1515 8:30 p.m. Sunday, Oct. 9 2 p.m. Monday, Oct. 10	

PLEASE NOTE: Show times are tentative and in some cases the entire meeting may not be shown due to length. Call or check your community access station web site to confirm program times.

Agenda items may not be considered in the exact order. For questions about the agenda, call Clerk of the Council, Chris Billington, (503) 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 e-mail, fax or mail or in person to the Clerk of the Council. For additional information about testifying before the Metro Council please go to the Metro website www.metro-region.org and click on public comment opportunities. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

MINUTES OF THE METRO COUNCIL MEETING

Thursday, September 29, 2005
Metro Council Chamber

Councilors Present: David Bragdon (Council President), Susan McLain, Robert Liberty, Rex Burkholder, Carl Hosticka, Rod Park, Brian Newman

Councilors Absent:

Council President Bragdon convened the Regular Council Meeting at 2:01 p.m.

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

3.

Ray Phelps, Allied Waste Services, 10295 SW Ridder Rd. Wilsonville, OR 97070 notified the Council that Allied Services had had a change in management. He explained the changes in management (a copy of his letter is included in the meeting record).

3. PRESENTATION OF THE 2005-06 SLATE OF NORTH PORTLAND REHABILITATION AND ENHANCEMENT GRANT PROJECTS

Councilor Burkholder introduced Jean Estey Hoops, Alan Holzapfel, Susan Landauer, and Mark Kirchmeier. The group would present grant projects. Karen Blauer, Solid Waste and Recycling Department, provided a summary of the members presentation (included in the meeting record). Mr. Kirchmeier explained the criteria for the grants and the reason for the enhancement grant program. Ms. Landauer appreciated Councilor Burkholder and the Metro Council for the budget amendment. Mr. Holzapfel highlighted some of the projects for the 2005-06 budget cycle and detailed some of the demographics of the community that received the grants. Ms. Hoops talked about the applicants for this year's grants. She noted that the committee had worked diligently to ensure the funds were spent appropriately. Mr. Holzapfel thanked the Council for the additional money. He noted that this money oftentimes functioned as seed money. Mr. Kirchmeier said this fund was one of the very best faces Metro had to show their north Portland residents. Ms. Hoops added her comments.

Councilors acknowledged the committee's efforts and Councilor Burkholder's leadership. Councilor Liberty asked if the committee had learned anything in the granting of funds. Ms. Landauer said she felt the north Portland residents needed more of a platform to know about Metro. Mr. Holzapfel added that the committee recognized that someone on the committee knew all of the opportunities. He felt the funds established a link to Metro. Ms. Hoops said every one of these projects showed that government cared. The neighborhoods could empower themselves by these projects. Councilor Burkholder thanked the committee for their work.

3. CONSENT AGENDA

4.1 Consideration of minutes of the September 22, 2005 Regular Council Meetings.

- 4.2 **Resolution No. 05-3611**, For the Purpose of Authorizing the Chief Operating Officer to Execute Amendment 2 to the Contract No. 922793 with Reischman Concerts LLC for Provision of an Additional Concert at the Oregon Zoo.
- 4.3 **Resolution No. 05-3619**, Considering an Amendment to Metro Contract No. 924828 for a Shared Revenue Contract for Lease of a Portable Simulation Theater at the Oregon Zoo.

Motion:

Councilor Burkholder moved to adopt the meeting minutes of the September 22, 2005 Regular Metro Council and Resolution Nos. 05-3611, 05-3619. Council President Bragdon requested that on page 10 of the minutes the word “price” be inserted before regulation.
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Vote:

Councilors Burkholder, McLain, Liberty, Park, Newman, Hosticka and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed with the amended minutes.
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5. RESOLUTIONS – TIME CERTAIN PUBLIC HEARING

- 5.1 **Resolution No. 05-3600**, For the Purpose of Entering an Order Relating to Newman Compliance With the Urban Growth Management Functional Plan.

Motion:	Councilor Newman moved to adopt Resolution No. 05-3600.
Seconded:	Councilor McLain seconded the motion

Councilor Newman introduced the resolution and explained the Functional Plan requirements, which included a public hearing. Sherry Oeser, Planning Department, reviewed the revisions to the original report received by the Council. She acknowledged the additional reports received after the deadline. Councilor Newman added that Metro Council’s action today would be to accept the report. Councilor McLain said when we accept this report we were acknowledging the jurisdictions who have completed their requirements.

Council President Bragdon opened a public hearing.

Sandi Young, City of Wilsonville Planning Director, 30000 Town Center Loop Wilsonville, OR 97070 submitted some corrections to the report. She reviewed those corrections, the Title 1 report was done, for Title 11 they had received a Transportation Growth Management (TGM) grant and they had been working on Title 7. Councilor Newman appreciated the work of Wilsonville.

Dennie Egner, Long Range Planning Manager for the City of Lake Oswego, 380 A Avenue Lake Oswego, OR 97034 spoke to Titles 3 and 7 and their progress on each of these titles. He noted that they had very good environmental protection. He addressed the City’s Title 7 Affordable Housing processes. Councilor Liberty asked about the public hearing on October 18th concerning housing issues. Mr. Egner responded to his questions. Councilor McLain suggested a footnote where the cities had completed compliance. She felt there should be some type of recognition of the updates provided by the jurisdictions.

Bryan Brown, City of West Linn Planner, 22500 Salamo Rd #1000 West Linn OR 97068 thanked the Council for their invitation to come to the Council meeting. He also acknowledged the Get Centered events he had attended. He talked about Title 3 and provided a background of West Linn's process efforts to comply. He wondered about the relationship between Title 3 and the Nature in Neighborhood program. He also spoke to the affordable housing issue. Councilor McLain explained the difference between Goal 5 and Title 3 but noted that they were integrated. She offered Metro staff's assistance. Councilor Liberty suggested talking about opportunities to create more housing choices in West Linn.

Councilor Park commented on Lake Oswego's compliance with Title 3. It could be noted but he didn't suggest that the Council condone it.

Council President Bragdon closed the public hearing.

Councilor Burkholder talked about why we bothered with compliance goals. He noted some issues with Title 7, which was the one title that quite a few jurisdictions were out of compliance on. He said they were still working on housing choices in the region. They were reviewing Title 7. Councilor McLain spoke to Title 11, planning new areas. She was hopeful to have a discussion with their partners.

Council President Bragdon said he was supportive of the report. He noted the two areas where jurisdictions were out of compliance, Affordable housing and Concept Planning. He also spoke to Metro's current efforts on these issues. Councilor Newman explained legislation that was on the agenda related to this item. He urged support.

Vote:

Councilors Park, Hosticka, Burkholder, Newman, McLain, Liberty, and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.

Councilor McLain asked our Chief Operating Officer (COO) for an update on Multnomah County compliance. Michael Jordan, COO, said he would update the Council under COO communications.

5.2 **Resolution No. 05-3620**, For the Purpose of Entering an Order Relating To an Application by Clackamas County for an Exception from Title 3 Of the Urban Growth Management Functional Plan.

Motion:	Councilor Newman moved to adopt Resolution No. 05-3620.
Seconded:	Councilor Liberty seconded the motion

Council President Bragdon asked Dan Cooper, Metro Attorney, to explain the resolution. Mr. Cooper responded to his question concerning the exception request. He said Council was required to make a decision based on the facts of finding. The Council was also required to review the criteria. The staff had prepared an order. If Council wanted to reach a different conclusion they could direct staff to draft a different order. He noted that this was similar to a quasi-judicial proceeding. Councilor Newman clarified his motion. Mr. Cooper said the resolution before Council did not incorporate the staff report. Council would need to either approve or deny the order. Councilor Liberty asked about interpretation of criteria. Mr. Cooper responded to his question. He said this was the first exception the Council had heard concerning the Functional Plan so there was no precedent that had been sent.

Paul Ketcham, Planning Department, provided the staff report for Clackamas County's exception. A letter was submitted for the record from Douglas McClain, Planning Director of Clackamas County (a copy may be found in the meeting record). He talked about Metro staff's communication with the County over the course of the past five years. He noted the four criterion and the approach of the Metro staff to assess the criterion as well as compliance with the criterion. The COO recommended that that Metro Council deny the exception.

Council President Bragdon opened a public hearing.

Doug McClain, Planning Director for Clackamas County, said they were disappointed that the Council didn't have opportunity to review the written submittal. It was the basis of their claim. He encouraged Council's review of the submittal. He said Clackamas County was oftentimes in the lead. He said the County was not requesting a categorical exception to Title 3. They were only requesting an exception to a particular area near Oak Lodge. He provided a history of this area. They were in compliance with all other areas. He provided a history of Clackamas County's process. They were trying to explain the rational behind the Board of Commissioners' decision.

Mike Judd, Assistant General Counsel for Clackamas County, reviewed the specific criterion and suggested that Clackamas County deserved an exception. Councilor Liberty asked clarifying questions. Mr. Judd continued with the criterion. Councilor Hosticka asked about regulations and who was the operative entity. Mr. Judd responded to his question. Mr. McClain further responded by explaining that Oak Lodge was an exception. Council President Bragdon said these regulations were sometime regulated by Surface Water Management Agency and sometimes regulated by the County Commissioners' land use Code. Councilor McLain added that they were dealing with two boards. Councilors asked further clarifying questions. Mr. McClain responded to their questions. Council President Bragdon noted the County Board of Commissioner's action on this issue, which was to recommend the exception. Mr. McClain said they had regulations in place, it was a difference between a 25 foot and 50 foot buffer. He talked about what was left to protect. He noted the committed property's list. He shared the vacant land and developed areas on the map near the wetlands. Councilor McLain asked about application of Title 3 to the properties. Mr. McClain responded to her question. Councilor Liberty asked which buffer was utilized, 25 or 50 feet. Mr. McClain said they applied the 50-foot buffer. Mr. Judd reviewed the other three criteria.

