

# 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-REVISED 2/29/00  
DATE: March 2, 2000  
DAY: Thursday  
TIME: 2:00 PM  
PLACE: Metro Council Chamber

### CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. EXECUTIVE OFFICER COMMUNICATIONS

4. AUDITOR COMMUNICATIONS

5. BUDGET/FINANCE COMMUNICATIONS

6. MPAC COMMUNICATIONS

7. CONSENT AGENDA

7.1 Consideration of Minutes for the February 17, 2000 Metro Council Regular Meeting.

8. ORDINANCES - FIRST READING

8.1 Ordinance No. 00-849, For the purpose of amending the Metro Code to adopt Campaign Finance and Disclosure Requirements.

8.2 Ordinance No. 00-850, For the purpose of authorizing a loan to Metro from the Oregon Economic and Community Development Department's Special Public Works Fund Loan Program; and Declaring an Emergency.

9. ORDINANCES - SECOND READING - QUASI-JUDICIAL PROCEEDINGS

9.1 Ordinance No. 00-843, For the Purpose of Approving Urban Growth Boundary Locational Adjustment 98-7: Jenkins/Kim, and Adopting the Findings, Conclusions And Final Order.

Kvistad

10. RESOLUTIONS

- 10.1 Resolution No. 00-2898, For the Purpose of Authorizing Participation in a Local Improvement District to Fund the Steel Bridge Pedestrian Walkway. Washington
- 10.2 Resolution No. 00-2901, For the Purpose of Authorizing the Executive Officer to Execute an Intergovernmental Agreement with the City of Gresham for the Management of Property in the East Buttes/Boring Lava Domes Target Area. Monroe
- 10.3 Resolution No. 00-2912, For the Purpose of Directing Metro Comments to the National Marine Fisheries Service Concerning their Proposed 4(d) Rule. Park
- 11. CONTRACT REVIEW BOARD**
- 11.1 Resolution No. 00-2891, For the Purpose of Authorizing an Exemption from Competitive Bidding Requirements and Authorizing Issuance of RFP #00R-1-REM for Replacement of Two Compaction Systems at Metro Central Station. Park
- 12. EXECUTIVE SESSION HELD PURSUANT TO ORS 192.660(1)(e). DELIBERATIONS WITH PERSONS DESIGNATED TO NEGOTIATE REAL PROPERTY TRANSACTIONS.**
- 12.1 Resolution No. 00-2908, For the Purpose of Amending the Jackson Bottom-Dairy McKay Creeks Target Area Refinement Plan. McLain
- 12.2 Resolution No. 00-2910A, For the Purpose of Amending the Rock Creek Greenway Target Area Refinement Plan. Kvistad
- 13. COUNCILOR COMMUNICATION**

**ADJOURN**

**Cable Schedule for March 2, 2000 Metro Council Meeting**

	Sunday (3/5)	Monday (3/6)	Tuesday (3/7)	Wednesday (3/8)	Thursday (3/2)	Friday (3/3)	Saturday (3/4)
CHANNEL 11 (Community Access Network) (most of Portland area)						2:00 P.M. *	
CHANNEL 21 (TVCA) (Washington Co., Lake Oswego, Wilsonville)	7:00 P.M. *	1:00 A.M. *		7:00 P.M. *			
CHANNEL 30 (TVCA) (NE Washington Co. - people in Wash. Co. who get Portland TCI)	7:00 P.M. *			7:00 P.M.*			
CHANNEL 30 (CityNet 30) (most of Portland area)		POSSIBLE 2:00 P.M. (previous meeting)					
CHANNEL 30 (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)	
CHANNEL 33 (ATT Consumer Svcs.) (Milwaukie)	4:00 P.M. (previous meeting)					10:00 P.M. (previous meeting)	9:00 A.M. (previous meeting)

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- 12.2 **Resolution No. 00-2910**, For the Purpose of Amending the Rock Creek Greenway Target Area Refinement Plan. Atherton

**13. COUNCILOR COMMUNICATION**

**ADJOURN**

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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).

Consideration of the February 17, 2000 Regular Metro Council Meeting minutes.

**Metro Council Meeting  
Thursday, March 2, 2000  
Metro Council Chamber**

*Agenda Item Number 8.1*

**Ordinance No. 00-849, For the purpose of amending the Metro Code to adopt Campaign Finance and Disclosure requirements.**

*First Reading*

**Metro Council Meeting  
Thursday, March 2, 2000  
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING ) ORDINANCE NO. 00-849  
THE METRO CODE REGARDING )  
CAMPAIGN FINANCE AND )  
DISCLOSURE ) Introduced by Councilor David Bragdon

WHEREAS, it is important to strengthen the public's confidence in democracy and to ensure that any qualified citizen can run for office; and

WHEREAS, the public's continuing concern for open and honest elections and for maximum citizen participation in the political process is acknowledged; and

WHEREAS, it is reaffirmed that in 1997, the Oregon Supreme Court ruled that money and freedom of speech were related, and that campaign contributions could not be limited; and

WHEREAS, the U.S. Supreme Court recently ruled that the states have the right to set their own campaign financing laws; and

WHEREAS, full and timely disclosure of all campaign contributions, in accordance with ORS 260 , contributes to public confidence in elected officials; and

WHEREAS, the goal to provide achievable campaign reforms by encouraging broad-based contributions from the public and voluntary campaign spending limits is laudable; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. That the following Chapter 2.18 "Campaign Finance Regulation" is hereby added to the Metro Code:

Chapter 2.18

CAMPAIGN FINANCE REGULATION

SECTIONS	TITLE	
Section 2.18.010	Purpose and Intent.....	2
Section 2.18.020	Definitions.....	2
Section 2.18.030	Additional Campaign Finance Reporting Requirements .....	2
Section 2.18.040	Public Dissemination of Campaign Finance Reports .....	3

Section 2.18.010 Purpose and Intent. The purpose and intent of this chapter is to provide additional campaign finance reporting disclosure to the public that is consistent with the current campaign finance disclosure requirements in Oregon and Federal laws. It is the intent of this chapter that it be construed as being a supplement to existing campaign finance regulations.

Section 2.18.020 Definitions. As used in this chapter, the following terms shall have the following meanings. Any word not specifically defined herein shall have the meaning defined in ORS 260.005.

- (a) "Candidate" means a candidate for a Metro elected office.
- (b) "Metro Elected Official" means any person elected or appointed as a member of the Metro Council, the Metro Executive Officer and the Metro Auditor.
- (c) "Metro Elected Office" means the seven (7) Metro Council positions, the Metro Executive Officer and the Metro Auditor.

Section 2.18.030 Additional Campaign Finance Reporting Requirements.

- (a) Every candidate for a Metro Elected Office and every Metro Elected Official who is a candidate for any public office shall file with the Metro Council Clerk an original copy of any campaign finance report required to be filed pursuant to ORS 260 or any applicable federal law. Such campaign finance reports shall include all required reports of contributions and expenditures. The report shall be delivered to the Clerk on the same day that it is filed with the filing officer provided for under Oregon or federal law.
- (b) In addition to the reports required by subsection (a) above, every Metro Elected Official who is a candidate for any public office shall file reports with the Metro Council Clerk containing all financial disclosures required to be reported under Oregon or Federal law no less frequently than every



90 days. The first report shall be filed with the Clerk 90 days after the date the Metro Elected Official declares their candidacy or first organizes a political committee.

- (c) Prior to taking any action or voting on any matter in which any person who has a legislative or administrative interest has made a campaign contribution of \$500 or more in the aggregate to the Metro Elected Official or to a political committee supporting the election of the Metro Elected Official to a public office, the Metro elected official shall disclose the existence of the contribution on the public record, if the contribution has not been previously reported on any financial report required to be filed with the Metro Council Clerk pursuant to (a) or (b) above.
- (d) Metro Councilor shall make the disclosure of such contributions on the record required by (c) above immediately prior to voting or abstaining from voting on the matter. The Metro Executive Officer and Metro Auditor shall disclose such contributions by filing a written notice with the Clerk or the Council prior to taking action on any such matter. In all cases, the disclosure shall include the name of the donor, the amount of the contribution and the nature of the donor's legislative or administrative interest in Metro.

Section 2.18.040 Public Dissemination of Campaign Finance Reports. The Metro Council Clerk shall maintain a file of all campaign finance reports received and shall provide public access to the file at no charge. The Clerk shall also provide such access by including the reports on Metro's world-wide web information "page."

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

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

ATTEST:

Approved as to Form:

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

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

*Agenda Item Number 8.2*

**Ordinance No. 00-850, For the Purpose of Authorizing a Loan to metro from the Oregon Economic and Community Development Department's Special Public Works Fund Loan Program; and Declaring an Emergency.**

***First Reading***

**Metro Council Meeting  
Thursday, March 2, 2000  
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING A ) ORDINANCE NO. 00-850  
LOAN TO METRO FROM THE OREGON )  
ECONOMIC AND COMMUNITY ) Introduced by Executive Officer  
DEVELOPMENT DEPARTMENT'S ) Mike Burton  
SPECIAL PUBLIC WORKS FUND LOAN )  
PROGRAM; AND DECLARING AN )  
EMERGENCY )

SECTION A. FINDINGS. As the preamble to this Ordinance, the Metro Council recites the matters set forth in this Section. To the extent any of the following recitals relates to a finding or determination which must be made by the Council in connection with the subject matter of this Ordinance or any aspect thereof, the Council declares that by setting forth such recital such finding or determination is thereby made by the Council. This Section A and the recitals, findings and determinations set forth herein constitute a part of this Ordinance.

(A) POLITICAL SUBDIVISION. Metro is a municipality and political subdivision organized and existing under and pursuant to Article M, Section 14 of the Oregon Constitution, the laws of the State of Oregon and the Metro Charter. Metro is a "municipality" within the meaning of Oregon Revised Statutes 285.700(1).

(B) EXPO CENTER HALL "D" CONSTRUCTION. Metro is also in the process of designing and constructing a replacement building for Hall "D" and

installing landscaping and site improvements at the Expo Center, and needs to finance at this time all of the costs of such improvements.

(C) METRO AUTHORITY TO BORROW FUNDS. Metro is authorized under the laws of the State of Oregon, and, in particular, the Metro Charter and Metro Ordinance No. 93-495 (said Ordinance adding various financing provisions as Article VII of the Metro Code) (collectively, the "Act"), to issue bonds and other obligations for the purpose of providing the funds needed in connection with Metro's governmental undertakings. Metro Ordinance No. 91-43 9, enacted on December 21, 1991, as amended by Metro Ordinance No. 93-495, enacted on April 22, 1993 (said Ordinance No. 91-439 as amended by said Ordinance No. 93-495 being herein referred to as the "General Revenue Bond Master Ordinance"), provides a comprehensive framework for Metro to borrow money by issuing Bonds and entering into and incurring Financial Obligations payable from Metro's Revenues and Available Funds.

(D) SPECIAL PUBLIC WORKS FUND LOAN PROGRAM. Oregon Revised Statutes 285B.410 through 285B.482 (the "SPWF Act") authorizes any municipality to file an application with the Oregon Economic and Community Development Department ("the Department") to obtain financial assistance from the Special Public Works Fund loan program administered by the Department. In order to obtain the funds necessary to finance the costs of the Hall "D" project at Expo (herein referred to as the "Project"), Metro has determined to enter into a

Financing Agreement (within the meaning of the General Revenue Bond Master Ordinance) with the Department pursuant to which Metro will borrow money through said Special Public Works Fund loan program. To that end, Metro has filed an application with the Department. The Department has approved Metro's application for financial assistance from the Special Public Works Fund pursuant to the SPWF Act. Metro is required, as a prerequisite to the receipt of financial assistance from the Department, to enter into a Financial Assistance Award Contract and a Loan Agreement with the Department in substantially the form on file with Metro's Chief Financial Officer in connection with the adoption of this Ordinance. The Project, as more particularly described in Exhibit "A" to the Loan Agreement, is an "infrastructure project" within the meaning of the SPWF Act which is needed by and is in the public interest of Metro.