Council President Bragdon explained that they had to look at the four criteria, he spoke to criteria one. He asked if there was something specific topographical that should allow exception. Second, he asked about Title 3 standards. Mr. Judd and Mr. McClain responded to his questions. Council President Bragdon asked about Criteria 2, an outcome not being able to be achieved regionally. Mr. Judd talked about considering the precedent. Each area and resource needed to be looked at on its own.

Councilor McLain asked if this was the only Title 3 feature within the Oak Lodge Sanitary District. Mr. McClain responded no, there were two other streams in the area that were protected under Goal 5. They both had a minimum buffer of 50 feet. Boardman Creek was not regulated by those zoning ordinances. Councilor McLain asked if there were other regulations that would apply. Mr. McClain said they didn't have a 50-foot buffer that was the only regulation that was different. Councilor McLain asked about other tools that a Sanitary District would have to protect the wetland or the stream. Mr. McClain said they didn't have a 50-foot buffer they had a 25-foot buffer. Councilor Liberty summarized some of the facts of their argument concerning Criteria 1. He asked about the developed properties. Mr. McClain said he could not answer his question.

Councilor Newman commented that he had talked with a property owner in the area about a year ago. Councilor Park asked about the damages. Mr. McClain said he did not know, they had heard testimony from property owners. Councilor Liberty asked about the existing development pattern and what was contemplated when developing the criterion. Dick Benner, Metro Senior Attorney, said when they developed the criteria they were trying to anticipate density patterns. There were areas of the region that were fully built out. For such an area, citizens could use this reasoning as an exception. Andy Cotugno, Planning Director, said the criteria were for any exception to any title. Councilor McLain talked about the inventory and the differences in the inventory. Mr. Ketcham said the county and its local process board made findings that this creek was not a significant resource. That did not preclude Metro from determining this creek as a significant resource. Mr. Ketcham responded to his question. Mr. Cooper clarified that our Title 3 was not a Goal 5 program. It was based on the existence of streams.

Council President Bragdon closed the public hearing. Councilor Liberty asked if the procedure was correct. Mr. Judd said he thought they were finished.

Motion:	Councilor Newman moved to deny the exception request for Clackamas County.
Seconded:	Councilor Burkholder seconded the motion

Councilor Newman spoke to the reason why he recommended denial. Councilor Burkholder concurred with Councilor Newman’s comments. He spoke to fairness and unnecessary issues. Applying the law consistently was a higher level of fairness. Councilor Liberty talked about their de minis argument. He felt the facts were not adequate. Councilor McLain talked about criteria 1 and 4. Councilor Park thanked both staffs for their efforts. He would be supporting Councilor Newman’s motion and spoke to effects across the region. Council President Bragdon also thanked the staff’s efforts. He would be supporting Councilor Newman’s motion. This was about the measure to protect clean water and prevent flooding.

Vote:	Councilors Park, Hosticka, Burkholder, Newman, McLain, Liberty, and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.
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Mr. Cooper said they had an order. The procedural question was whether this allowed the order to go forward. Was Council’s intent clear enough? Mr. Benner said if they approved the resolution, they have adopted the order. Council President Bragdon indicated that since they had just received the order, he would hold this item over until next week for consideration.

6. ORDINANCES – SECOND READING

6.1 Ordinance No. 05-1091A, For the Purpose of Amending Provisions of Metro Code Chapter 7.01 Relating to Excise Tax imposed on Certain Consumer And Exhibitor Payments at the Metropolitan Exposition-Recreation Commission Facilities.

Motion:	Councilor Park moved to adopt Ordinance No. 05-1091A.
Seconded:	Councilor Burkholder seconded the motion

Councilor Park said Metro did not presently collect sales tax on payments made by consumers and exhibitors at licensed events and retail businesses at Metro regional parks and at facilities managed by the Metropolitan Exposition-Recreation Commission. Amending Metro code chapter

7.01 to include an exemption from excise tax on payments made by consumers and exhibitors to operators accurately reflected Metro’s actual excise tax collection practices. This resolution simply codified the actual practice of how Metro imposed an excise tax.

The proposed exemption did not affect the following revenue, all of which would continue to be subject to the excise tax of 7.5%: Facility rental charges and all event-related charges when such payments are made directly to MERC; Rent payments made to MERC by the retail lessees; Gross concessions and catering revenue collected by MERC’s authorized concessionaire; Gross parking revenue collected by MERC’s authorized parking lot management contractor; Commissions paid to MERC by private operators of miscellaneous services provided at the MERC facilities, including commissions paid by ATM operators, vending machines operators, and electrical contractor Hollywood Lights (at the Expo Center).

The suggested language for the Code change was attached in Exhibits A and B. Budget impacts included gross revenue collected by OCC’s wireless internet provider would be exempt under this section. The 2004-05 excise tax generated from this revenue source was \$7,500, and the estimate for 2005-06 was approximately \$7,800. Councilor McLain asked a clarifying question. Mr. Cooper responded to her question.

Council President Bragdon opened a public hearing on Ordinance No. 05-1091A. No one came forward. Council President Bragdon closed the public hearing.

Vote:

Councilors Park, Hosticka, Burkholder, McLain, Newman, Liberty and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.

6.2 **Ordinance No. 05-1095**, For the Purpose of Amending the FY 2005-06 Appropriations Recognizing Grants and Donations to the Oregon Zoo, Adding 2.0 Limited Duration FTE; and Declaring an Emergency.

Motion:	Councilor Newman moved to adopt Ordinance No. 05-1095.
Seconded:	Councilor Hosticka seconded the motion

Councilor Newman said the ordinance amended the budget to reflect donations and recognize grants received by the Oregon Zoo. He detailed the donations received by the Oregon Zoo. He urged approval.

Council President Bragdon opened a public hearing on Ordinance No. 05-1095. No one came forward. Council President Bragdon closed the public hearing.

Vote:

Councilors Park, Hosticka, Burkholder, McLain, Newman, Liberty and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.

6.3 **Ordinance No. 05-1077C**, Amending the Regional Framework Plan and the Urban Growth Management Functional Plan Relating to Nature in Neighborhoods.

Council President Bragdon said this ordinance was carried over from the previous week. He asked Chris Deffebach, Planning Department, to address those that had worked on this effort. Ms.

Deffebach acknowledged all of the staff that had worked on this effort both internal and external to the agency. Councilors also thanked Ms. Deffebach's for her efforts.

Council President Bragdon opened a public hearing on Ordinance No. 05-1077C.

Dorothy Cofield, 4248 Gatewood Lake Oswego, OR 970342said she had put a memo into the record. The mapping correction had been approved "sort-of". She was concerned that the mapping process still had to occur. She noted that the current map was wrong. She had not seen the map correction. Councilor McLain talked about the mapping process, which was on going. Councilor Liberty asked for clarification on the map correction process. Mr. Garrahan said he had received the memorandum that Ms. Cofield had submitted. There were still opportunities to take up the mapping changes. They would be bringing these back to Council to see the final results.

Council President Bragdon closed the public hearing.

Councilor Hosticka said this was the beginning of the effort where we had put in place one piece of the Nature in Neighborhood program. He spoke to future pieces to the program.

Councilor Newman said he would be supporting the ordinance. He spoke to the history of the ordinance. He commended the staff and the whole Council. This effort hadn't been about stopping development or growth. This effort was to make sure that we do it in such a way that it respected the resources. Councilor Park thanked staff and fellow Councilors, particular Councilor McLain. This proposal tickled people's imagination. He was hopeful the general public would continue to embrace Nature in Neighborhoods.

Council President Bragdon also supported the ordinance. It was the successful conclusion of one chapter in the story. He spoke to challenges such as monitoring and measuring the successes. He further detailed some of the elements of the Nature in Neighborhoods program. He was excited about the next chapters.

Councilor Liberty said he would have liked something stronger but appreciated what had been crafted. He spoke to his history in Northeast Portland, which did not have nature. He talked about his rural experience as well. Councilor McLain said they still had many steps to take but it was important to celebrate each step. Councilor Hosticka said he was glad they had gotten to this stage before Councilor McLain was term limited. He urged approval.

Vote:

Councilors Park, Hosticka, Burkholder, McLain, Newman, Liberty and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.

7. RESOLUTIONS

7.1 Resolution No. 05-3612, For the Purpose of Stating an Intent to Submit to the Voters the Question of the Establishment of a Funding Measure to Support Natural Area Protection and Establishing a Blue Ribbon Committee; and Setting Forth the Official Intent of Metro to Reimburse Certain Expenditures Out of the Proceeds of Obligations to Be Issued in Connection With the Regional Parks and Greenspaces Program.

Motion:	Councilor Hosticka moved to adopt Resolution No. 05-3612.
Seconded:	Councilor McLain seconded the motion

Councilor Hosticka said this resolution continued the Nature in Neighborhoods efforts. It expressed intent for a bond measure as well as establishing a Blue Ribbon Committee. Council President Bragdon provided additional information about the resolution and the committee membership. He spoke to the first bond measure that passed in 1995. They wanted to repeat the experience of the first measure. Councilor Newman added his comments about this resolution. He was excited about the committee membership. Councilor Liberty said he was enthusiastic about what they were trying to achieve. He spoke to equity issues and the local share. Council President Bragdon said the Council had committed to a local share component. The committee would be making recommendations about this component. Councilor McLain said she was pleased with the group of folks who had agreed to serve on the committee. She suggested providing the committee with the current Council’s conversation and direction.

Councilor Liberty suggested striking the local share per capita in Exhibit B, Item C. Councilor Hosticka and McLain accepted this as a friendly amendment. There was no objection.

Vote:

Councilors Park, Hosticka, Burkholder, Newman, McLain, Liberty, and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.

7.2 **Resolution No. 05-3613**, For the Purpose of Approving an Investment by the Metro Tourism Opportunity and Competitiveness Account (MTOCA) to fund the Replacement of the Audio Visual Head End Room Equipment at the Oregon Convention Center.

Motion:	Councilor Park moved to adopt Resolution No. 05-3613.
Seconded:	Councilor Newman seconded the motion

Councilor Park said Metro Council had approved Current Policy and Guidelines that had established a process and criteria for proposed investments from the Metro Tourism Opportunity and Competitiveness Account (MTOCA). Goals and strategies were identified in these Policy and Guidelines. These included investment in Targeted Capital Investments in the Oregon Convention Center’s physical plant that yielded demonstrable marketing advantages. With this goal as a guide, the Metropolitan Exposition-Recreation Commission was submitting a proposal to approve an investment of \$636,208 from the Metro Tourism Opportunity and Competitiveness Account (MTOCA) to fund the replacement of the audio-visual head end room equipment at the Oregon Convention Center. The MERC Commission approved this proposal at their August 24th Commission meeting. The Oregon Convention Center audio/visual head end room equipment, located in the original building, was failing. Because the system was analog, replacement parts were no longer available. During 2003, a digital AV system costing \$1.1 million was installed in the new expansion. It was anticipated that the AV equipment in the original building would be replaced at that time but due to budge shortfalls, this replacement did not take place. This proposal would extend the same system technology to the original structure and tie the entire system together for better overall service, labor reductions and quality sound in all areas of the facility. The total cost of this replacement will cost \$985,000. The MERC Commission recommended that the Metro Council approve the expenditure of the previously appropriated \$636,208 from MTOCA on the replacement of the audio-visual head end room equipment, with the remaining cost of the \$348,792 to be funded by the MERC Pooled Capital Fund. Councilor McLain added her comments. Councilor Burkholder said the reason they did this was to improve the convention center. Councilor Newman suggested improving the Oregon Zoo’s audio-visual equipment as well. Council President Bragdon spoke to the management and beauty of the convention center. Councilor Park urged support.

Vote:

Councilors Park, Hosticka, Burkholder, Newman, McLain, Liberty, and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.
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8. CHIEF OPERATING OFFICER COMMUNICATION

Michael Jordon, COO, responded to Councilor McLain question about Area 93. Councilor McLain explained why she had asked the question. She thought it was important that we had some kind of planning started by the end of the year. She also suggested that our COO meet with the six or seven groups that had similar issues.

9. COUNCILOR COMMUNICATION

Councilor Burkholder said next week he and Councilor Liberty would be bringing a presentation to Council on Housing Choice Advisory Committee.

Councilor Park reminded that the Salmon Festival was October 7th and 8th at Oxbow Park.

Councilor Liberty said the speakers' bureau had been convened. He welcomed submission of good speakers. He then spoke to materials being produced for planning purposes.

Council President Bragdon said he had added an executive session on next week's agenda.

10. ADJOURN

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 5:30 p.m.

Prepared by

Chris Billington
Clerk of the Council

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF SEPTEMBER 29, 2005

Item	Topic	Doc Date	Document Description	Doc. Number
2	Letter	9/29/05	To: Metro Council From: Ray Phelps, AWS Re: Change of Management	092905c-01
3	Talking points	9/29/05	To: Metro Council From: Karen Blauer, Solid Waste and Recycling Department Re: Talking Points for North Portland Enhancement Grant Committee	092905c-02
3	Slate of Grants awarded for 2005-06	9/27/05	To: Metro Council From: Karen Blauer, Solid Waste and Recycling Department Re: Metro North Portland Enhancement Grant Program 2005-06 Grant Awards	092905c-03
3	Project Status	9/29/05	To: Metro Council From: Karen Blauer, Solid Waste and Recycling Dept. Re: North Portland Enhancement Grant Program 04-05 Grant Awards Project Status	092905c-04
5.2	Email	9/29/05	To: Metro Council From: Jim Labbe, Audubon Society of Portland Re: Comments on Resolution No. 05-3620	092905c-05
5.2	Letter	7/22/05	To: Andy Cotugno, Planning Director From: Douglas McClain, Planning Director Clackamas County Re: Exception from Title 3	092905c-06
5.2	Proposed order	9/29/05	To: Metro Council From: Dick Benner, Metro Senior Attorney Re: Exhibit A, Order 05-001 to Res. No. 05-3620	092905c-07
5.1	Annual Compliance Report	12/23/04	To: Metro Council From: Sherry Oeser, Planning Department Re: Urban Growth Management Functional Plan Annual Compliance Report	092905c-08
5.1	Revised Annual Compliance Report on Title 7	9/26/05	To: Metro Council From: Gerry Uba, Planning Department Re: Title 7 Component of the 2004 Annual Compliance Report for the Urban Growth Management Functional Plan	092905c-09
6.1	“A” version	9/29/05	Ordinance No. 05-1091A , For the Purpose of Amending Provisions of Metro Code Chapter 7.01 Relating to Excise Tax imposed on Certain Consumer And Exhibitor Payments at the Metropolitan Exposition-Recreation Commission Facilities.	092905c-10
6.3	“C” version	9/27/05	Ordinance No. 05-1077C , Amending the Regional Framework Plan and the Urban Growth Management Functional Plan Relating to Nature in Neighborhoods.	092905c-11

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ENTERING AN) Resolution No. 05-3620
ORDER RELATING TO AN APPLICATION BY)
CLACKAMAS COUNTY FOR AN EXCEPTION) Introduced by Michael Jordan, Chief
FROM TITLE 3 OF THE URBAN GROWTH) Operating Officer, in concurrence with
MANAGEMENT FUNCTIONAL PLAN) David Bragdon, Council President

WHEREAS, Clackamas County has filed an application for an exception from certain requirements in Title 3 (Water Quality, Flood Management and Fish and Wildlife Conservation) of the Urban Growth Management Functional Plan, pursuant to the process set forth in section 3.07.860 of Title 8 (Compliance Procedures); and

WHEREAS, the Metro Council President set the matter for public hearing before the Council and sent notification of the application to the Metropolitan Policy Advisory Committee, the Department of Land Conservation and Development (“DLCD”) and persons who requested notification of such applications; and

WHEREAS, the Council held a hearing on the application on September 29, 2005, and heard testimony from Clackamas County, the Metro Planning Department and interested persons; and

WHEREAS, Title 8 requires the Council to issue an order with its decision on the application for an exception, with its conclusions and analysis, and to send the order to the county, MPAC, DLCD, and any participant at the hearing who requested a copy of the order; now, therefore,

BE IT RESOLVED:

- 1. That the Council adopt Order No. 05-001, with its attachments, as the Council’s decision on Clackamas County’s application for an exception from certain requirements in Title 3.
- 2. That the Council direct the Chief Operating Officer to distribute the order to the persons specified in section 3.07.860 of Title 8.

ADOPTED by the Metro Council this 6th day of October, 2005

David Bragdon, Council President

Approved as to form:

Daniel B. Cooper, Metro Attorney

**Exhibit "A" to
Resolution No. 05-3620**

ORDER NO. 05-001

**DECISION ON CLACKAMAS COUNTY'S APPLICATION FOR
AN EXCEPTION FROM TITLE 3 OF THE URBAN GROWTH
MANAGEMENT FUNCTIONAL PLAN**

APPLICABLE LAW

On August 6, 2004, Clackamas County filed an application for an exception from water quality resource area performance standards in Title 3 (Water Quality, Flood Management and Fish and Wildlife Conservation) of the Urban Growth Management Functional Plan (UGMFP), pursuant to the process set forth in section 3.07.860 of Title 8 (Compliance Procedures), for certain territory in the county. Title 8 sets forth the criteria that apply to such an application. Section 3.07.860B(1) of that title says the Council may grant an exception if it finds that:

1. It is not possible to achieve the requirement due to topographic or other physical constraints or an existing development pattern;
2. This exception and likely similar exceptions will not render the objective of the requirement not achievable region-wide;
3. The exception will not reduce the ability of another city or county to comply with the requirement; and
4. The city or county has adopted other measures more appropriate for the city or county to achieve the intended result of the requirement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

As required by Title 8 of the UGMFP, Metro sent notification of the application to the Metropolitan Policy Advisory Committee, the Department of Land Conservation and Development ("DLCD") and persons who requested notification of such applications. Metro set the matter for hearing on the matter before the Council and held the hearing on September 29, 2005.

At the hearing the Council heard testimony from Clackamas County and the Metro Planning Department. The Council received written materials from the county and the planning department. This testimony and these materials comprise the record in this matter.

Criterion 1: It is not possible to achieve the requirement due to topographic or other physical constraints or an existing development pattern.

The County contends that the existing development pattern in the area makes it impossible to apply Title 3 to the area. As noted in the staff report, however, it is possible to apply Title 3, and Title 3 is intended to apply, to redevelopment in areas subject to Title 3. Other cities and counties in the region have applied Title 3 requirements to developed areas. Clackamas County itself has applied the requirements in developed parts of the county. Also, there is a small amount of developable land in the area, to which it is possible to apply the requirements.

The county also argues that the first criterion [3.07.860(B)(1)(a)] should be interpreted to mean that an exception should be approved if application of the functional plan requirement in a particular instance would do no good and the consequences of noncompliance would be minimal. The Council rejects this meaning as contrary to the express language of the criterion and more appropriate for a “substantial compliance” determination.