NOW, THEREFORE, THE METRO COUNCIL ORDAINS AS FOLLOWS:

**SECTION 1. TERMS DEFINED IN GENERAL REVENUE BOND MASTER ORDINANCE.** All terms used in this Ordinance and not otherwise defined herein shall have the respective meanings assigned thereto in the General Revenue Bond Master Ordinance.

**SECTION 2. LOAN AUTHORIZED.** Pursuant to the Special Public Works Fund loan program, Metro shall borrow from the Department the principal sum of Fifteen Million Six Hundred Thirty-one Thousand Dollars (\$15,631,000) (the "Loan"). The

Executive Officer is hereby authorized, empowered and directed, for and on behalf of Metro, to establish and determine:

(a) the interest rate to be applicable to the Loan, *provided that* in no event shall the Loan bear interest at a rate in excess of 6.5% *per annum*; and

(b) the dates on which the principal of and accrued interest on the Loan shall be due and payable and the principal amount to be due on each such date.

**SECTION 3. SECURITY.** The Loan shall constitute a Financing Obligation under the General Revenue Bond Master Ordinance, and the Financing Documents (as defined below) shall constitute a Financing Agreement within the meaning of the General Revenue Bond Master Ordinance. The principal of and interest on the Loan shall be payable from the Revenues and Available Funds on a parity basis (*pari passu*) with the payment of all amounts owing under all Outstanding Debt Obligations. The obligation of Metro to make payments pursuant to the Loan Agreement is a full faith and credit obligation of Metro payable as aforesaid out of the Revenues and Available Fund and is an obligation that is not subject to annual appropriation. In accordance with the requirements of the General Revenue Bond Master Ordinance, Metro covenants and agrees to duly budget and appropriate Revenues and Available Funds in each fiscal year sufficient to pay when due all amounts of principal and interest on the Loan.

SECTION 4. ADDITIONAL AUTHORIZATIONS. Metro's Executive Officer and Chief Financial Officer, and each of them acting individually, are hereby authorized, empowered and directed, for and on behalf of Metro, to do and perform all acts and things necessary or appropriate to obtain the Loan and otherwise implement the provisions of this Ordinance, including but not limited to the execution and delivery of the Financial Assistance Award Contract, Loan Agreement, the Promissory Note attached as an Exhibit to the Loan Agreement (the "Financing Documents") and such documents, instruments, certificates and agreements as may be necessary or appropriate in connection with the Loan. The proceeds of the Loan shall be applied solely to the "Costs of the Project" as such term is defined in the Loan Agreement.

SECTION 5. MAINTENANCE OF TAX-EXEMPT STATUS. Metro hereby covenants and agrees that it will not take any action which would cause the interest on the Loan to become includable for federal income tax purposes in the gross incomes of the owner thereof, and that Metro will take all reasonable actions within its control necessary in order to ensure that the interest on the Loan remains excludable for federal income tax purposes from the gross incomes of the owner thereof. In addition, Metro further covenants and agrees that it will not make any use of the proceeds of the Loan or the lands and improvements to be financed with the proceeds of the Loan which would result in the Loan being or becoming (a) a private activity bond within the meaning of Section 141(a) of the Internal Revenue Code of 1986, as amended (the "Code") or (b) an arbitrage bond within the meaning of Code Section 148(a). Metro may, in subsequent Ordinances of the Council and in the certificates executed and delivered by Metro Executive Officer and the

Metro Chief Financial Officer in connection with the Loan, make additional covenants to insure that interest paid on the Loan will remain excludable for federal income tax purposes from the gross incomes of the owner thereof, in which event such additional covenants shall constitute contracts with the owner of the Loan.

SECTION 6. REIMBURSEMENT OUT OF LOAN PROCEEDS. Metro may reimburse expenditures for the Project with amounts received from the Department pursuant to the Financing Documents. Additionally, Metro understands that the Department may fund or reimburse itself for the funding of amounts paid to Metro pursuant to the Financing Documents with the proceeds of bonds issued by the State of Oregon pursuant to the SPWF Act. This Ordinance shall constitute "official intent" within the meaning of Section 1.150-2 of the Income Tax Regulations promulgated by the United States Department of the Treasury with respect to the funding or the reimbursement for the funding of the costs of the Project with the proceeds of the Loan pursuant to the Financing Documents and with the proceeds of any bonds issued by the State of Oregon pursuant to the SPWF Act.

SECTION 7. EMERGENCY CLAUSE. This Ordinance is necessary for the immediate preservation of public health, safety and welfare, in that it will secure the needed Project financing which has been offered by the Department; 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 \_\_\_\_\_ 2000.

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

ATTEST:

Approved as to Form:

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

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

KAP:kaj/sm  
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2/17/2000

## STAFF REPORT

### CONSIDERATION OF ORDINANCE NUMBER 00-850 FOR THE PURPOSE OF AUTHORIZING A LOAN TO METRO FROM THE OREGON ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT'S SPECIAL PUBLIC WORKS FUND LOAN PROGRAM; AND DECLARING AN EMERGENCY.

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Date: February 14, 2000

Presented by: Tony Mounts

## FACTUAL BACKGROUND AND ANALYSIS

Ordinance 00-850 authorizes acceptance of a loan from the Oregon Economic and Community Development Department (OECDD) Special Public Works Fund (SPWF) to finance the replacement of Hall D at the Expo Center.

Resolution 99-2833, adopted on September 16, 1999, authorized submittal of a loan application to OECDD for the Hall D project. The total project cost for the replacement of Hall D is \$15,631,000. At the time Resolution 99-2833 was considered, the financing plan was based on a \$5 million loan from OECDD and the sale of General Fund-backed revenue bonds for the balance. In the interim, OECDD has determined that they can finance the entire project. This allows Metro to both avoid the costs of issuing debt and obtain a lower interest rate than would otherwise be possible.

In December, prior to the agreeing to finance to entire project, OECDD had awarded Metro a SPWF loan for \$5,013,000. An amendment to this award is in process and should be available by the time of final action on this ordinance. This ordinance authorizes Metro to accept the original award and authorizes the Executive Officer to accept the amendment when it is available.

The full loan amount, after the amendment, will be \$15,631,000. The term will be 25 years with an interest rate of approximately 5.5%. The final interest rate will be set at the time the bonds are sold in late March, 2000. The loan will be repaid from revenues charged for use of Expo facilities. Should Expo revenues be insufficient to pay the full debt service in any year, Metro's General Fund will be expected to provide the funds needed.

## BUDGET IMPACT

Receipt of this loan has been budgeted in the General Revenue Bond Fund in the FY2000-01 Budget. Debt service is anticipated to begin during FY2000-01 as well. Because the State sells bonds for specific projects, Metro will earn interest on the unspent portion of the loan during the construction draw down period. These earnings will be dedicated to payment of loan interest, reducing the debt service burden to Expo operations.

## EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 00-850.

*Agenda Item Number 9.1*

**Ordinance No. 00-843, For the Purpose of Approving Urban Growth Boundary Locational Adjustment 98-7; Jenkins/Kim, and Adopting the Findings, Conclusions and Final Order**

***Second Reading – Quasi-Judicial Proceedings***

**Metro Council Meeting  
Thursday, March 2, 2000  
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING ) ORDINANCE NO 00-843  
URBAN GROWTH BOUNDARY )  
LOCATIONAL ADJUSTMENT 98-7: )  
JENKINS/KIM, AND ADOPTING THE ) Introduced by Councilor Rod Park  
FINDINGS, CONCLUSIONS AND FINAL )  
ORDER )

WHEREAS, on December 1, 1998, Metro received a revised petition for a locational adjustment for 18.85 acres located southeast of the intersection of Kaiser and Springville roads in unincorporated Washington County, as shown in Exhibit A; and

WHEREAS, Metro staff reviewed and analyzed the petition, and completed a written report to the Hearings Officer, recommending approval of the petition; and

WHEREAS, Metro held a hearing to consider the petition on May 24, 1999, conducted by an independent Hearing Officer; and

WHEREAS, the Hearings Officer submitted his report on July 1, 1999, 30 days after the close of the record on June 1, 1999, recommending Findings of Fact and Conclusions on all of the criteria applicable to the petition; and

WHEREAS, exceptions to the Hearings Officer Report were filed; and

WHEREAS, arguments were held before the Metro Council on September 16, 1999 and October 28, 1999; now, therefore

THE METRO COUNCIL ORDAINS:

1. That the Findings, Conclusions and Final Order attached and incorporated herein as Exhibit B are hereby adopted; and
2. That the regional urban growth boundary is hereby adjusted by including the 18.85 acres as described in Exhibit B and as shown in Exhibit A attached and incorporated herein in the urban growth boundary to improve the boundary at that location.

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

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

ATTEST:

Approved as to Form:

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

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

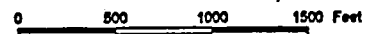
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OGC/LSS/kvw (01/12/00)

# Proposed Adjustment

## UGB Case 98-7 Jenkins/Kim

 Urban Growth Boundary

 Subject Property



1" = 1000 feet



**METRO**

600 NE Grand Ave.  
 Portland, OR 97232-2736  
 503 787-1742 FAX 503 787-1909  
 Email: drc@metro.dst.or.us

Plot date: Apr 29, 1999; c:\projects\jenkins.apr

**BEFORE THE METRO COUNCIL**

In the matter of the petition of Michael Jenkins and Sang Kim for a Locational Adjustment to the Urban Growth Boundary between Laidlaw and Springville Roads, east of Kaiser Road in unincorporated Washington County ) **FINDINGS,  
CONCLUSIONS &  
FINAL ORDER  
Contested Case No. 98-07**

**I. BASIC FACTS, PUBLIC HEARINGS AND THE RECORD**

1. On December 1, 1998, Michael Jenkins and Sang Kim ("petitioners") completed filing a revised petition for a locational adjustment to the Urban Growth Boundary ("UGB"), including exhibits required by Metro rules for locational adjustments. See Exhibit 3 for the original petition for locational adjustment (the "petition"). Basic facts about the petition include the following:

a. The land to be added to the UGB is described as Tax Lot 1100, Section 21, T1N-R1W and Tax Lot 101, Section 21BA, T1N-R1W, WM, Washington County (the "subject property").<sup>1</sup> It is located roughly 1800 feet south of Springville Road, roughly 2100 feet north of Laidlaw Road and roughly 2200 feet east of Kaiser Road in unincorporated Washington County. The present UGB forms the east, west and south edges of the subject property. The Washington/Multnomah County line forms the north boundary of the site. Land to the east, west and south is inside the UGB and unincorporated Washington County. Land to the north is outside the UGB and in unincorporated Multnomah County. See Exhibits 3, 8 and 17 for maps showing the subject property. Land to the south, east and west is zoned R6 (Residential, 6 units per acre). Land to the southeast is zoned R5 (Residential, 5 units per acre). Land to the northwest is zoned EFU (Exclusive Farm Use, 80 acre minimum lot size). Land to the northeast is zoned MUA-20 (Multiple Use Agriculture, 20 acre minimum lot size). See Exhibit 1E of the petition, Exhibit 3.

b. The subject property is a rectangular-shaped parcel 450 feet north-south by about 1900 feet east-west. The site contains 18.85 acres. It is designated and zoned EFU (Exclusive Farm Use) on the acknowledged Washington County Comprehensive Plan and zoning map.

<sup>1</sup> The subject property was originally included in the UGB. In 1982 the site was removed from the UGB as a trade with another property located adjacent to Tualatin. See Metro Ordinance 82-149.