CONCLUSION: Based upon analysis of evidence in the record, the Council concludes that the county has not demonstrated compliance with this criterion.

Criterion 2: This exception and likely similar exceptions will not render the objective of the requirement not achievable region-wide.

Granting an exception in this situation would set a precedent for the rest of the region with respect for application of Title 3 to infill and re-development. If other cities and counties followed the precedent, it would, as described in the staff report, detract from the region’s effort to achieve the objectives of Title 3.

CONCLUSION: Based upon analysis of evidence in the record, the Council concludes that the county has not demonstrated compliance with this criterion.

Criterion 3: The exception will not reduce the ability of another city or county to comply with the requirement.

There is no evidence to suggest that granting this exception to Clackamas County will reduce the ability of other cities or counties to comply with Title 3.

CONCLUSION: The Council concludes, therefore, that an exception would meet this criterion.

Criterion 4: The city or county has adopted other measures more appropriate for the city or county to achieve the intended result of the requirement.

As stated in the staff report, the county has not adopted other measures that will achieve the intended result of the buffer requirements of Title 3.

CONCLUSION: For this reason, the Council concludes that the county has not satisfied this criterion.

IT IS HEREBY ORDERED THAT:

1. The application by Clackamas County for an exception from Title 3 is denied.

ENTERED this 6th day of October, 2005.

David Bragdon, Council President

Approved as to form:

Daniel B. Cooper, Metro Attorney

STAFF REPORT

In Consideration of Resolution 05-3620 for the Purpose of Entering an Order Relating to an Application by Clackamas County for an Exception from Title 3 Water Quality Resource Area Performance Standards of the Urban Growth Management Functional Plan

Date: September 14, 2005

Prepared by Paul Ketcham

BACKGROUND

Metro received a July 22, 2004 application from Clackamas County for an exception from Title 3 Water Quality Resource Area Performance Standards of the Urban Growth Management Functional Plan.¹ The exception, pursuant to Metro Code 3.07.860, is for a portion of the Oaks Lodge Sanitary District portion of the county. The County's letter of transmittal states that the Title 3 exception is for two specific areas—Boardman wetland and Boardman Creek.² The district covers 3,579 acres and is located in unincorporated Clackamas County between the cities of Milwaukie and Gladstone. It borders the Willamette River on the west, and is bisected by McLoughlin Boulevard (Attachment 1: Map of Oak Lodge Sanitary District). For all other areas, the county is up-to-date with its compliance with Title 3.³

Metro's Title 3 Water Quality and Floodplain Protection Plan requires local jurisdictions to meet regional performance standards relating to water quality and floodplain management. The purpose of Title 3 is to protect the beneficial water uses and functions and values of resources within Water Quality and Flood Management Areas. In June 1998 Metro Council adopted Title 3 provisions as part of Metro's Code (Sections 3.07.310 to 370). Title 3 requires establishment of Water Quality Resource Areas that includes a vegetated corridor as well as the protected water feature such as streams and wetlands. The width of vegetated corridors is 50 feet from the top of bank along primary water features and may extend outward to 200 feet on adjacent steep slopes.⁴ The width of vegetated corridors is 15 feet from top of bank along secondary water features and may extend outward to 50 feet on adjacent steep slopes (Metro Code Section 3.07.340(B)(2)(a)).⁵

¹ July 22, 2004 letter from Doug McClain, Clackamas County Planning Director, to Andy Cotugno, Metro Planning Director, with attachments.

² Two other surface water resources lie within the District's boundary—Forest Creek and an unnamed tributary of Kellogg Creek that are presumed to be in compliance with relevant Title 3 provisions. This issue was clarified during an October 20, 2004 meeting between Doug McClain, Clackamas County Planning Director and Dick Benner, Metro Senior Attorney.

³ February 5, 2004 Metro Urban Growth Management Functional Plan Annual Compliance Report

⁴ Primary protected water features include all perennial streams and streams draining greater than 100 acres, Title 3 wetlands, natural lakes and springs.

⁵ Secondary protected water features include intermittent streams draining 50-100 acres.

The following is a chronology of the more significant communications and actions between Metro and the county regarding Title 3 compliance.

- An April 5, 2001 letter from Ray Valone, Senior Regional Planner to Doug McClain, Planning Director for Clackamas County, indicates that the county meets standards of Title 3 within the UGB except for several water features within the Oaks Lodge Sanitary District. The letter describes that the conditions for substantial compliance are to adopt Title 3 standards or seek an exception to those requirements (Attachment 2).
- A November 29, 2002 letter from Greg Fritz, Clackamas County Senior Planner, to Ray Valone, Metro, reports on an October 28 Planning Commission public hearing regarding Zoning and Development Ordinance (ZDO) 191, the amendments proposed to bring the Boardman wetland and the Boardman Creek into compliance with Title 3. The Planning Commission decided to continue testimony on the Title 3 amendments and scheduled another hearing set for January 27, 2003. The County Board of Commissioners scheduled a hearing for March 19, 2003 (Attachment 3).
- A January 13, 2003 letter from Ray Valone, Metro, to Greg Fritts, Clackamas County, affirming its position articulated in its April 5, 2001 letter regarding substantial compliance with Title 3. The County is given the option to request an exception to Title 3 requirements according to Section 3.07.860 of the Metro Code (Attachment 4).
- A March 7, 2003 letter from Metro Council President David Bragdon to Clackamas County Commissioner Larry Sowa confirms that the county has not demonstrated substantial compliance with requirements of Title 3 and offers options to gain compliance: seek an exception to Title 3 (section 3.07.860 of the Metro Functional Plan) or seek review by Metropolitan Policy Advisory Committee and subsequent Metro Council hearing under Sections 3.07.830 and 3.07.840 of Title 8 of the Metro Functional Plan (Attachment 5).
- On March 19, 2003, the Board of County Commissioners voted against proposed amendments that would have brought the County into compliance with Title 3 for the Oaks Lodge Sanitary District.
- A May 7, 2003 letter from Andy Cotugno, Metro Planning Director, to Commissioner Sowa, requests an exception to Title 3 for the Boardman wetland and Boardman Creek (Attachment 6).
- A July 22, 2004 letter from Douglas McClain, Clackamas County Planning Director, to Andy Cotugno, Metro Planning Director, requests an exception to Title 3 following Section 3.07.860 of the Metro Code for two specific areas within the Oaks Lodge Sanitary District (Attachment 7).
- An August 24, 2004 memo from Andy Cotugno, Metro, to Metro Council and Metro Chief Operating Officer Michael Jordan outlines the process for considering an exception from Title 3 of the Urban Growth Management Functional Plan (Attachment 8).

Metro code section 3.07.860 lists the criteria that must be met before an exception to a Functional Plan requirement may be granted. The following section lists the criteria (in bold), summarizes the county's rationale for meeting them, states Metro staff's response to the county rationale, and presents staff's conclusion as to whether the respective exceptions criteria have been met or not.

a) It is not possible to achieve the requirement due to topographic or other physical constraints or an existing development pattern;

County's rationale for the exception under this criterion:

- The County cites "existing development pattern" around the Boardman wetland and along Boardman Creek as the reason it is not possible to meet Title 3 requirements for establishment of water quality resource areas along streams and wetlands.
- The County states that there is very little developable area adjacent to the wetland, and that most parcels adjacent to Boardman Creek are developed. The argument states that there is very little opportunity for development, and therefore, "no benefit from application of the Title 3 requirements to an area substantially developed."
- The County argues that Boardman wetland is protected under the standards of Section 709 of the Zoning and Development Ordinance (ZDO) providing a 25-foot buffer.
- The County recognizes that Boardman Creek is not covered by Section 709 of the ZDO (due to the county's determination that it is not a Goal 5 significant resource), but states that Section 1002.05 applies (Protection of Natural Features), requiring a vegetative buffer, but does not specify the specific protective measures applied.

Response to County's rationale:

Existing uses and conditions do not preclude implementation of Title 3. Properties may redevelop or change current status. Development status is not a criterion for establishment of water quality resource areas. Local governments within Metro's jurisdictional boundaries have established Title 3 water quality resource areas regardless of development status of lands. Region wide data shows that water quality resource areas have been established on lands developed with residential, commercial, and industrial uses (23%), park and open space lands (36%), and undeveloped, vacant lands (41%)⁶.

There are examples of lands within Metro's jurisdiction that are primarily developed to which the provisions of Title 3 apply (see Attachments 11-14). These maps show areas where Clackamas County and other jurisdictions have applied Title 3 Water

⁶ Metro's Fish and Wildlife Habitat Protection Program Economic, Social, Environmental, and Energy Analysis (ESEE) Phase II Analysis of Program Options, April 2004 draft, Table 3-7, pages 42-43).

Quality Resource Areas to primarily developed areas. The Title 3 definition of “development” (Metro Code 3.07.340(D)(3)) applies to additions or modifications to existing uses within the water quality resource area, as well as to development and redevelopment of properties.

Within the Oaks Lodge Sanitary District, Clackamas County has applied Title 3 Water Quality Resource Areas to land that is primarily developed along Forest Creek and an unnamed tributary of Kellogg Creek (Attachments 11-12). Some parcels along these streams are vacant or underdeveloped.⁷ These development patterns are similar to those found along Boardman Creek and wetland, the two water features subject to the County’s exception request.

Similarly, properties along Boardman Creek and Boardman wetland are primarily developed. There are, however, vacant or partially vacant properties along Boardman Creek and Boardman Wetland, the water features subject to the County’s exception request, that are not currently covered by Title 3 protections (see Attachments 9-10). A steep slope adjacent to the lower segment of the Boardman Creek is subject to a wider water quality resource area and is not covered by local code provisions.⁸

In addition, Boardman wetland is covered only by a 25-foot buffer and would receive a 50-foot buffer under Title 3. There are several undeveloped/underdeveloped lots on the north section of the Boardman wetland that could develop without Title 3 protections. There are 5 lots, zoned R-7 that may redevelop and/or subdivide. There are 8 lots zoned MR 1 with older single-family homes that may redevelop and/or subdivide. Remaining properties surrounding the wetland, though developed, could redevelop or be altered.⁹

The south section of Boardman wetland, although owned by the North Clackamas Park and Recreation District or included as common open space in a PUD, does not preclude implementation of Title 3. Properties may redevelop or change current status. Vegetation may be removed without protections of Title 3 requirements for maintenance, enhancement, or restoration of native vegetation.

CONCLUSION: Based on staff response, this criterion is not met.

⁷ April 5, 2001 letter with attachments from Raymond Valone, Metro Senior Regional Planner, to Douglas McClain, Clackamas County Planning Director. This letter indicates there are some vacant or underdeveloped lands located within Title 3 water quality resource areas along Forest Creek and an unnamed tributary to Kellogg Creek.

⁸ Ibid, page 1.

⁹ Ibid, page 2.

b) This exception and likely similar exceptions will not render the objective of the requirement unachievable region-wide;

County's rationale for the exception under this criterion:

- Granting the exception will have no effect on the ability to achieve objectives of Title 3 region-wide.
- The requested exception is limited, applying to a specific area with little development potential, where resources are protected but to a lesser degree than would be provided under Title 3.

Response to County's rationale:

The objective of Title 3 water quality standards is to protect the beneficial uses and functions and values of streams and wetlands and associated vegetated corridors. Wetlands and streams are part of an interlinked system, and it is important that they be treated consistently. Scientific studies show that the vegetated corridors required under Title 3 provide the minimum level of protection to water quality and beneficial uses of streams and wetlands; the county's 25 foot buffers fall short of these minimums.¹⁰

Granting the county's exception to Title 3 would allow inconsistent treatment of the region's streams and wetlands. Granting the exception would set a precedent for other exceptions for similar (mostly developed) areas around the region, resulting in cumulative adverse effects on the values and functions of the region's streams, wetlands, and other water bodies.

CONCLUSION: Based on staff response, this criterion is not met.

¹⁰ Metro, 1997. Metropolitan Service District (Metro) Title 3 Policy Analysis and Scientific Review Paper, Portland, OR. See also: Metro, 2002. Metro's Technical Report for Goal 5, Portland, OR; Metro, 2002. Local Plan Analysis: A Review of Goal 5 Protection in the Metro Region.

- c) **The exception will not reduce the ability of another city or county to comply with the requirement;**

County's rationale for the exception under this criterion:

- Granting the exception will have no effect on the ability of other jurisdictions to comply with Title 3 because the area is physically isolated from other jurisdictions.

Response to County's rationale:

Streams and wetlands are part of an interlinked system and directly contribute to watershed function and health. Boardman wetland is connected to Boardman Creek, which flows into the Willamette River, and thus these water features are not physically isolated from the larger watershed. Failure to adequately protect the stream and wetland system can adversely affect water quality and overall watershed health, and therefore detract from the effectiveness of other local government Title 3 efforts. However, this possibility does not mean other local governments cannot comply with Title 3. In fact, the cities of Portland and Milwaukie currently comply with Title 3. It is not apparent that this exception would reduce the ability of local governments in the lower Willamette watershed to comply with Title 3.

CONCLUSION: Based on staff response, this criterion is met.

d) The city or county has adopted other measures more appropriate for the city or county to achieve the intended result of the requirement.

County's rationale for the exception under this criterion:

- The County's Zoning and Development Code Sections 1002 (Protection of Natural Features) and 709(Conservation Wetland District) apply to the Boardman wetland, Boardman Creek and unnamed tributaries and are adequately protected by ordinance provisions.
- The Oak Lodge Service District has accomplished and continues to work on stream enhancement projects.
- Portions of Boardman wetland have been acquired by the North Clackamas Parks and Recreation District and are thus adequately protected.

Response to County's rationale:

The County's 25-foot buffer does not achieve the intended result of Title 3 protection. The larger vegetated corridor required under Title 3 provides more shading of streams, does more to minimize erosion and help moderate pollutant and nutrient loading, and better moderates storm water flows. Several extensive reviews of scientific literature by Metro provides the basis of the widths of Title 3 vegetated corridors. These reviews show that a 50-foot vegetated corridor around streams and wetlands is on the low end of a range of widths needed to provide for adequate protection of the functions and values associated with stream and wetland riparian corridors.¹¹ Based on the scientific literature, a 25-foot buffer as provided under county ordinance does not provide adequate protection to streams and wetlands and does not achieve the purpose of Title 3 water quality standards.

CONCLUSION: Based on staff response, this criterion is not met.

ANALYSIS INFORMATION

1. **Known Opposition.** To date, Metro has not received public comments from individuals, interest groups, or government agencies regarding Clackamas County's exception request to Title 3.
2. **Legal Antecedents.** Policies in Metro's Regional Framework Plan and Title 3 of Metro's Urban Growth Management Functional Plan requires local jurisdictions to meet regional performance standards relating to water quality and floodplain management. The purpose of Title 3 is to protect the beneficial water uses and functions and values of resources within Water Quality and Flood Management Areas. In June 1998 Metro Council adopted Title 3 provisions as part of Metro's Code (Sections

¹¹ Metro, 1997. Metropolitan Service District (Metro) Title 3 Policy Analysis and Scientific Review Paper, Portland, OR. See also: Metro, 2002. Metro's Technical Report for Goal 5, Portland, OR, and Metro's Local Plan Analysis: A Review of Goal 5 Protection in the Metro Region, August, 2002.

3.07.310 to 370). Title 3 requires establishment of Water Quality Resource Areas that includes a vegetated corridor as well as the protected water feature such as streams and wetlands.

3. **Anticipated Effects.** Denial of the exception request will ensure consistent application of Title 3 water quality resource area requirements to support protection of the region's streams and wetlands for water quality purposes. In addition, denial of the exception will act to discourage other Title 3 exceptions for similar (mostly developed) water quality resource areas around the region. Conversely, the danger in approving such exceptions is cumulative adverse effects on the values and functions of the region's streams, wetlands, and other water bodies.
4. **Budget Impacts.** There are negligible budget impacts of this resolution.

RECOMMENDED ACTION

Metro code section 3.07.860 lists the criteria that must be met before an exception to a Functional Plan requirement may be granted. The Chief Operating Officer recommends that Metro Council deny the exception request based on staff conclusions of non-compliance with Metro Code Section 3.07.860 criteria a, b, and d.

Attachments to the Staff Report

Attachment 1: Map of Oak Lodge Sanitary District

Attachment 2: April 5, 2001 letter from Ray Valone, Senior Regional Planner to Doug McClain, Planning Director for Clackamas County

Attachment 3: November 29, 2002 letter from Greg Fritz, Clackamas County Senior Planner, to Ray Valone, Metro

Attachment 4: January 13, 2003 letter from Ray Valone, Metro, to Greg Fritts, Clackamas County

Attachment 5: March 7, 2003 letter from Metro Council President David Bragdon to Clackamas County Commissioner Larry Sowa

Attachment 6: May 7, 2003 letter from Andy Cotugno, Metro Planning Director, to Commissioner Sowa

Attachment 7: July 22, 2004 letter from Douglas McClain, Clackamas County Planning Director, to Andy Cotugno, Metro Planning Director

Attachment 8: August 24, 2004 memo from Andy Cotugno, Metro, to Metro Council and Metro Chief Operating Officer Michael Jordan

Click the link below to download the map attachments:

ftp://ftp.metro-region.org/dist/gm/ClackamasCo_Title3_Maps/

Attachments 9-10: Maps of Title 3 Water Quality Resource Areas and vacant lands within the Oak Lodge Sanitary District subject to the County's Exception from Title 3

Attachment 9a: Title 3 Water Quality and Flood Area Map for Boardman Wetland

Attachment 9b: Map of vacant land for Boardman Wetland

Attachment 10a: Title 3 Water Quality and Flood Area Map for Boardman Creek

Attachment 10b: Map of vacant land for Map Boardman Creek

Attachments 11-14: Maps of Title 3 Water Quality Resource Areas and vacant lands in other primarily developed areas both within and outside the Oak Lodge Sanitary District

Attachment 11a: Title 3 Water Quality and Flood Area Map for Forest Creek

Attachment 11b: Map of vacant land for Forest Creek

Attachment 12a: Title 3 Water Quality and Flood Area Map for unnamed tributary to Kellogg Creek