1 c. The subject property slopes southwest from a high of about 410 feet  
2 above mean sea level ("msl") at the northeast corner to a low of about 360 feet msl along  
3 the southwest corner. Average slope is less than five percent (Attachment C of exhibit 3).  
4

5 d. The petition was accompanied by comments from affected jurisdictions  
6 and service providers. See Exhibits 1, 2, 6, 7, and 9.  
7

8 i. The Washington County Board of Commissioners adopted an  
9 order in which it made no recommendation on the merits of the petition. See Exhibit 16.  
10

11 ii. The Tualatin Valley Water District ("TVWD") testified that it  
12 could serve the subject property, and that approval of the petition would make the  
13 provision of water service delivery in the UGB more efficient and would result in an  
14 orderly and economic provision of services. TVWD expressed support for the petition.  
15 See Exhibit 2.  
16

17 iii. The Beaverton School District testified that it would review the  
18 status of school facilities in response to an application for Comprehensive Plan  
19 Amendment on the subject property. The School District took no position regarding the  
20 petition. See Exhibit 3H to the petition, Exhibit 3.  
21

22 iv. The Unified Sewerage Agency of Washington County  
23 ("USA") testified that the subject property is not located within the Agency's service  
24 area, but is located within the drainage basin. Approval of the petition would result in a  
25 net increase in efficiency of sanitary sewer service within the UGB due to the fact that  
26 USA policies prohibit service of the neighboring land within the UGB by pump station  
27 and alternative gravity flow service, while possible, is not practicable due to topographic  
28 and intervening property ownership hindrances. The petition would not result in a  
29 decrease of efficiency of storm water services to properties currently in the UGB. See  
30 Exhibits 1 and 7.  
31

32 v. Tualatin Valley Fire & Rescue ("TVFR") commented that it  
33 could serve the subject pr operty, and that approval of the petition would have "very little  
34 impact on fire department services." TVFR adopted a neutral position regarding the  
35 petition.  
36

1 vi. The Washington County Sheriff's Office commented that it  
2 could provide economical and efficient services to the subject property, and that approval  
3 of the petition would improve efficiency of service delivery in the UGB. See Exhibit 3C  
4 to the petition, Exhibit 3.

5  
6 vii. The Tualatin Hills Parks and Recreation District ("THPRD")  
7 commented that it has sufficient capacity to serve the subject property if it is annexed into  
8 the park district. See Exhibit 10. THPRD's comment letter indicated that including the  
9 property within the UGB would result in an orderly and economic provision of park and  
10 recreation services and will result in a net improvement in efficiency of its operations in  
11 the area.

12  
13 viii. Tri-Met did not comment on this petition.

14  
15 ix. Northwest Natural Gas stated that it has adequate capacity  
16 to serve the site and that including the property in the UGB would enhance its ability to  
17 serve any new development beyond this project. See Exhibit 3-F of the petition.

18  
19 2. Metro staff mailed notices of a hearing to consider the petition by certified  
20 mail to the owners of property within 500 feet of the subject property, to the petitioners,  
21 to Washington County, the Department of Land Conservation and Development  
22 ("DLCD"), service providers, the local Citizen Planning Organization (CPO-7) and  
23 persons, agencies and organizations who requested notice. See Exhibits 15, 19 and 28. A  
24 notice of the hearing also was published in *The Oregonian* at least 10 days before the  
25 hearing.

26  
27 3. On May 24, 1999, Metro hearings officer Larry Epstein (the "hearings officer")  
28 held a public hearing at the Washington County Public Services Building Auditorium to  
29 consider the petition. All exhibits and records of testimony have been filed with the  
30 Growth Management Division of Metro. The hearings officer announced at the  
31 beginning of the hearing the rights of persons with an interest in the matter, including the  
32 right to request that the hearings officer continue the hearing or hold open the public  
33 record, the duty of those persons to testify and to raise all issues to preserve appeal rights,  
34 the manner in which the hearing will be conducted, and the applicable approval  
35 standards. The hearings officer disclaimed any *ex parte* contacts, bias or conflicts of  
36 interest. Eleven witnesses testified in person.



1 a. Metro senior regional planner Ray Valone verified the contents of the  
2 record and summarized the staff report (Exhibit 18), including basic facts about the  
3 subject property, the UGB and urban services, and comments from neighboring property  
4 owners. He testified that the petitioners showed that the proposed locational adjustment  
5 complies with all of the applicable approval criteria.

6  
7 i. He noted that the approval of the petition would result in a net  
8 improvement in efficiency of sewer, water, park and police services, will have no impact  
9 on fire and transportation services and will reduce efficiency of school services.

10  
11 ii. He noted that approval of the petition will facilitate needed  
12 development of the abutting property east of the site that is located within the existing  
13 UGB (the Malinowski property).

14  
15 iii. He corrected two minor errors in the Staff Report. The  
16 THPRD letter referenced on page 6 of the Staff Report was dated September 25, 1998.  
17 On page 7 the Staff Report should include storm water in the list of services with which  
18 the subject property can be served in an orderly and economic fashion.

19  
20 b. Eric Eisemann, Ryan O'Brien and Michael Jenkins appeared on behalf  
21 of the petitioners, Michael Jenkins and Sang Kim.

22  
23 i. Mr. Eisemann noted that the subject property was previously  
24 included in the UGB. The property was removed in 1982 because neither the owner nor  
25 Metro expected the surrounding property to develop with urban services in the near  
26 future. Circumstances have changed since that time.

27  
28 (1) He testified that there are no "similarly situated"  
29 nearby properties based on the soils classifications on the site and the ability to provide  
30 services to land within the existing UGB. He introduced a service provider "matrix"  
31 summarizing the service provider statements submitted in response to the petition.  
32 Exhibit 27. Petitioners also pointed to the fact that the subject property is the only  
33 portion of the petitioner's property located within Washington County and that all  
34 neighboring property to the south, east and west of the site are also within Washington  
35 County. They noted that the proposed adjustment will remove the inconsistencies  
36 between Multnomah County and Washington County codes. They pointed out that

1 County lines have consistently been used as UGB boundaries pointing to the history of  
2 the UGB. The information submitted regarding CRAG findings in January 1979 indicate  
3 that commonly accepted legal features such as city limits and property lines are  
4 appropriate for delineating the UGB and that the UGB was intended to coincide with  
5 existing administrative and political boundary as well as natural features and man made  
6 buffers.

7  
8 (2) He testified that this petition allows maximum  
9 efficiency of land use by providing access around the Dogwood Park Area of Special  
10 Concern ("ASC"), permitting properties to the east to develop at urban densities.

11  
12 (3) He testified that "on-balance," retention of this site as  
13 agricultural land would make the provision of urban services to adjacent areas inside the  
14 UGB impracticable. Although there are alternative means of providing services, they are  
15 not practicable due to cost, environmental impacts, timing and lack of willing buyers and  
16 sellers. He testified that urban services are "needed" to serve abutting properties based  
17 on their urban designation in the County's Comprehensive Plan. The current plans of the  
18 property owners are not relevant.

19  
20 (4) He testified that the site plan is only intended to show  
21 that the property can be developed consistent with the County's minimum density  
22 standards. The petition responded to the Goal 5 issues based on the Goal 5 resources  
23 identified in the Washington County inventory. The petitioners delineated the wetlands  
24 on the site. Development on this site may impact wetlands to some extent but such  
25 impacts are permitted subject to mitigation. The petitioners' traffic study considered all  
26 intersections identified as intersections of concern by Washington County. He testified  
27 that the site can be developed around the natural gas pipeline.

28  
29 (5) He testified that alleged comments by opponents  
30 regarding the feasibility of alternative sewer extensions are not accurate, are not in the  
31 record and therefore are not substantial evidence.

32  
33 (6) He testified that the petition is consistent with the  
34 Dogwood Park ASC and the Bethany Community Plan. Adding this site to the UGB will  
35 allow development while minimizing impacts on the ASC.

1                   ii. Mr. O'Brien argued that inclusion of this property in the UGB  
2 is necessary to provide urban services to properties within the existing UGB. It is  
3 unlikely that urban services will be provided to the abutting properties through alternative  
4 means within a relevant time period. Therefore retention of the subject property as  
5 agricultural land will make it impracticable to provide urban services to properties within  
6 the existing UGB.

7  
8                   (1) He noted that, although the wetlands on the subject  
9 property limit development, it is feasible to develop this site. Development on this  
10 property will provide an opportunity for enhancement of the existing wetlands. State law  
11 prohibits development on this site from causing flooding on adjacent properties.

12  
13                   (2) He argued that the land within the powerline right of  
14 way south of the subject property is entirely wetlands. The Oregon Division of State  
15 Lands ("DSL") and the Army Corps of Engineers (the "Corps") do not want sewers  
16 located in wetlands. The electrical utilities do not want other public services located  
17 within the right of way due to concerns about equipment near the powerlines. In  
18 addition, the Greenwood Hills development was not required to extend sewer stubs to the  
19 north and east boundaries of that site.

20  
21                   (3) Sewers could be extended in the low areas within  
22 Dogwood Park, but that would require easements across several private properties. USA  
23 prefers that sewers be located in public streets. Public services are unlikely to be  
24 extended through Dogwood Park in the near future.

25  
26                   iii. Dr. Jenkins argued that development on this site will not  
27 impact the farm operation on his property north of the site. He currently leases the  
28 property for grass seed production, but different farmers have planted it with a variety of  
29 crops during the 19 years he has owned the property. The owners of adjacent properties  
30 have never complained about impacts from farm practices. He argued that the  
31 Malinowskis are not aggressively farming their property east of the subject site. They use  
32 it for limited grazing. They do not harvest hay. Most of their pastures are further north,  
33 in Multnomah County and separated from the subject property by intervening properties  
34 which are not zoned EFU but rather are the location of homes on parcels for which an  
35 exception had been taken.

1 (1) He summarized the development potential in the area.

2 He argued that the areas southeast of the site will develop in the near future as sanitary  
3 sewer service is extended. Development on the subject property will assist development  
4 in the area by enhancing east-west circulation around the Dogwood Park ASC. He  
5 argued that the Teufel letter (exhibit 20) demonstrates that, unless this petition is  
6 approved, the Malinowski property will remain isolated for many years. Road and sewer  
7 access through this site will be lost, because the abutting property south of the site (the  
8 Bosa North subdivision) will be developed.

9  
10 (2) He argued that development on this site will extend  
11 sanitary sewers within public streets rather than in private easements, consistent with  
12 USA's preferences. He testified that Don Scholander, the owner of the Greenwood Hill  
13 subdivision, will not grant an easement to allow sanitary sewer extension to the  
14 Malinowski property. He opined that sanitary sewers are unlikely to be extended through  
15 the Dogwood Park ASC, because it would removal of numerous trees.

16  
17 c. Chris Warren testified on behalf of Lexington Homes, the owner of the  
18 Bosa North subdivision south of the site, in support of the petition. He testified the  
19 petition needs to be approved to enhance cross circulation in the area. If this petition is  
20 denied Lexington Homes will develop the proposed street stubs south of the subject  
21 property as residential lots within one year.

22  
23 d. Greg and Richard Malinowski, the owners of the property east of the  
24 site, testified in opposition to the petition.

25  
26 i. Greg Malinowski summarized his written testimony (Exhibit  
27 21).

28  
29 (1) He testified that they are farming their property. They  
30 have no plans to develop it. Development on the subject property would threaten the  
31 continued operation of their farm. He argued that the subject property should be retained  
32 in agricultural use and as a natural wetland. He summarized their farm operations. He  
33 testified that they are seeking to "trade" their property out of the UGB. Approval of this  
34 petition could eliminate that option.

1 (2) He argued that the property north of the site (outlined  
2 in blue on the aerial photo attached to exhibit 21) is similarly situated and owned by  
3 petitioner Jenkins. If this petition is approved, petitioner Jenkins will argue that the  
4 abutting property is too small to farm and therefore should also be included in the UGB.  
5

6 (3) He argued that the majority of the subject site is  
7 wetland based on Metro's "flood prone soils" maps. This site (and their property to the  
8 east) is wet for three months of the year. He introduced photographs showing standing  
9 water on the site, exhibits 25a and b. He expressed concern that development on this site  
10 will increase flooding on their property east of the site. They cut hay on their property  
11 and graze cattle during the summer and fall.  
12

13 (4) He argued that approval of this petition is not required  
14 to provide sanitary sewer service to their property. Equally efficient alternatives are  
15 available. Sanitary sewers can be extended to their property within the powerline right of  
16 way south of the site, within the existing UGB. The petitioners do not own the right of  
17 way, and it is not part of the subject property. There are no trees or slopes that might  
18 interfere with extension of sanitary sewer lines. Allen Lindell, the owner of the property  
19 southeast of the site, is willing to grant an easement allowing extension of sanitary sewers  
20 across his property. A sewer line in this location would also serve future redevelopment  
21 of Mr. Lindell's property. Sewer lines in the Greenwood Hills development would be too  
22 high to serve future development on lands east of Greenwood Hills.  
23

24 (5) He testified that issues regarding public services and  
25 access to their property were addressed when the subject property was removed from the  
26 UGB in 1982. The subject property would not have been removed at that time if it would  
27 have prevented extension of services to their property.  
28

29 ii. Richard Malinowski argued that approval of this petition will  
30 have an adverse impact on their active farm operations due to increasing conflicts with  
31 urban uses. He testified that they frequently run their equipment in the early mornings  
32 and late evenings during the summer. They have received complaints and threats from  
33 neighbors regarding noise and dust under existing conditions. He expressed concern that  
34 urban residents will use their fields for playgrounds; leaving debris which could damage  
35 harvesting equipment, knocking down crops and opening gates allowing animals to  
36 escape. In the past people have cut their fences in order to ride motorcycles and four-

1 wheel drive vehicles on their fields. These impacts will increase with increasing  
2 development on abutting properties. Mr. Malinowski did not respond to the testimony  
3 that he was not intensively farming the land adjacent to the subject property.  
4

5 e. Mary Manseau opined that the ASC designation will not prevent  
6 extension of urban services and future development in the area. Greenwood Drive will be  
7 extended in the future when adequate sight distance is available at the 137th/Laidlaw  
8 Road intersection. She argued that orderly extension of public services can occur without  
9 this locational adjustment. Extending sewers through this site will only provide service  
10 to the western portion of the Malinowski site. She argued that area schools are already  
11 over capacity. Elementary students are being bussed to other schools. Development on  
12 the subject property will add to the problem if this petition is approved. She argued that  
13 the transportation report is incomplete, because it failed to address impacts on streets to  
14 the south and east. She argued that roads to access this site would impact open space and  
15 wetland mitigation sites within the Bosa North development. She argued that this  
16 petition is inconsistent with the Bethany Community plan which recommends that  
17 powerline corridors, streams, wetlands and similar features to define the boundaries of the  
18 community. She questioned whether the site can be developed with 80 lots as proposed  
19 due to the large wetlands on the site. She argued that the Staff Report overstates the  
20 potential adverse environmental impacts of continued agricultural use and fails to  
21 consider the impacts to the wetlands of urban development on this site. The forested  
22 upland areas of the site must be clear-cut to allow development on the site.  
23

24 f. April Debolt argued that the wetlands on this site are an important  
25 natural resource, and they form a natural boundary on this site. Red-legged frogs and  
26 western pond turtles, listed as endangered or threatened species in Oregon, live in the  
27 wetlands on the site. She opined that livestock grazing on the site, during the right time  
28 of year, can enhance the complexity of the wetland ecosystem. She argued that  
29 development on this site is inefficient. It is located several hundred feet from existing  
30 urban development and it abuts existing agricultural uses. Access to this site through  
31 Bosa North will impact the open space/wetlands areas preserved on that site. She argued  
32 that the applicant ignored the existing 16-inch high-pressure natural gas line that crosses  
33 this site. She argued that sewer lines could be extended within the open space on the  
34 north edge of the Bosa North development without removing any trees.  
35

1 g. Tom Hamann argued that the subject property should remain rural.  
2 Development on this site will put pressure on other lands outside the UGB to convert to  
3 urban uses.  
4

5 h. Ted Nelson expressed concerns that development on this site could  
6 impact his property to the north. His property is roughly 100 feet higher in elevation, and  
7 it is very wet during the winter. Development on this site may block natural storm water  
8 flows and cause increased flooding on his property.  
9

10 i. George and Susan Teufel submitted written testimony in opposition to  
11 the petition. Exhibit 20.  
12

13 j. Mary Kyle McCurdy submitted written testimony in opposition to the  
14 petition on behalf of 1000 Friends of Oregon. Exhibit 23.  
15

16 k. The hearings officer held the record open for 1 week to allow the  
17 petitioners an opportunity to submit a closing statement. The record in this case closed at  
18 5:00 pm on June 1, 1999.  
19

20 5. On July 1, 1999, the hearings officer filed with the Council a report,  
21 recommendation, and draft final order denying the petition for the reasons provided  
22 therein. Copies of the report and recommendation were timely mailed to parties of record  
23 together with an explanation of rights to file exceptions thereto and notice of the Council  
24 hearing to consider the matter.  
25

26 6. On September 16, 1999 the Council held a duly noticed public hearing to  
27 consider testimony and timely exceptions to the report and recommendation. After  
28 considering the testimony and discussion, the Council voted to deny the petition for  
29 Contested Case No. 98-7 (Jenkins/Kim). In a subsequent action later that day, the Council  
30 voted to reconsider its decision and set a date for further deliberation. The parties were  
31 notified of the reconsideration vote.  
32

## 33 II. APPLICABLE APPROVAL STANDARDS AND RESPONSIVE FINDINGS

34

35 1. Metro Code section 3.01.035(b) and (c) contains approval criteria for all  
36 locational adjustments. Metro Code section 3.01.035(f) contains additional approval

1 criteria for locational adjustments to add land to the UGB. The relevant criteria from  
2 those sections are reprinted below in italic font. Following each criterion are findings  
3 explaining how the petition does or does not comply with that criterion.

4  
5 The relevant goals, rules and statutes are implemented by the procedures in  
6 Chapter 3.01. Metro Code section 3.01.005.

7  
8 *Area of locational adjustments. All locational adjustment additions and*  
9 *administrative adjustments for any one year shall not exceed 100 net acres*  
10 *and no individual locational adjustment shall exceed 20 net acres...*

11 Metro Code section 3.01.035(b)

12  
13 2. No locational adjustments or administrative adjustments have been  
14 approved in 1999. Therefore not more than 100 acres has been added to the UGB  
15 this year. The petition in this case proposes to add 18.85 acres to the UGB, which  
16 is less than 20 acres. Therefore, as proposed, the petition complies with Metro  
17 Code section 3.01.035(b).

18  
19 *Orderly and economic provisions of public facilities and services. A*  
20 *locational adjustment shall result in a net improvement in the efficiency of*  
21 *public facilities and services, including but not limited to, water,*  
22 *sewerage, storm drainage, transportation, parks and open space in the*  
23 *adjoining areas within the UGB; and any area to be added must be*  
24 *capable of being served in an orderly and economical fashion.*

25 Metro Code section 3.01.035(c)(1)

26  
27 3. The Council finds that the subject property can be served in an orderly and  
28 economic manner by the public facilities and services specified in this Code section,  
29 including water, sewerage, storm drainage, transportation, parks, transit and emergency  
30 services, based on the comments in the record from the service providers.

31  
32 a. Service agency letters and expert testimony establish that urban  
33 services can be efficiently provided to the property. The expert opinion of Metro staff  
34 supports this testimony. This aspect of the case is not the major focus of the debate  
35 between the parties.



1           b. USA testified that it was against agency policy to allow pump stations  
2 to serve the neighboring UGB property. Without the pump station petitioner's land is the  
3 most efficient way to serve the neighboring property within the UGB due to  
4 topographical and ownership constraints hindering alternative access to gravity sewer  
5 services. The developer would be required to pay for any necessary upgrades to the  
6 capacity of collection system and treatment facilities. Therefore the Council finds that  
7 adequate sewer capacity can be provided to serve this property.

8  
9           c. The Beaverton School District testified that it would address school  
10 capacity issues through the Comprehensive Plan Amendment process after the locational  
11 adjustment is made. The evidence indicates there are presently existing or planned  
12 schools for elementary and middle school aged children in the immediate vicinity of the  
13 subject property.

14  
15           i. Schools are not expressly included in the list of services in this  
16 criteria. While the Council finds that school capacity is a matter to be considered in  
17 general in evaluating whether this Code provision has been met, actual individual  
18 building capacity figures are premature for consideration due the fact that capacity figures  
19 are variables solely within the control of independent special districts and their varying  
20 policies on class size. We do not interpret the standard to require immediate availability  
21 of classroom space. Instead, we consider whether the land is within a school district with  
22 proven ability to provide service in an orderly and sufficient manner. This is the case in  
23 this application.

24  
25           Building capacity variables are not in the control of the applicant  
26 or Metro and will be addressed upon actual subdivision application. Furthermore, failure  
27 of the school district to take a definitive position on the application should not be  
28 construed as a negative response to a locational adjustment proposal. We find that the  
29 property can be provided with school services in an orderly and efficient manner based on  
30 the proximity of existing and planned schools in the immediate vicinity.

31  
32           4. The major dispute among the parties deals with whether the adjustment will  
33 result in a net improvement in the efficiency of public facilities and services. Metro  
34 rules do not define how to calculate net efficiency of urban services. In the absence of  
35 such rules, the Council must construe the words in practice. It does so consistent with the  
36 manner in which it has construed those words in past locational adjustments. The record

1 supports the conclusion of Metro staff that approval of the petition would result in a net  
2 improvement in efficiency of sewer, water, park and police services, will have no impact  
3 on fire and transportation services and will reduce efficiency of school services. On  
4 balance, we find this results in a net improvement in efficiency of public facilities and  
5 services. The Council concludes that the locational adjustment proposed in this case  
6 results in a net improvement in the efficiency of services sufficient to comply with Metro  
7 Code section 3.01.035(c)(1):

8  
9 a. Including the subject property in the UGB increases the net efficiency  
10 of sewer service, because it enables the petitioners to serve properties east of the subject  
11 property (the Malinowski properties) with a gravity flow sewer line. Unified Sewerage  
12 Agency (USA) rules prohibit use of a pump station to serve land in the UGB if the sewer  
13 is within 5000 feet, which it is in this case.

14  
15 i. Alternative routes for gravity flow sewer service are not  
16 practicable or available. It was alleged that sewers could be extended to the Malinowski  
17 properties through the powerline right of way south of the subject property within the  
18 existing UGB. However sewer lines do not extend to the powerline right of way now.  
19 Sewer lines serving the Greenwood Hill subdivision were stubbed in NW Greenwood  
20 Drive south of the site. Gravity sewers could be extended to the Malinowski properties  
21 from this stub ("Option 2" identified by the applicant in Attachment C of the Staff  
22 Report, Exhibit 18). However there is no legal right for a sewer to cross all intervening  
23 properties at this time, and topography between Greenwood Drive and the western  
24 portion of the Malinowski property may impede gravity flow service to that area even if a  
25 line is extended from Greenwood Drive. Therefore the gravity flow line from Greenwood  
26 Drive, while possible is not sufficiently timely or certain to be practicable and available.

27  
28 b. The Council finds that including the subject property in the UGB  
29 increases the net efficiency of park and open space services and facilities. The April 12,  
30 1999 letter from the THPRD states that approval of this petition results in increased  
31 efficiency of park and open space services.

32  
33 i. Certain wetland areas of the site are proposed to be set aside for  
34 preservation. Approval of the petition would increase the amount of open space within  
35 the Park District because the wetland areas of the subject property would be available for  
36 dedication to the THPRD when the subject property is developed. The area proposed to

1 be dedicated is adjacent to the existing open space within the Kaiser Woods subdivision  
2 to the west.<sup>2</sup> Therefore approval of this petition will expand the amount of contiguous  
3 open space area in the Park District. Increasing the area of open space increases the  
4 efficiency of open space services for purposes of this section.