Attachment 12b: Map of vacant land for unnamed tributary to Kellogg Creek

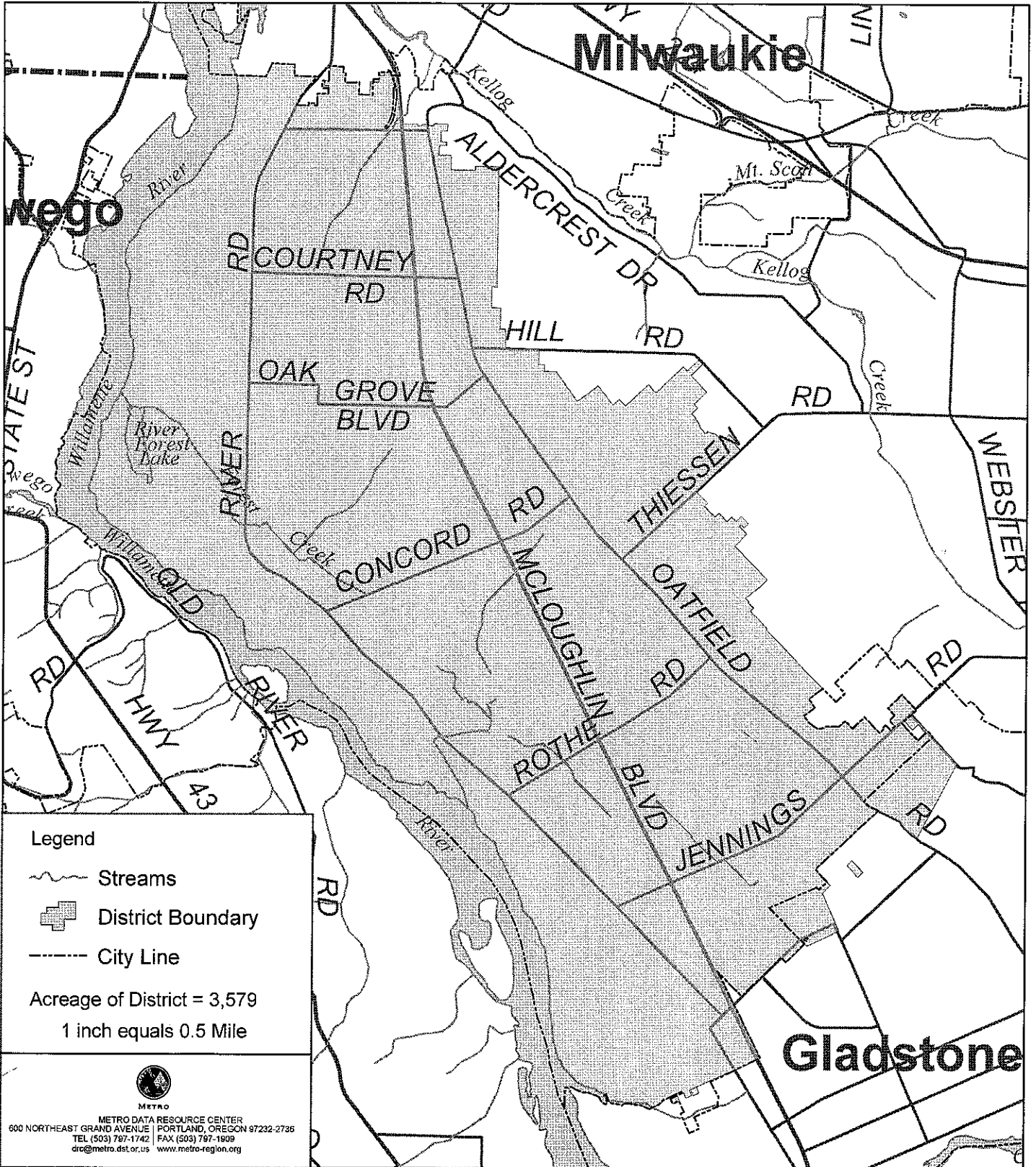
Attachment 13a: Title 3 Water Quality and Flood Area Map for Blue Lake and Fairview Lake

Attachment 13b: Map of vacant land for Blue Lake and Fairview Lake

Attachment 14a: Title 3 Water Quality and Flood Area Map for Fairview Creek

Attachment 14b: Map of vacant land for Fairview Creek

Oak Lodge Sanitary District



Legend

- Streams
- District Boundary
- City Line

Acreage of District = 3,579
1 inch equals 0.5 Mile


METRO DATA RESOURCE CENTER
600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232-2736
TEL (503) 797-1742 FAX (503) 797-1909
drc@metro.dst.or.us www.metro-region.org



METRO

Resolution No. 05-3620
Attachment 2

April 5, 2001

Douglas M. McClain
Planning Director
Clackamas County DTD
Sunnybrook Service Center
9101 SE Sunnybrook Blvd.
Clackamas, OR 97015

Dear Doug:

Metro staff has made a final determination on the County's submittals and the follow-up discussions regarding compliance with Title 3 of the Functional Plan. We are treating the area within the UGB and the area outside the UGB but within the Metro jurisdictional boundary differently for this determination.

INSIDE THE UGB

Based on the information submitted, the County meets the standards of Title 3 within the UGB except for several water features within the Oak Lodge Sanitary District area. In previous submittals and discussions, I have addressed the 'Boardman Swamp' wetland separately and demonstrated that the current County regulations do not substantially comply with Title 3.

Oak Lodge Sanitary District Area

The existing buffer requirement for streams and wetlands within the district is twenty-five feet. There are three stream segments and associated wetlands identified on the Title 3 maps as subject to that Title's regulations.

The tributary of Johnson Creek, Forest Creek and an unnamed creek (Attachments 1 - 7) have several underdeveloped and vacant properties adjacent to them. These properties could be further developed without Title 3 protection of the streams. A segment of the lower part of the unnamed creek has adjacent steep slopes and thus is subject to a wider vegetated corridor (Attachment 5).

Many of the properties adjacent to these streams are developed to the maximum allowed under the existing zoning. Existing uses and conditions, however, do not preclude implementation of Title 3. Properties may redevelop or change current status. Additional protection under Title 3 not only applies to 'development' as defined in the Functional Plan, but would also take effect upon additions or modifications to existing uses within the corridor (Metro Code 3.07.340(D)(3)).

The sections of the streams that are piped are not subject to Title 3 regulations, and can be removed from the Title 3 map based on evidence that you submit to us. In addition, the County may request that areas be deleted from the Title 3 map (see Metro Code 3.07.820(B)(3)).

'Boardman Swamp'

The current required buffer for this wetland is twenty-five feet. According to County staff analysis and the map of this wetland (Greg Fritts letter of October 6, 2000), the north section of the wetland borders several lots of undeveloped/underdeveloped land. There are five lots, zoned R-7, that contain single family residences, four older ones, that may redevelop and/or subdivide. There are eight lots, zoned MR 1, that contain older single family residents on them that may redevelop and/or subdivide. These properties need to be protected under Title 3. The remaining properties surrounding the wetland, though currently developed to the maximum under existing zoning, may redevelop or be added to or altered, resulting in adherence to the wetland protection provisions in place at the time.

According to the Fritts' letter, the perimeter of the south section of the wetland that is within the County either cannot be developed (owned by the park district) or is part of a PUD common space. Existing uses and conditions, however, do not preclude implementation of Title 3, which would extend protection of water quality through larger vegetated corridors. Properties may redevelop or change current status. Additional protection under Title 3 not only applies to 'development' as defined in the Functional Plan, but would also take effect upon additions or modifications to existing uses within the corridor.

In addition, while the park district may not allow new construction, the definition of 'development' under Title 3 includes any structure or other activity that results in the removal of more than ten percent of the vegetation on a lot. Title 3 also requires other protections within the vegetated corridor such as maintenance, enhancement or restoration of native cover, if disturbed, and prohibition of uncontained hazardous waste (Metro Code 3.07.340(B)(2d-e)).

Conditions for Substantial Compliance

Once the County has adopted Title 3 standards for the Oak Lodge Sanitary District including the Boardman Swamp wetland, Metro will deem the County in substantial compliance to Title 3's water quality and floodplain protection policies for the area inside the Metro UGB. If the County chooses not to follow Metro requirements, the County would need to request an exception to the requirements.

OUTSIDE THE UGB

Title 3 applies to areas outside the UGB but within the Metro jurisdictional boundary. The two applicable County areas are Stafford and Damascus.

Stafford

The Stafford area is comprised of the triangular section of land south of Lake Oswego, west of West Linn and north of Metro's boundary. This area is part of the Surface Water Management District of Clackamas County (SWMCC). Currently, County code sections 704

or 1002 govern the buffer requirements for streams and wetlands in this area. This protection includes 25-foot buffers for wetlands and a variable buffer for those streams identified as regulated streams by the County. As previously agreed, SWMCC will adopt regulations to implement Title 3 after the City of Rivergrove adopts similar regulations. At this time, the City of Rivergrove has placed the final proposed Title 3 ordinance on hold pending the outcome of Measure 7. For this reason, we request that SWMCC implement the Title 3 regulations in this area regardless of the City's actions.

Damascus

For purposes of this interpretation, the Damascus area is considered to be the unincorporated portion of the County east of the UGB, south of Multnomah County, and west and north of Metro's jurisdictional boundary. Based on the information submitted to us, we have determined that the streams in this area are adequately protected at the present time. The lack of protection for the few remaining steep-sloped areas is considered minor in nature for the purposes of compliance with Title 3's vegetated corridor performance standards. Metro's conclusion is based on the amount of protection currently provided under County code, the limitations to development due to rural zoning, and the fact that there are very limited development opportunities along these steeped-sloped segments.

Conditions for Substantial Compliance

Substantial compliance with Title 3 for the areas outside the UGB is conditioned on the County taking the following actions:

- Stafford – The existing County regulations do not protect all water features, including those identified on the Title 3 map and not identified by the County, to Title 3 standards. The County or SWMCC, therefore, need to adopt Title 3 regulations, or regulations that are in substantial compliance to Title 3.
- Damascus - Upon future adoption by Metro of Goal 5-related regulations and implementation of them by the County, extend full Title 3 stream and wetland protections to all mapped water features.

If you have any questions or would like to discuss our comments, please call me at 503-797-1808.