5  
6 ii. Existing zoning of the subject property is so constrained that it  
7 is reasonably likely to remain undeveloped if it is not included within the UGB. Including  
8 the subject property in the UGB is likely to reduce the undeveloped area of the site. But,  
9 under MC 3.01.035(c)(1), the only parks and open spaces that are relevant are "public"  
10 parks and open spaces, i.e., land owned or used by the public for park or open space  
11 purposes. Therefore the loss of undeveloped land as a result of the locational adjustment  
12 petition is not relevant.

13  
14 c. Council finds that including the subject property in the UGB increases  
15 the net efficiency of transportation services for land already in the UGB. This contributes  
16 to our finding that petitioner has sustained its burden of proof that a net improvement in  
17 service efficiency will result from approval. The Council finds that including the subject  
18 property in the UGB has a net increase in transportation efficiency.

19  
20 i. The Council finds that development on the subject property  
21 would create an opportunity for additional cross-circulation in the area by extending a  
22 stub street that could serve the Malinowski properties within the UGB.

23  
24 ii. The Council further finds that east-west cross-circulation may  
25 be provided through the Dogwood Park ASC by the extension of NW Greenwood Drive  
26 at some future date. However, the Bethany Community Plan requires future expansion of  
27 essential urban services into the Dogwood Park ACS must protect the unique character of  
28 Dogwood Park. Consequently, NW Greenwood Drive is currently barricaded to prevent  
29 the creation of additional adverse traffic impacts in the Dogwood Park ASC.

30  
31 iii. The evidence includes materials from the Washington County  
32 Department of Land Use and Transportation staff that finds that the petitioner's proposed  
33 connection to the Malinowski property is appropriate and consistent with the purposes to  
34 be achieved by the concept of connectivity. Ultimately, whether including the subject

---

<sup>2</sup> Although the Kaiser Woods open space is separated from this site by the intervening powerline right of way, the right of way is designated open space in the Bethany Community Plan.

1 property in the UGB will result in increased transportation efficiency depends on whether  
2 the Malinowski property is developed before the barriers, both physical and political are  
3 removed to allow Greenwood Drive to extended to the east. There is no certainty when  
4 the adjoining land in the UGB will develop or when the barriers in Greenwood Drive will  
5 be removed. On balance, Council finds that providing additional potential for access and  
6 cross-circulation in the area is sufficient to show that including the subject site in the  
7 UGB results in a net improvement in transportation services to land already in the UGB.

8  
9 d. The Council concludes that the petitioners demonstrated that approval  
10 of this petition will increase efficiency of emergency services. As discussed above,  
11 approval of this petition will enhance east-west circulation opportunities in the area. Such  
12 enhancement would benefit emergency service access to land already in the UGB.

13  
14 e. The petition submittal does not include comments from Tri-Met  
15 however the Council takes notice that Tri-Met provides services in the general area, as  
16 stated in the petition. In the long run, the enhancement of east-west circulation  
17 opportunities will benefit public transit.

18  
19 f. The Council concludes that the petitioners proved that this locational  
20 adjustment will result in a net improvement in the efficiency of water services in the  
21 adjoining area already in the UGB. TVWD testified that this locational adjustment would  
22 allow the creation of a looped water-system through the site and provide for future  
23 extension to properties to the east within the existing UGB.

24  
25 g. Including the subject property in the UGB will increase the net  
26 efficiency of surface water management/storm drainage, natural gas, electricity and fire  
27 protection for land already in the UGB by providing improved access for those services to  
28 that UGB land and incrementally spreading cost of providing such services over a larger  
29 population base thus making them more economical to residents of land already in the  
30 UGB.

31  
32 h. Our factual conclusions demonstrate that there will be an improvement  
33 in efficiency of the provision of most urban facilities and services if this land is included  
34 in the UGB. Under these circumstances, Council finds that including the subject property  
35 in the UGB results in a net increase in the efficiency of providing public facilities and

1 services available to land within the UGB. Council concludes the petitioners sustained  
2 their burden of proof that the petition complies with Metro section 3.01.035(c)(1).

3  
4 *Maximum efficiency of land uses. The amendment shall facilitate needed*  
5 *development on adjacent existing urban land. Needed development, for*  
6 *the purposes of this section, shall mean consistent with the local*  
7 *comprehensive plan and/or applicable regional plans.*  
8 Metro Code section 3.01.035(c)(2)

9  
10 5. Including the subject property in the UGB facilitates needed development on  
11 adjacent existing urban land, (i.e., the Malinowski properties), because it makes it  
12 possible to serve that property with a gravity flow sewer and in accord with adopted USA  
13 policy. This adjacent land is inside the current UGB and is needed for residential  
14 development as indicated in the Washington County Comprehensive Plan.

15  
16 a. The Malinowskis' stated lack of desire to develop their property is  
17 irrelevant to this criteria. We interpret the criteria to require our analysis to be based  
18 upon the adopted plan, not on the preference of the current owners. The Malinowski  
19 properties are designated for urban residential development in the Washington County  
20 Comprehensive Plan. Sewer service must be provided to the Malinowski properties if  
21 they are to be developed consistent with the comprehensive plan. Therefore the Council  
22 finds that including the subject property in the UGB facilitates needed development on  
23 adjacent existing urban land.

24  
25 b. The Council acknowledges that it is not absolutely necessary to include  
26 the subject property in the UGB to provide sewer services. The Malinowski properties  
27 could theoretically be served by extending a sewer line from the southwest, from the  
28 existing stub in Greenwood Drive or from the south up 137th Avenue. Expert testimony  
29 established that this is not a realistic solution. Based on the topography in the area and  
30 the statement from USA, such alternative routes for sewer lines would require extensive  
31 topographical adjustments and the consent of intervening property owners. There is no  
32 legal right for a sewer to cross all intervening properties at this time. The evidence also  
33 indicates that existing residential development and vegetation, including trees, would be  
34 disturbed thus making such alternatives impracticable and uncertain.

35

1 c. Given the importance of the efficiency of service delivery in section  
2 3.01.035(c)(1), the Council finds that the availability of a less efficient means of sewer  
3 service does not preclude and is not inconsistent with a finding that the locational  
4 adjustment in this case facilitates development on the Malinowski properties by enabling  
5 it to be served with a more efficient sewer system in a more certain and timely manner.  
6 This is consistent with and similar to the Council's action in the matter of UGB Case 88-  
7 04 (Bean) and UGB Case 94-01 (Starr/Richards).

8  
9 *Environmental, energy, social & economic consequences. Any impact*  
10 *on regional transit corridor development must be positive and any*  
11 *limitations imposed by the presence of hazard or resource lands must be*  
12 *addressed. Metro Code section 3.01.035(c)(3)*

13  
14 6. Council finds including the subject property in the UGB would not have  
15 any impact on regional transit corridor development, because the nearest regional corridor  
16 is more than one-quarter mile from the site. Council further finds that the subject  
17 property is not subject to hazards identified by Washington County.

18  
19 The petitioner asserts, and we agree, that an ESEE analysis is not required under  
20 our ordinance, however, the petition contains an ESEE analysis which would suffice if it  
21 were required.

22  
23 The facts of the record establish that the application petition includes a  
24 professional delineation of on-site wetlands. The presence of wetlands can be addressed  
25 through compliance with state laws. Although development on this site is likely to  
26 impact these wetlands, such impacts are not prohibited so long as adequate mitigation is  
27 provided. This has been shown to be feasible. The petition contains an analysis of the  
28 feasibility of development given the wetland constraints. The analysis concludes that it is  
29 possible, with the implementation of approved mitigation measures, to protect the  
30 wetland and riparian areas to the extent required under current Washington County  
31 regulations or Metro's Title III requirements.

32  
33 *Retention of agricultural land. When a petitioners includes land with*  
34 *Agricultural Class I-IV soils designated in the applicable comprehensive*  
35 *plan for farm or forest use, the petition shall not be approved unless it is*  
36 *factually demonstrated that:*

1  
2 (A) Retention of any agricultural land would preclude  
3 urbanization of an adjacent area already inside the UGB, or

4  
5 (B) Retention of the agricultural land would make the provision of  
6 urban services to an adjacent area inside the UGB impracticable.

7 Metro Code section 3.03.035(c)(4)

8  
9 7. The subject property contains Class III and IV soils, and it is designated  
10 and zoned EFU. Therefore Council finds this criterion does apply. We conclude that the  
11 applicant demonstrated that both tests are met, even though only one is required.

12  
13 a. The Council finds that retaining the subject property as agricultural  
14 land will preclude urbanization of adjacent lands. Specifically, sewer will not be  
15 available to the Malinowski land if the property is retained as agricultural. Public gravity  
16 flow sewer services and facilities cannot be provided practicably to the Malinowski  
17 properties through lands within the existing UGB. The USA, a special district whose  
18 policies must be accommodated per Metro's statutory mandates, will not allow other than  
19 gravity flow sewerage to the Malinowski property.

20  
21 b. The Council further finds that retaining the subject property as  
22 agricultural land will make the provision of urban services to adjacent properties inside  
23 the UGB impracticable. Sewer service cannot be provided to the Malinowski properties  
24 by means of a pump station or other practicable alternative.

25  
26 *Compatibility of proposed urban uses with nearby agricultural activities.*

27 *When a proposed adjustment would allow an urban use in proximity to*  
28 *existing agricultural activities, the justification in terms of this subsection*  
29 *must clearly outweigh the adverse impact of any incompatibility. Metro*  
30 *Code section 3.01.035(c)(5)*

31  
32 8. Petitioners have argued that this provision is ambiguous in that it does not  
33 distinguish between agricultural uses taking place on land within the UGB that are in  
34 proximity to the subject property from agricultural uses taking place on land outside the  
35 UGB which are also in proximity to the subject property. Petitioners point out that it is  
36 presumed that all areas within UGB's are by definition "Urban Areas", citing to

1 definitions made by CRAG and Metro under the Land Use Framework Element of the  
2 Crag Regional Plan dated November 1978, with revisions dated December 1977. The  
3 Council agrees with petitioners that ambiguity exists in that it would be inconsistent with  
4 the concepts of agricultural uses and urban zoning to allow agricultural uses within the  
5 UGB to dictate whether other lands should be included within the UGB. Therefore, the  
6 Council will address its findings to agricultural uses within the UGB separately from  
7 findings regarding agricultural uses taking place outside the UGB.

8  
9 The Council finds that in interpreting and applying Metro Code section  
10 3.01.035(c)(5) agricultural activities on property which is within the existing  
11 UGB are irrelevant in application of this criterion because the locational  
12 adjustment rules assume urban development of all land within the UGB, and that  
13 protection of agricultural uses on land already within the UGB should not be the  
14 basis upon which to measure impacts of proposed urban development on the  
15 subject property. Metro interprets the phrase "existing agricultural activities" to  
16 mean agricultural activities occurring outside of the UGB. Even if the rule  
17 requires consideration of agricultural lands within the UGB and adjacent to the  
18 site, in this case the Council finds that the Malinowski activity on adjacent land in  
19 the UGB is of sufficiently low incidence that the locational adjustment would not  
20 significantly impact those limited agricultural activities.