Sincerely,



Ray Valone
Senior Regional Planner
Growth Management Services

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Enclosures

cc: Greg Fritts
Andy Cotugno
Ken Helm
Mary Weber



Clackamas
County

Resolution No. 05-3620
Attachment 3

DEPARTMENT OF
TRANSPORTATION AND DEVELOPMENT

Sunnybrook Service Center

NOVEMBER 29, 2002

Ray Valone
Senior Regional Planner
METRO Growth Management Services Department
600 NE GRAND
PORTLAND, OR 97232 2736

RE: **CLACKAMAS COUNTY TITLE 3 COMPLIANCE ZDO AMENDMENTS,
PLANNING COMMISSION MEETING**

The Planning Commission, at its October 28 public hearing, considered ZDO 191, the amendments regarding Title 3 compliance for the Boardman Swamp/wetland, and Boardman Creek. There were 45 people in the audience. The commission took extensive testimony in opposition to the amendments. The testimony generally was that the creek was already heavily impacted by various characteristics of urban development, and therefore increasing the buffer from the present 25 feet to 50 or more feet would not serve any beneficial purpose.

There was also testimony that the Boardman wetland should not be protected as a wetland because it is man-made.

After the public testimony closed, the Planning Commission deliberated about the testimony. From those deliberations came questions for Metro, in the form of a motion adopted unanimously by the PC. The questions they want Metro to answer before the next meeting are:

1. Reaffirmation of the Boardman Wetland as a Goal 5 delineated wetland and Title 3 resource.

Note: The PC is interested in what information Metro used to map Title 3 resources. I will also provide information on the County Goal 5 analysis of this wetland.

2. The potential impacts on downstream resources of development in the area.

Note: This is in reference to the few parcels along Boardman Creek east of River Road that have the most development potential. Lots west of this area are predominantly developed at the maximum density allowed, or have topographical and other constraints limiting redevelopment potential. The issue is what will really be achieved by increasing the buffer in this area.

3. Facts and evidence supporting the reasons for changing the buffers from 25 feet to 50+ feet.

Note: This relates to the science justifying the increased buffer widths, with again, a special concern about the benefits of wider buffers in a highly developed urban area.

4. Justification as to why this stream needs to be protected under Title 3 and the inadequacy of the 25 foot to meet the objectives of Title 3.

Note: This is most related to the 'substantial compliance' issue. The Planning Commission is looking for a clear definition of substantial compliance, and the Metro staff reasons for deeming the county does not meet this definition if the Boardman Swamp and creek are not given more protection than they have through existing regulations.

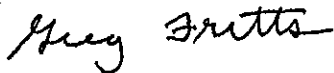
The Planning Commission motion also included a request to Mr. Fritts "to communicate to Metro the importance of a Metro representative attending the next PC meeting, and the seriousness of this request and the need to have justification for Metro's position".

A legal issue was raised in correspondence from a Planning Commission member after the hearing regarding whether Metro is a 'moving party' under state law and Metro Code 2.05.030(e). This will be discussed at the January meeting, so you may want to have Metro's position on this matter.

The Planning Commission meeting to continue testimony on the Title 3 amendments is set for January 27, 2002. The meeting will be at the Sunnybrook Service Center, 9101 SE Sunnybrook Blvd., and will begin at 6:30 pm.

The BCC hearing has been rescheduled from December 4, 2002, to March 19, 2003.

Please contact me if you have questions regarding this matter.



Greg Fritts
Senior Planner,
Title 3 Compliance Manager



METRO

Resolution No. 05-3620
Attachment 4

January 13, 2003

Mr. Greg Fritts, Senior Planner
Department of Transportation & Development
Clackamas County
9101 S.E. Sunnybrook Boulevard
Clackamas, OR 97015

Dear Mr. Fritts:

This letter is in response to the Planning Commission's request for information regarding Title 3 compliance as it affects the Boardman wetland and Boardman Creek. The following numbered items correspond to the items listed in your letter of November 29, 2002 (Attachment A):

1. *Reaffirmation of the Boardman Wetland as a Goal delineated wetland and Title 3 resource.*

Response: The Water Resources Policy Advisory Committee (WRPAC), a standing committee to the Metro Council, led the development of Title 3. WRPAC used the following sources for designating wetlands on the Water Quality and Flood Management Area Map, the adopted map of Title 3:

- National Wetlands Inventory
- Local jurisdiction information

The northern section of the Boardman Wetland was identified by Metro through the National Wetland Inventory; Clackamas County staff modified its final shape. The southern section of the wetland was included on the Title 3 map as a result of information provided to Metro by Clackamas County staff. I understand that County staff identified it as part of the local Goal 5 process.

2. *The potential impacts on downstream resources of development in the area.*

Response: If 'potential impacts' means what effect on development a 50-foot vegetated corridor will have vs. a 25-foot corridor, I have not calculated the difference in the number of dwelling units. This, of course, is dependent on how the parcels are platted, the land netted out for streets and other infrastructure and any assembly of parcels. A preliminary observation of the lots through aerial photography seems to indicate that the impact would be minor, given the zoning of one unit per 10,000 square feet of land. This impact needs to be balanced with the environmental impact from development within 25 feet of the stream. The streams and wetlands are part of a system. It is important, therefore, that the component parts of that system are treated consistently, if possible. The larger buffer helps in many ways including moderation of stream temperatures; minimizing erosion, nutrient and pollutant loading; and moderating storm water flows. The width of the vegetated corridors for streams and wetlands are actually on the low end of a range of several scientific studies (see 3 below).

3. *Facts and evidence supporting the reasons for changing the buffers from 25 feet to 50+ feet.*
Response: Title 3 was developed after almost two years of analysis and debate by WRPAC. This committee represents a broad spectrum of water resources including stormwater management, municipal water providers, natural resource agencies and citizens. After extensive review and subsequent recommendation by the Metro Technical Advisory Committee (MTAC) and Metro Policy Advisory Committee (MPAC), the Metro Council adopted the Title 3 recommendation without modification in June 1998. Local jurisdictions had until January 2000 to amend their plans and codes to comply with this title.

WRPAC had access to several scientific studies during the development of the performance measures found in Title 3. I have included excerpts from a white paper released by Metro in July 1997, entitled "Policy Analysis and Scientific Literature Review – For Title 3 of the Urban Growth Management Functional Plan," to help the Planning Commission understand the level of research and review that went into the determination of Title 3 vegetated corridors (Attachment B). As you will read in the white paper, the 50-foot buffer width around wetlands and streams is on the low end of a range of scientific studies conducted for the various functions associated with stream and wetland corridors.

4. *Justification as to why this stream needs to be protected under Title 3 and the inadequacy of the 25-foot to meet the objectives of Title 3.*
Response: My response to item 3 above, including the white paper excerpts, addresses the issue of why 50-foot buffers are more effective than 25-foot buffers for protecting the functions and values of wetland and vegetated corridors. If this item relates more to the issue of substantial compliance, I offer the following:
- As you know, County and Metro staff have been working since June 1999 on the County's compliance with Title 3. After several discussions and much review of existing County code as well as adoption of Title 3 regulations by CCSD1 and SWMCC, Metro staff wrote two letters to Doug McClain during April 2001 with our final determination regarding County compliance with Title 3 (Attachment C). This determination includes consideration of 'substantial compliance,' as described in those letters.
 - In summary, the letters conclude that the County will be in substantial compliance with Title 3 after meeting three conditions. One condition has been met, i.e., SWMCC adopted new regulations for the Stafford Basin area. The two remaining conditions are as follows (excerpted from the letters):
 - 1) "Once the County has adopted Title 3 standards for the Oak Lodge Sanitary District including the Boardman Swamp wetland, Metro will deem the County in substantial compliance to Title 3's water quality and floodplain protection policies for the area inside the Metro UGB. If the County chooses not to follow Metro requirements, the County would need to request an exception to the requirements."
 - 2) "Damascus - Extend the same level of protection, pursuant to existing County code, to all stream segments and wetlands that are shown on the Title 3 map. If any of the Title 3 mapped water features are inaccurate or no longer exist, please submit this information with evidence demonstrating why they should be removed from the map. Upon future adoption by Metro of Goal 5-related regulations and implementation of them by the County, extend full Title 3 stream and wetland protections to all mapped water features."
 - As defined in the Functional Plan, 'substantial compliance means 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

Mr. Greg Fritts, Senior Planner
Department of Transportation & Development
Clackamas County
January 13, 2003
Page 3

standard requirements is technical or minor in nature.' The intent behind this definition is to allow for some flexibility in implementing Title 3 standards. The use of this type of compliance has been limited, however, to three instances within the entire metropolitan region, including the County's case. All other jurisdictions except West Linn have adopted code to comply with Title 3 without an interpretation of substantial compliance.

The City of Portland staff demonstrated that the City's code for development within the environmental overlay zones gives as much or more protection for streams and wetlands as does Title 3. In addition, the code serves to ensure that a development is located as far away as possible from the resource. Further, a mitigation or remediation plan is required when, through an alternatives analysis, it is determined that development cannot avoid impacts to the resources on the site.

The City of Lake Oswego requested that Oswego Lake not be subject to the balance cut and fill provision of Title 3's floodplain standards, due to the lake not being a river or stream channel and not having a riverine floodplain. City staff submitted information demonstrating that the lake functions as a detention facility, especially during flood events. Based on the information submitted, Metro staff concluded that the City's not meeting performance standard 3.07.340A(2)(b) is minor in nature for reducing the risk of flooding, preventing or reducing risk to human life and property and maintaining functions and values of floodplains.

Based on the information submitted to date from the County, Metro staff abides by the letters of April 5 and April 9, 2001 regarding substantial compliance to Title 3. If the County chooses not to meet the two remaining conditions put forth in those letters, it may request an 'exception' to these requirements of Title 3. We have already discussed with you the process to request an exception. Section 3.07.860 of the Metro code includes the criteria for granting an exception (Attachment D).

Ken Helm from the Metro Attorney's Office and I will attend the Planning Commission's meeting on January 27, 2003 to answer any additional questions about this matter. Please forward this letter to the Commission.