21  
22 With regard to the agricultural uses on land within proximity of the subject  
23 property but outside the UGB the Council finds the subject property is surrounded  
24 on three sides by land within the UGB. The only area in proximity of petitioner's  
25 property that is in agricultural use is directly to the North. That land has been  
26 discussed elsewhere when applying the similarly situated test and is owned by  
27 petitioners. Adjacent to the Northeast of the subject property is land for which an  
28 exception has apparently been taken because it is zoned other than EFU. Those  
29 adjacent parcels contain housing and rural residential development. They separate  
30 EFU land further to the Northeast from the petitioners land and there is no  
31 evidence that agricultural activities are taking place on them. The evidence  
32 introduced by the opponents primarily relates to the Malinowski property that is  
33 adjacent to and in proximity to the petitioners and within the UGB. The  
34 Malinowski property outside the UGB is separated from petitioners by the  
35 aforementioned non-EFU parcels.  
36



1 The Council finds that the proposed adjustment will not be incompatible with  
2 ongoing agricultural activities on the Malinowski properties or other properties located  
3 outside the UGB. Service efficiencies such as water looping and sanitary sewer  
4 extension achieved by including subject property in the UGB) clearly outweigh any  
5 adverse impacts of its urban development on existing agricultural activities.  
6

7 a. The Malinowskis' agricultural activities outside of the UGB are  
8 separated from the subject site by a sufficient distance that potential adverse impacts of  
9 urban development on the subject site will dissipate to insignificant levels before  
10 reaching the agricultural activities and vice versa.  
11

12 b. The Malinowski property outside the UGB is largely buffered from  
13 urban development under existing conditions. The powerline right of way along the  
14 south boundary of their property provides a buffer between their property and abutting  
15 urban lands. Properties to the immediate northeast of the subject property are designated  
16 for rural development in the Multnomah County Comprehensive Plan.  
17

18 c. Even if we consider existing agricultural activities within the UGB, our  
19 conclusion would be unchanged. There is sufficient testimony in the record to  
20 demonstrate that the Malinowski's grazing of land within the UGB is intermittent and not  
21 intensive, and that the lack of complaints from other urban landowners regarding these  
22 activities demonstrates that the Malinowski agricultural use of land inside the UGB is not  
23 incompatible with urban lands.  
24

25 *Superiority. [T]he proposed UGB must be superior to the UGB as*  
26 *presently located based on a consideration of the factors in subsection (c)*  
27 *of this section. Metro Code section 3.01.035(f)(2)*  
28

29 9. Based on the evidence in the record and our previous findings, Council finds  
30 that the proposed UGB is superior to the existing UGB, because:  
31

32 a. There is evidence that public services can be provided to the subject  
33 property in an orderly and economic fashion;  
34

1           b. The proposed UGB would result in a net increase in service and land  
2 use efficiencies for the public commensurate with the size and nature of the locational  
3 adjustment;

4  
5           c. Retention of the subject property as agricultural land would preclude  
6 urbanization of adjacent land already inside the UGB or make the provision of urban  
7 services on that adjacent urban land impracticable;

8  
9           d. The benefits of including the subject property in the UGB clearly  
10 outweigh impacts on existing agricultural uses; and

11  
12           e. It includes all similarly situated land.

13  
14           *Similarly situated land. The proposed UGB amendment must include all*  
15 *similarly situated contiguous land which could also be appropriately*  
16 *included within the UGB as an addition based on the factors above.*

17 Metro Code section 3.01.035(f)(3)

18  
19           10. Council finds the evidence in the record shows sufficient difference between  
20 the subject site and the adjoining land to the north to conclude that such lands are not  
21 similarly situated.

22  
23           a. Based on aerial photographs of the subject property and surrounding  
24 areas, soils reports and testimony of witnesses, the southern portion of the abutting  
25 property is not being actively farmed because its surfaces have been rendered  
26 unproductive due to placement of extensive subsoil spoils on the surface. TVWD built a  
27 water reservoir on land adjacent to the subject site to the north. The record shows in the  
28 testimony of TVWD, Eric Eisemann, Ryan O'Brien and findings of the Oregon Tax  
29 Court in case #91-1610 that this land has been rendered unproductive. Moderate slopes  
30 exist on the adjoining property, not on the subject property. The Tax Court found that the  
31 spoils were used to recontour the acreage near the reservoir leaving a depth of up to 15-20  
32 feet of unsuitable soil. Even though petitioner Jenkins unsuccessfully attempted to rectify  
33 the problem by bringing in new topsoil, the soils are not similar. The subject property  
34 contains class III and IV soils while the property to the north to be retained as EFU zoned  
35 in the Multnomah County contains, or will contain when reclaimed, class I and II soils.

1           b. The subject property is not similar because it contains extensive  
2 wetlands on the southern portion  
3

4           c. An existing urban use, i.e. a water district reservoir that serves urban  
5 development differentiates the adjoining land to the north from the subject property. The  
6 reservoir itself and its excavation spoils impact much of this adjoining land. The subsoil  
7 spoils consisting of clay soils and rocky shale from the excavation for the reservoir are  
8 spread over several acres. Testimony of Mr. Schaff indicates that farming on this land  
9 was abandoned because of its poor productivity since the reservoir was constructed. The  
10 Council finds that the total impact of this man-made physical feature affects the adjoining  
11 land to the north sufficiently to make it dissimilar.  
12

13           d. Adjoining land to the north is not similar because that land is not  
14 necessary to extend urban services to the adjoining land already in the UGB (i.e., the  
15 Malinowski property).  
16

17           e. The adjoining land to the north is not similar because that land is in a  
18 different county and is subject to different code provisions. In addition, the present UGB  
19 does not surround the land to the north on three sides.  
20

21           We interpret the term "similarly situated" to include consideration of  
22 governmental jurisdictional boundaries. We make this interpretation in order to be  
23 consistent with the considerations in the findings by CRAG supporting the original UGB.  
24 The record contains references to those findings and they establish that jurisdictional  
25 boundaries were used to distinguish lands for purposes of inclusion or exclusion from the  
26 UGB. This factor is therefore an important consideration in weighing whether lands are  
27 similarly situated for purposes of UGB adjustments.  
28

29           f. Other nearby lands do not have a history of inclusion within the UGB  
30 as does this land. This is another indication that they are not similarly situated.  
31

32           g. Therefore the Council concludes the petition does include all similarly  
33 situated land.

### III. CONCLUSIONS

1  
2  
3 Based on the foregoing findings, the Council adopts the following conclusions.  
4

5 1. Public services and facilities, including water, sanitary sewer, storm drainage,  
6 transportation, and police and fire protection, can be provided to the subject property in  
7 an orderly and economical fashion.  
8

9 2. School services exist or are planned for areas adjacent to the subject property.  
10

11 3. On balance, Council concludes the petition complies with MC section  
12 3.01.035(c)(1), because the petitioners carried the burden of proof that including all of the  
13 subject site in the UGB will result in a net improvement in the efficiency of public  
14 services and facilities.  
15

16 4. The petitioners showed that the proposed addition will facilitate needed  
17 development on adjacent existing urban land. Therefore Council concludes the petition  
18 does comply with MC section 3.01.035(c)(2).  
19

20 5. The petitioners showed that including the subject property in the UGB will not  
21 affect regional transit corridor development and that limitations imposed by the presence  
22 of wetlands and a natural gas transmission pipeline can be addressed. Therefore Council  
23 concludes the petition does comply with MC section 3.01.035(c)(3).  
24

25 6. The petitioners carried the burden of proof that retention of the subject  
26 property as agricultural land would preclude urbanization of an adjacent area already  
27 inside the UGB and will make the provision of urban services to an adjacent area inside  
28 the UGB impracticable. Thus the petition complies with MC section 3.03.035(c)(4).  
29

30 7. The petitioners carried the burden of proof that efficiencies created by  
31 including the subject property in the UGB clearly outweigh the adverse impact of any  
32 incompatibility with existing agricultural activities. Thus the petition complies with MC  
33 section 3.01.035(c)(5).  
34

35 8. The petitioners have shown that the proposed addition will result in a superior  
36 UGB. Thus the petition complies with MC section 3.01.035(f)(2)

1  
2 9. The petition includes all similarly situated contiguous land outside the UGB.  
3

4 IV. DECISION  
5

6 Based on the findings and conclusions adopted herein and on the public record in  
7 this matter, the Metro Council hereby approves the petition in Contested Case 98-07  
8 (Jenkins/Kim).  
9

10 DATED: \_\_\_\_\_  
11

*Agenda Item Number 10.1*

**Resolution No. 00-2898, For the Purpose of Authorizing Participation in a Local Improvement District to Fund the Steel Bridge Pedestrian Walkway.**

**Metro Council Meeting  
Thursday, March 2, 2000  
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING ) RESOLUTION NO. 00-2898  
PARTICIPATION IN A LOCAL )  
IMPROVEMENT DISTRICT TO FUND ) Introduced by Mike Burton  
THE STEEL BRIDGE PEDESTRIAN ) Executive Officer  
WALKWAY

WHEREAS, the City of Portland desires to establish a Local Improvement District to fund a walkway on the Steel Bridge connecting Tom McCall Park to the Eastbank Esplanade Improvements; and

WHEREAS, the proposed walkway would benefit visitors to the Oregon Convention Center; now, therefore

BE IT RESOLVED:

That the Metro Council authorizes the Executive Officer to sign the Local Improvement District as shown in Exhibit 1.

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

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

Approved as to Form:

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

**Petition for Creation of a Local Improvement District (LID) to Fund Capital Improvements Related to the River Access and Transportation Project**

To the Portland City Council:

The Undersigned, being the owner or contract purchaser of the property held in the name or names of companies or individuals set forth below and within the boundary of the LID herein described, hereby petitions the Portland City Council to form an LID to assist in funding the capital cost of the River Access and Transportation Steel Bridge Pedestrian Connection Project (Project), subject to the terms and conditions of this petition.

**Project Description.** The Project shall include the design and construction of a new pedestrian walkway across the Willamette River attached to the south side of the Steel Bridge adjacent to its lower deck. On the west end the walkway will meet the existing pedestrian walkway along the river in Tom McCall Waterfront Park. On the eastbank, the walkway will slope upward over the railroad right-of-way to the River Overlook at the intersection of N.E. Oregon and Occident, adjacent to the Oregon Convention Center. The eastbank walkway will be designed to connect to the Eastbank Esplanade Improvements.

**LID Boundary.** The LID shall include properties identified on the attached list Exhibit 'B'.

**Total LID Assessment.** The Total LID Assessment, including superintendence and interest, shall be \$1,500,000.

**Individual LID Assessments.** The Total LID Assessment shall be apportioned in accordance with the attached Exhibit 'A' to each of the eleven (11) property owners assessed under this LID.

**Other Capital Funding.** The Project is estimated to cost \$7,600,000. The LID shall not be formed until the City certifies that the balance of funds needed for design and construction of the Project are available.

**Transportation System Development Charge (TSDC) Credits.** The City shall issue up to a total of \$869,457 in TSDC Credit to property owners assessed under this LID, excepting the City of Portland and the Portland Development Commission which shall not receive credits. The total amount of SDC credits represents the total equivalent SDC eligible cost of the Steel Bridge Pedestrian Walkway as set forth in the Transportation System Development Charges Rate Study adopted by Portland City Council on June 18, 1997, Ordinance Number 171301. Eligible property owners must apply for the TSDC Credits within ten years from the date of the Final Assessment of the LID. The property owners that receive the TSDC Credits may, in accordance with City Code Chapter 17.15.060, either use the TSDC Credits themselves or transfer the TSDC Credits to others to use them for offsetting TSDC assessments on development projects anywhere within the City. The total TSDC Credit allocated to this Project shall be allotted in accordance with attached Exhibit 'A' among the nine (9) property owners qualifying to receive them.

**Financing.** The City shall arrange long-term financing and make it available to property owners with an interest in financing their LID assessment. The financing shall be for a term of not less than 20 years at interest rates not to exceed 8 percent. The actual interest rate charged to property owners shall be the interest rate at which municipal bonds for the LID are sold plus percentage markups specified in the Portland City Code. Property owners shall be offered the option of monthly or semi-annual payment plans.

**Time Limit.** This petition is valid provided that the LID is formed by the City before March 31, 2000.



It is understood that this Petition constitutes a commitment by the undersigned to support the formation of and participation in an LID subject to the conditions of this petition and requirements of Title 17, Portland City Code.

SIGNED,

\_\_\_\_\_  
Property Owner or Contract Purchaser

\_\_\_\_\_

\_\_\_\_\_

Address of Property to be assessed:  
\_\_\_\_\_

**EXHIBIT 'A'**  
**RIVER ACCESS AND TRANSPORTATION LID**

PETITIONER	LID ASSESSMENT	TSDC CREDIT	NET COST
PDOT	\$ 136,363.64	\$ -	\$ 136,363.64
PDC	\$ 136,363.64	\$ -	\$ 136,363.64
LOUIS DREYFUS	\$ 68,181.82	\$ 48,303.17	\$ 19,878.65
H. NAITO CORPORATION	\$ 136,363.64	\$ 96,606.33	\$ 39,757.30
KALBERER HOTEL SUPPLY	\$ 68,181.82	\$ 48,303.17	\$ 19,878.65
PORT OF PORTLAND	\$ 136,363.64	\$ 96,606.33	\$ 39,757.30
NW NATURAL	\$ 136,363.64	\$ 96,606.33	\$ 39,757.30
HGW INC.	\$ 136,363.64	\$ 96,606.33	\$ 39,757.30
METRO	\$ 204,545.45	\$ 144,909.50	\$ 59,635.95
OREGON ARENA/AEGEAN	\$ 204,545.45	\$ 144,909.50	\$ 59,635.95
GSL PROPERTIES	\$ 136,363.64	\$ 96,606.33	\$ 39,757.30
<b>TOTALS</b>	<b>\$ 1,500,000.00</b>	<b>\$ 869,457.00</b>	<b>\$ 630,543.00</b>

**EXHIBIT 'B'**  
**RIVER ACCESS AND TRANSPORTATION LID**

<b>Petitioner</b>	<b>Property</b>	<b>Property ID Number</b>
City of Portland (PDC)	Holladays Add; Exc Pt in St Lots 1,4,5&8 Block 49; Lots 2,3,6&7 Block 49	R182157
Louis Dreyfus	(Grain Elevator)	R90370-1950
H. Naito Coroporation		
Kalberer Hotel Supply	Wheelers Add; TL 401 Lot 1-3 Block 31; TL 400 Block 31	
Port of Portland	121 NW Everett	
NW Natural Gas		CR18020-1520
HGW Inc.		
METRO		
Oregon Arena/ Aegean	1225 N Thunderbird Way	
GSL Properties		

## **STAFF REPORT**

FOR THE PURPOSE OF AUTHORIZING PARTICIPATION IN A LOCAL IMPROVEMENT DISTRICT TO FUND THE STEEL BRIDGE PEDESTRIAN WALKWAY

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Date: February 17, 2000

Presented by: David Biedermann,  
MERC, Director of Administration

## **PROPOSED ACTION**

Adopt Resolution No. 00-2898 authorizing a Local Improvement District (LID) for a pedestrian walkway over the Willamette River on the Steel Bridge.

## **EXISTING LAW**

Metro Code section 2.04.026 (a)(3) requires Council approval of all real property transactions. Metro Code section 2.04.026 (a)(1) requires Council approval of all contracts committing the district to the expenditure of appropriations not provided for in the current fiscal year and which has significant impact on Metro.

## **FACTUAL BACKGROUND AND ANALYSIS**

The City of Portland requests Metro/MERC participate in a LID to design and construct a new pedestrian walkway across the Willamette River attached to the south side of the Steel Bridge adjacent to its lower deck as described in exhibit 1. The walkway will connect Tom McCall Waterfront Park to the Eastbank Esplanade Improvements. This proposed improvement will provide a convenient walkway for convention visitors to enjoy downtown Portland.

The LID amount is \$204,545.45, all of which will be paid by MERC using the City of Portland's long-term funding plan. Transportation System Development Charge (TSDC) Credits will be issued to those who participate. TSD charges are applied to new construction or remodel jobs in the City of Portland. The City will credit Metro/MERC with \$144,909.50 for future construction projects. The Oregon Convention Center Expansion and Expo Hall D will have TSD charges in excess of the credits provided by the City. Therefore, the net cost to MERC is \$59,635.95.

The LID lien will be placed on the Oregon Convention Center.

## **BUDGET IMPACT**

MERC has sufficient funds budgeted for the annual LID expense.

## **EXECUTIVE OFFICER RECOMMENDATION**

The Executive Officer recommends approval of Resolution No. 00-2898.

*Agenda Item Number 10.2*

**Resolution No. 00-2901, For the Purpose of Authorizing the Executive Officer to Execute an Intergovernmental Agreement with the City of Gresham for the Management of Property in the East Buttes/Boring Lava Domes Target Area.**

**Metro Council Meeting  
Thursday, March 2, 2000  
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE )  
EXECUTIVE OFFICER TO EXECUTE AN )  
INTERGOVERNMENTAL AGREEMENT )  
WITH THE CITY OF GRESHAM FOR THE )  
MANAGEMENT OF PROPERTY IN THE EAST )  
BUTTES/BORING LAVA DOMES TARGET AREA )

RESOLUTION NO. 00-2901

Introduced by Mike Burton  
Executive Officer

WHEREAS, in July 1992, Metro completed the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, at the election held on May 16, 1995, the Metro area voters approved the Open Spaces, Parks and Streams bond measure (Ballot Measure 26-26) which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements; and

WHEREAS, the Open Spaces, Parks and Streams bond measure provided that lands acquired by Metro with the regional share of the bond funds would be "land banked" with minimal maintenance, and no bond funds can be legally used for any operating expenses on these lands; and

WHEREAS, the Open Spaces, Parks and Streams bond measure stated that Metro Regional Parks and Greenspaces Department may operate and maintain these lands, or other cooperative arrangements may be made with other jurisdictions or park providers to operate and maintain these lands consistent with the Greenspaces Master Plan; and

WHEREAS, on July 25, 1996 via resolution 96-2361, the Metro Council adopted a refinement plan for the East Buttes/Boring Lava Domes regional target area, which included a confidential tax-lot specific map identifying priority properties for acquisition, and which encouraged partnerships involving Metro and local governments; and

WHEREAS, in December 1999, Metro acquired 26.25 acres in the East Buttes/Boring Lava Domes target area on the west slope of Gresham Butte, surrounded on three sides by open space owned and managed by the City of Gresham (the "Property"); and

WHEREAS, the City of Gresham (the City) lacked funding to participate in the acquisition of the Property, but offered to facilitate the acquisition by taking 16 open space acres (the City Tract) in the proximity of the Property off of the market and by managing the Property after closing; and

WHEREAS, the City and Metro desire that the City should manage, operate, and maintain the City Tract and the Property as open space, and have agreed to record the covenants, conditions, and restrictions attached as Exhibit A with the deed to the Property and to the City Tract to ensure that both properties will be managed, operated and maintained as open space; and

WHEREAS, an intergovernmental agreement (IGA) involving Metro and the City would benefit the Property, as well as the public in general by ensuring consistent open space management on Gresham Butte; and

WHEREAS, the IGA attached to this resolution as Exhibit B sets forth management, maintenance, and operation guidelines for the City, requiring that the Property be managed for protection of the Property's natural resources; enhancement, restoration and protection of wildlife habitat; pedestrian and bicycle use; and public recreation consistent with these goals; with the primary goal being to manage the Property as a component of the City's Gresham Butte open space area; and

WHEREAS, the IGA attached to this resolution as Exhibit B sets forth the City's commitment to take the City Tract off of the market and to record the covenants, conditions, and restrictions attached as Exhibit A with the deed of the City Tract, as well as Metro's commitment to record the covenants, conditions, and restrictions attached as Exhibit A with the deed of the Property; now therefore

BE IT RESOLVED,

That the Metro Council approves and authorizes the Metro Executive Officer to execute the Intergovernmental Agreement with the City of Gresham, attached hereto as Exhibit B, wherein Metro will record the covenants, conditions, and restrictions attached as Exhibit A with the deed of the Property and the the City will manage the Property in the East Buttes/Boring Lava Domes target area.

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

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

Approved as to Form:

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

### Declaration of Real Covenants and Restrictions

Declarant Metro, a municipal corporation and political subdivision of the state of Oregon, is fee owner of approximately 26.5 acres known as the Chambers Property, described in Exhibit 1. Declarant the City of Gresham, a municipal Corporation, is fee owner of approximately 16.4 acres known as the Regner Sixteen Acres, described in Exhibit 2. Declarants hereby covenant and restrict, each to the other, the use of the Chambers Property and the Regner Sixteen Acres to open space uses in perpetuity, and covenant to maintain the following described real property in its natural state in perpetuity.

1. These covenants and restrictions shall run with the land and shall burden each of the below described parcels of land, shall be enforceable against the declarants, their successors and assigns, and shall be enforceable for the benefit of each parcel herein described by the declarants, their successors and assigns, and party who holds any right, title or interest in the parcel herein described.
2. These covenants and restrictions shall also be enforceable in the same manner by or against and for the benefit of any parcel later included by either declarant via a like declaration benefiting the parcels herein described.
3. These covenants and restrictions are enforceable by the declarants until such time as the declarants no longer own the parcels herein described or later included. Thereafter, these covenants and restrictions shall be enforceable by declarants' successors and assigns, and any party holding any right, title or interest in the parcels herein described or later included.
4. If legal proceedings of any type are begun so as to enforce these covenants and restrictions or to seek damages for violations of these covenants and restrictions, the prevailing party shall recover reasonable attorney's fees, including attorney fees on appeal, as determined by the trial or appellate courts. However, attorney's fees may not be recovered by the prevailing party unless legal proceedings to enforce these covenants and restrictions were preceded by ten days written notice to the recorded owners of all parcels of real property subject to these covenants and restrictions at that time.

IN WITNESS WHEREOF, the declarants Metro, a municipal corporation and political subdivision of the state of Oregon, and the City of Gresham, a municipal corporation have executed this Declaration of Covenants and Restrictions on \_\_\_\_\_, 199\_\_.

Declarant METRO

Declarant CITY OF GRESHAM

\_\_\_\_\_  
Mike Burton, Metro Executive Officer

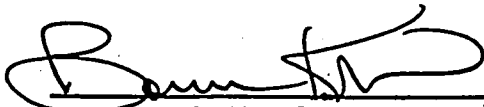
  
\_\_\_\_\_  
Bonnie Kraft, City Manager

Exhibit 1 – Legal Description of Chambers Property

Exhibit 2 – Legal Description of Regner Sixteen Acres



## Exhibit B

## INTERGOVERNMENTAL AGREEMENT

## Chambers Property

This Intergovernmental Agreement ("Agreement") dated this \_\_\_ day of \_\_\_\_, 1999, is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter, located at 600 Northeast Grand Avenue, Portland, Oregon, 97232-2736 ("Metro"), and the City of Gresham, located at 1333 NW Eastman Parkway, Gresham, Oregon 97030 ("the City").