If you have any questions about this letter, please contact me at 503-797-1808 or email me at valoner@metro.dst.or.us.

Sincerely,



Ray Valone
Senior Regional Planner
Planning Department

RV/srb
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Enclosures

cc: Brenda Bernards
Ken Helm



METRO

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1540 | FAX 503 797 1793

March 7, 2003

Council President David Bragdon

The Honorable Larry Sowa, Chair
Clackamas County Board of Commissioners
807 Main Street
Oregon City, OR 97045

Dear Chair Sowa:

This letter addresses the current status of County compliance with Metro's Title 3. It is in part a response to the Planning Commission's hearing and motion on January 27 regarding proposed ZDO-191 to adopt Title 3 regulations within the Oak Grove Sanitary District. As you know, our staff has been working with County staff for almost three years on compliance with Title 3. This letter summarizes the process to date as well as lays out possible next steps in order to complete the process.

Originally adopted in June 1998, Title 3 was to be implemented by all jurisdictions by December 18, 1999. Due to several issues including staffing resources and controversial provisions of that title, many jurisdictions requested that the Metro Council extend the deadline. The Council did extend all requested deadlines from early 2000 to December 2001. At that time, the Metro Council stated that no more extensions would be granted. The last extension expired in December 2002, which included the deadline for Clackamas County.

As a result of many months of contacts between our staffs, two letters were sent to Doug McClain from Ray Valone during April 2001. Those letters reflect Metro staff's final determination that the County would be in substantial compliance with Title 3 upon the completion of the following three actions (also see Attachment 1):

1. Adopt Title 3 standards for the Oak Lodge Sanitary District including the Boardman wetland;
2. Adopt Title 3 standards for the Stafford Basin area within the Metro jurisdictional boundary; and
3. Extend the same level of protection, pursuant to existing County code, to all stream segments and wetlands that are shown on the Title 3 map within the Damascus/Boring area, defined as east of the pre-2002 Urban Growth Boundary line, south of the Multnomah/Clackamas county line, and west and north of the Metro jurisdictional boundary. If any of the Title 3 mapped streams or wetlands are inaccurate or no longer exist, please submit this information with evidence demonstrating why they should be removed from the map.

March 7, 2003

Page 2

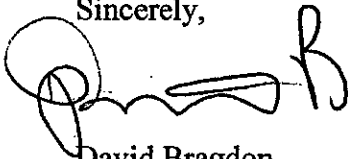
On January 27, 2003, the Clackamas County Planning Commission voted, though not a formal recommendation, to not adopt code language implementing Title 3 regulations within the Oak Lodge Sanitary District. We understand that the Board of Commissioners' hearing on this proposal (ZDO-191) is scheduled for March 19. The County has met the second condition through the Board of Commissioners' adoption of Title 3 requirements into the Rules and Regulations, effective July 2002, of the Surface Water Management District of Clackamas County. The County has not yet addressed the last condition.

The County has not, therefore, demonstrated substantial compliance with the requirements of Title 3. Because the time extension for compliance elapsed at the end of December 2002, future County decisions could be subject to appeals by Metro or any third party who is affected by the non-compliance. At this time, the County's options are as follows:

1. Adopt ZDO-191 extending Title 3 coverage for stream and wetland protection within the Oak Lodge Sanitary District, thereby meet condition 1 above.
2. Initiate a process to extend the same level of protection, pursuant to existing County code, to all stream segments and wetlands shown on the Title 3 map within the Damascus/Boring area, thereby meeting condition 3 above.
3. Alternatively, request an exception to the appropriate Title 3 requirements. This process includes review by MPAC and a public hearing by the Metro Council to determine whether the exception request meets the criteria found in Section 3.07.860 of the Functional Plan.
4. Demonstrate substantial compliance with Title 3. Completion of options 1 and 2 above would be considered substantial compliance. Alternatively, the County may submit additional substantive information demonstrating how these resources would be protected in conformance with the purposes of the Title 3 standards.

If you have questions about this letter, please contact Ray Valone by phone at 503-797-1808, or email him at valoner@metro.dst.or.us.

Sincerely,



David Bragdon
Council President

Enclosures

cc: Doug McClain
Andy Cotugno
Ray Valone



Resolution No. 05-3620
Attachment 6

METRO

May 7, 2003

The Honorable Larry Sowa
The Honorable Bill Kennemer
The Honorable Martha Schrader
Clackamas County Board of Commissioners
906 Main Street
Oregon City, OR 97045

Dear Chair Sowa and Commissioners Kennemer and Schrader:

Re: Title 3

As you know, Title 3 (Water Quality, Flood Management and Fish and Wildlife Conservation) of Metro's Urban Growth Management Functional Plan (Functional Plan) requires all cities and counties in the Metro jurisdictional boundary to revise their comprehensive plans and land use ordinances, if necessary, to comply with performance standards in the title. Clackamas County has complied with Title 3 for most areas of the county. I understand, however, that the county decided in March not to revise its plan or ordinances to comply with Title 3 in the Oak Lodge Sanitary District area. My purpose here is to tell you about avenues now available to the county and to ask you which of these avenues the county would like to pursue.

First, the county may seek an exception to the Title 3 requirement from the Metro Council. The process and the criteria for an exception are set forth in Title 8 (Compliance Procedures, section 3.07.860) of the Functional Plan and are enclosed with this letter for your review. From what I know of the circumstances you face in Oak Lodge, I believe that it will be difficult for the county to satisfy the exception criteria in Title 8. However, this process is nonetheless available to the county. I have enclosed the form provided by Metro for an exception application.

Second, the county may seek review of the matter by the Metropolitan Policy Advisory Council (MPAC). MPAC may hold a hearing on the county's request, and make recommendations on possible resolution of the matter to the Metro Council. The matter would then go before the Metro Council at a public hearing. I have enclosed the sections of Title 8 (3.07.830 and 3.07.840) that describe this process more fully.


Please bear in mind that the time extension for Clackamas County's compliance with Title 3 lapsed December 2002. This means that the county must apply the provisions of Title 3 directly to land use decisions in the subject area until the county has amended its comprehensive plan to comply with Title 3. This is a requirement of Title 8, section 3.07.810.E, a copy of which is

The Honorable Larry Sowa
The Honorable Bill Kennemer
The Honorable Martha Schrader
Clackamas County Board of Commissioners
May 7, 2003
Page 2

enclosed. Any person who participates in the county's process may appeal the decision to Land Use Board of Appeals on grounds that the decision violates Title 3.

Ray Valone of Metro's Planning Department (503-797-1808), Dick Benner of the Office of Metro Attorney (503-797-1532) or I (503-797-1763) would be happy to discuss these options with you at your convenience.

Sincerely,



Andrew C. Cotugno
Planning Department Director

ACC/srb
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Enclosures

cc: David Bragdon, Metro Council President
Brian Newman, Metro Council District 2



*Clackamas
County*

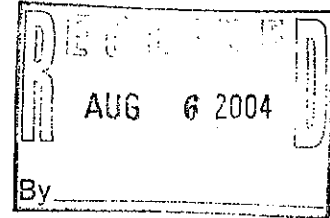
Resolution No. 05-3620
Attachment 7

**DEPARTMENT OF
TRANSPORTATION AND DEVELOPMENT**

Sunnybrook Service Center

July 22, 2004

Andy Cotugno
Metro
600 NE Grand Avenue
Portland, Oregon
97232



Re: Exception Request

Enclosed are the appropriate forms for a request for an exception from Title 3, for two specific areas. I have also included a copy of the Board Order denying the proposed amendments that would have brought the County into compliance.

If you have any questions regarding this material, please contact me.

Cordially,

Douglas M. McClain
Planning Director

M E M O R A N D U M

Resolution No. 05-3620
Attachment 8


600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1700 | FAX 503 797 1797



METRO

August 24, 2004

TO: Metro Councilors
Mike Jordan, Chief Operating Officer

FROM:  Andy Cotugno, Planning Director

RE: Title 3 Exceptions Application

I have recently received an application for an exception from Title 3 of the Urban Growth Management Functional Plan from Clackamas County. This application is for an exception from the requirements of the Water Quality Resource Area performance standards for the Oak Lodge Sanitary District portion of the county. The County Commission believes that it is in substantial compliance with the requirement. This represents the first time that a local government has applied for an exception to a functional plan requirement.

Metro Code 3.07.860 provides the exceptions process for compliance with functional plan requirements. The code calls for the Council President to set a public hearing on the issue before the Metro Council and must notify the Metro Policy Advisory Committee (MPAC), the Department of Land Conservation and Development (DLCD) and anyone who requests to be notified of exception requests. A staff report will be available to allow scheduling of this hearing in mid-October.

After the public hearing, the Metro Council determines whether the exception meets four criteria and may grant an exception if it finds:

1. It is not possible to achieve the requirement due to topographic or other physical constraints or an existing development pattern;
2. This exception and likely similar exceptions will not render the objective of the requirement unachievable region-wide;
3. The exception will not reduce the ability of another city or county to comply with the requirement; and
4. The city or county has adopted other measures more appropriate for that jurisdiction to achieve the intended result of the requirement.

The Council may establish terms and conditions for the exception to ensure that it does not undermine the ability of the region to achieve the 2040 Growth Concept. Such terms or conditions must relate to the functional plan requirement to which the Council grants the exception. The terms and conditions must be incorporated into the Council's order granting the exception.

The Council must issue an order with its conclusion and analysis and send a copy to the city or county seeking the exception, MPAC, DLCD and anyone requesting a copy of the order. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10) (a) (A).

If you have any questions, please contact either Dick Benner at extension 1532 or me at extension 1763.

cc: Dan Cooper
Richard Benner