## RECITALS:

WHEREAS, pursuant to the Metro Open Spaces, Parks and Streams 1995 Ballot Measure 26-26 ("Metro Open Spaces Bond Measure"), Metro has entered into an Agreement of Purchase and Sale and Donation Agreement to acquire approximately 26.5 acres of real property on the west slope of Gresham Butte in Gresham, Oregon, commonly known as tax parcels R99316-1800, and R99316-0540, and more particularly described in Exhibit A and Exhibit A-1 attached hereto and incorporated herein (hereinafter referred to as "the Property");

WHEREAS, the Property is within the East Buttes/Boring Lava Domes Target Area identified pursuant to the Metro Open Spaces Bond Measure, and is also identified as a regionally significant open space and natural area in the Metro Greenspaces Master Plan;

WHEREAS, the Property is directly adjacent to open space owned by the City, and is central to the City's trail system on Gresham Butte;

WHEREAS, Metro and the City wish to preserve the Property as open space in perpetuity and in accordance with the Metro Open Spaces Bond Measure, the Metro Greenspaces Master Plan, and Gresham's Park, Recreation, and Open Space Master Plan;

WHEREAS, the City lacks adequate funding to financially participate in the acquisition of the Property with Metro;

WHEREAS, the City is currently marketing for sale thirty (30) acres of property east of Regner Road, on the east side of Towle Butte, consisting of two (2) tax lots with reference parcel numbers 1S3E15C 00800, and 1S3E15C 00900 (the "Regner Road Property"), located within Metro's East Buttes/Boring Lava Domes Target Area;

WHEREAS, though the City lacks the financial resources to partner with Metro in the acquisition of the Property, the City desires to assist Metro's effort to protect open space properties within the City limits and Metro's East Buttes/Boring Lava Domes Target Area by foregoing the sale of the western 16.4 acres of the Regner Road Property, as described in Exhibit B and Exhibit B-1 (hereafter, "the Regner Sixteen Acres"), retaining ownership of and managing the Regner Sixteen Acres for open space natural area in perpetuity, in accordance with the terms set forth in this Agreement; and

WHEREAS, in order to insure that the open space protections established in this Agreement for the Property and for the Regner Sixteen Acres are perpetual, Metro will record the covenants, conditions and restrictions attached as Exhibit C along with the deed for the Property and the City will record the same covenants, conditions and restrictions along with the deed for the Regner Sixteen Acres;

WHEREAS, on 9/21, 1999 the Gresham City Council authorized the City to enter into this Agreement to forego the sale of the Regner Sixteen Acres; to accept Conditions, Covenants, and Restrictions restricting its use of the Regner Sixteen Acres to that of open space natural area in perpetuity; to be responsible for the interim protection and management for the Property until such time that Metro and the City decide to draft a Management Plan; to manage, operate and maintain the Regner Sixteen Acres in accordance with the terms set forth in this Agreement; and

WHEREAS, Metro and the City wish to enter into this Agreement to provide for the responsibilities and obligations of the parties with respect to the acquisition, allowable uses, management, maintenance, and operation of the Property;

Now, therefore, the parties agree as follows:

**A. Acquisition of the Property**

1. Metro has entered into an Agreement of Purchase and Sale and a Donation Agreement, contingent on execution of this Intergovernmental Agreement between the City and Metro, for the acquisition of the Property. Metro shall be responsible for conducting its normal due diligence investigations prior to closing, pursuant to Metro Open Spaces Bond Measure practices. If the City requires any due diligence investigations not normally performed by Metro, the City shall be solely responsible for those items.
2. Metro shall record covenants, conditions, and restrictions upon The Property, in the form attached as Exhibit C, prohibiting subdivision, development, or improvement of the Property, and which otherwise insure that the Property will be managed in accordance with the terms of this Agreement in perpetuity.

**B. The Regner Road Property**

1. In consideration for Metro's full financial obligation to acquire the Property, the City shall forego the sale of the Regner Sixteen Acres, retaining full deeded ownership and managing the Regner Sixteen Acres for open space natural area purposes in perpetuity, in accordance with the terms of this Agreement.
2. The provisions of this Agreement shall not be effective until such time as Metro has accepted title to the Property. If Metro does not accept title to the Property, this Agreement is null and void in its entirety. Notwithstanding the above, the City will forego the sale of the Regner Sixteen Acres until Metro's due diligence is completed and Metro acquires the Property or decides not to acquire the Property.

3. The City shall record covenants, conditions, and restrictions upon the Regner Sixteen Acres, in the form attached as Exhibit C, prohibiting subdivision, development, or improvement of the Regner Sixteen Acres, and which otherwise insure that the Regner Sixteen Acres will be managed in accordance with the terms of this Agreement in perpetuity.

**C. Resource Management Plan for the Property**

1. The City shall develop a Resource Management Plan ("Management Plan") for the Property prior to any improvements or enhancements made to the Property. The Management Plan shall set forth the acceptable management, operation, maintenance, types and levels of programmed and public use, and trail and improvement standards for the Property. The City shall manage the Property in accordance with the standards and guidelines developed in the Management Plan.
2. The Management Plan shall include guidelines to help manage, maintain and operate the Property in accordance with the Metro Greenspaces Master Plan, the City's Park, Recreation, and Open Space master plans and with this Agreement, and that all trails and improvements on the Property comply with the Metro Greenspaces Master Plan, the City's Park, Recreation, and Open Spaces Master Plans and with this Agreement. The Management Plan shall also outline measures to guide the management of the Property as a natural area open space, with the primary goals being protection of the Property's natural resources, enhancement and protection of wildlife habitat, and public recreation consistent with the foregoing. The Management Plan shall include an inventory of the resources on the Property.
3. Metro shall designate at least one staff member to participate in the Management Plan process for the Property. The Management Plan shall be subject to approval by the Metro Council and by the City prior to its implementation. Metro Council approval shall not be unreasonably withheld and shall be based on consistency with this Agreement and with the Metro Greenspaces Master Plan.

**D. Management, Maintenance, and Operation**

1. During the Interim Period prior to formal adoption of the Management Plan set forth above (the "Interim Period"), this Agreement shall provide the interim protection guidelines for the Property, and shall also provide the use and limitations for the Property which must be carried forth and reflected in the Management Plan.
2. Metro and the City agree that the City shall be responsible for the ongoing management, maintenance, and operation of the Property, both during the interim period and after adoption of the Management Plan.
3. Metro grants to the City, its agents and contractors, the right to enter the Property without notification to Metro for the purpose of performing all activities reasonably necessary for the

management, maintenance and operation of the Property and for the fulfillment of their duties under this Agreement and pursuant to the Management Plan.

**E. Interim Protection Guidelines**

1. During the Interim Period, the Property shall be managed, maintained and operated by the City in accordance and in a manner consistent with this Agreement, the Metro Greenspaces Master Plan, the City's Park, Recreation and Open Space Master Plan ("the Plans"). In case of conflict among Plans, the Plan affording the highest level of resource protection shall govern.
2. In the Interim Period and thereafter, the Property shall be managed, maintained, operated, and protected in accordance with its intended use as a natural area open space, with the primary goals being protection of the Property's natural resources, enhancement and protection of wildlife habitat, and public recreation consistent with the foregoing.
3. In accordance with the Metro Greenspaces Master Plan, formal public use of the Property and site development on the Property shall not begin until a Management Plan for the Property has been adopted, as set forth in Section D above.
4. During the Interim Period, at the City's discretion, the Property may be used informally by the public for passive recreation, habitat enhancement, pedestrian activity, and/or nonmotorized bicycle use. All uses of the Property in the interim period shall be consistent with this Agreement and with the Plans, and shall not preclude any uses that could later be allowed in the Management Plan.
5. During the Interim Period, the City shall not allow or permit any alteration of any water, timber, mineral, or other resource on the Property, except for the control of exotic or pest plant species or as necessary to prevent Property degradation or for security or public health or safety concerns.
6. During the Interim Period and thereafter, the City shall maintain security of the Property, and shall provide additional fencing, gates, signage, and other measures as the City may deem necessary to increase safety on the Property, and to deter improper public use of the Property prior to adoption of the Management Plan. During the Interim Period the City shall control access to the Property if deemed necessary by the City, and shall respond to neighborhood or citizen complaints regarding improper use or noise on the Property.

**F. Permits, Assessments, Coordination with Other Public Agencies**

1. As stated in the Greenspaces Master Plan, by accepting management responsibility for the Property the City agrees to be responsible for funding the operation and maintenance of the Property with the City's own resources. The City's management responsibility shall include responsibility for all assessments, costs, and liabilities for the Property. Notwithstanding the guidelines established in this Agreement and future Interim Management Plans designed for

the Property, the City shall have the right to determine at its discretion the level of maintenance for the Property and the amount of its resource allocation.

2. Until formal adoption of the Management Plan and thereafter, the City shall be responsible for obtaining any permits necessary for management, maintenance or operation of the Property.
3. Any permits granted by the City to users of the Property shall comply with the terms and limitations set forth in this Agreement and in the Management Plan for the Property.
4. The City shall be responsible for contacting and coordinating with other local or state agencies regarding any and all management, maintenance or operation issues that may arise with respect to the Property.

**G. General Provisions**

1. Indemnification.
  - a) Metro shall indemnify the City and its officers, employees, and agents against all liability, damage, loss, and expense resulting from injury to or death of persons, or property damage, arising out of or in any way connected to the tortious acts of Metro employees acting within the scope of employment and duties in performance of this agreement, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS Chapter 30.
  - b) The City shall indemnify Metro and its officers, employees, and agents against all liability, damage, loss, and expense resulting from injury to or death of persons, or property damage, arising out of or in any way connected to the tortious acts of City employees acting within the scope of employment and duties in performance of this agreement, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS Chapter 30.
2. Oregon Constitution and Tax Exempt Bond Covenants. The source of funds for the acquisition of this Property is from the sale of voter-approved general obligation bonds that are to be paid from ad valorem property taxes exempt from the limitations of Article XI, section 11(b), 11(c), 11(d) and 11(e) of the Oregon Constitution, and the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. The City covenants that it will take no actions that would cause Metro to be unable to maintain the current status of the real property taxes as exempt from Oregon's constitutional limitations or the income tax exempt status of the bond interest. In the event the City breaches this covenant, Metro shall be entitled to whatever remedies are available to either cure the default or to compensate Metro for any loss it may suffer as a result thereof.
3. Signage. At its timing discretion, The City shall provide on-site signage informing the public that the City is managing the site. Metro will provide on-site signage stating that funding for the acquisition came from Metro Open Spaces Bond Measure bond proceeds. The City shall

also document in any publication, media presentation or other presentations, that funding for the acquisition came from Metro Open Spaces Bond Measure bond proceeds. On-site signage that provides recognition of Metro funding shall be subject to prior review and comment by Metro. All signage will be consistent with Metro guidelines for Open Spaces Projects.

4. Joint Termination for Convenience. Metro and the City may by mutual agreement terminate all or part of this Agreement based upon a determination that such action is in the public interest.
5. Documents are Public Records. All records, reports, data, documents, systems and concepts, whether in the form of writings, figures, graphs, or models which are prepared or developed in connection with the acquisition, management, maintenance or operation of the Property shall become public records. Nothing in this section or in any other part of this Agreement shall be construed as limiting Metro's or the City's ability to consider real property transactions in executive session pursuant to ORS 192.660(1)(e) or as requiring disclosure of records that are otherwise exempt from disclosure pursuant to the Public Records Law (ORS 192.410 to 192.505) or Public Meetings Law (ORS 192.610 to 192.690).
6. Law of Oregon. This Agreement shall be governed by the laws of the state of Oregon, and the parties agree to submit to the jurisdiction of the courts of the state of Oregon. All applicable provisions of ORS chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby incorporated as if such provisions were a part of this Agreement including but not limited to ORS 279.015 to 279.320.
7. Assignment. The parties may not assign any of its rights or responsibilities under this Agreement without prior written consent from the other party, except the parties may delegate or subcontract for performance of any of its responsibilities under this Agreement.
8. Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by fax and regular mail.

To Metro: Metro  
Charles Ciecko  
Director, Metro Regional Parks and Greenspaces  
600 N.E. Grand Avenue  
Portland, OR 97232-2736

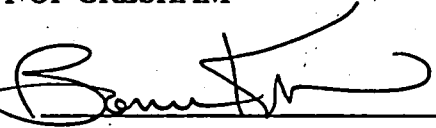
To City: City of Gresham  
Ms. Julee Conway, Manager  
Parks and Recreation Division  
Department of Environmental Services  
1333 NW Eastman Parkway  
Gresham, OR 97030-3813

9. Severability. If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement.
10. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written agreements or representations relating to this Property. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year set forth above.

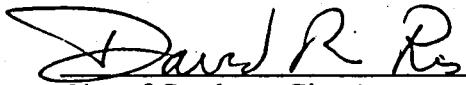
CITY OF GRESHAM

METRO

By:   
Title: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
Mike Burton, Executive Officer

Approved to Form:

  
City of Gresham, City Attorney Office

Attachments:

- Exhibit A Legal Description of Property
- Exhibit A-1 Map of Property
- Exhibit B Legal Description of Regner Sixteen Acres
- Exhibit B-1 Map of Regner Sixteen Acres
- Exhibit C Declaration of Real Covenants and Restrictions

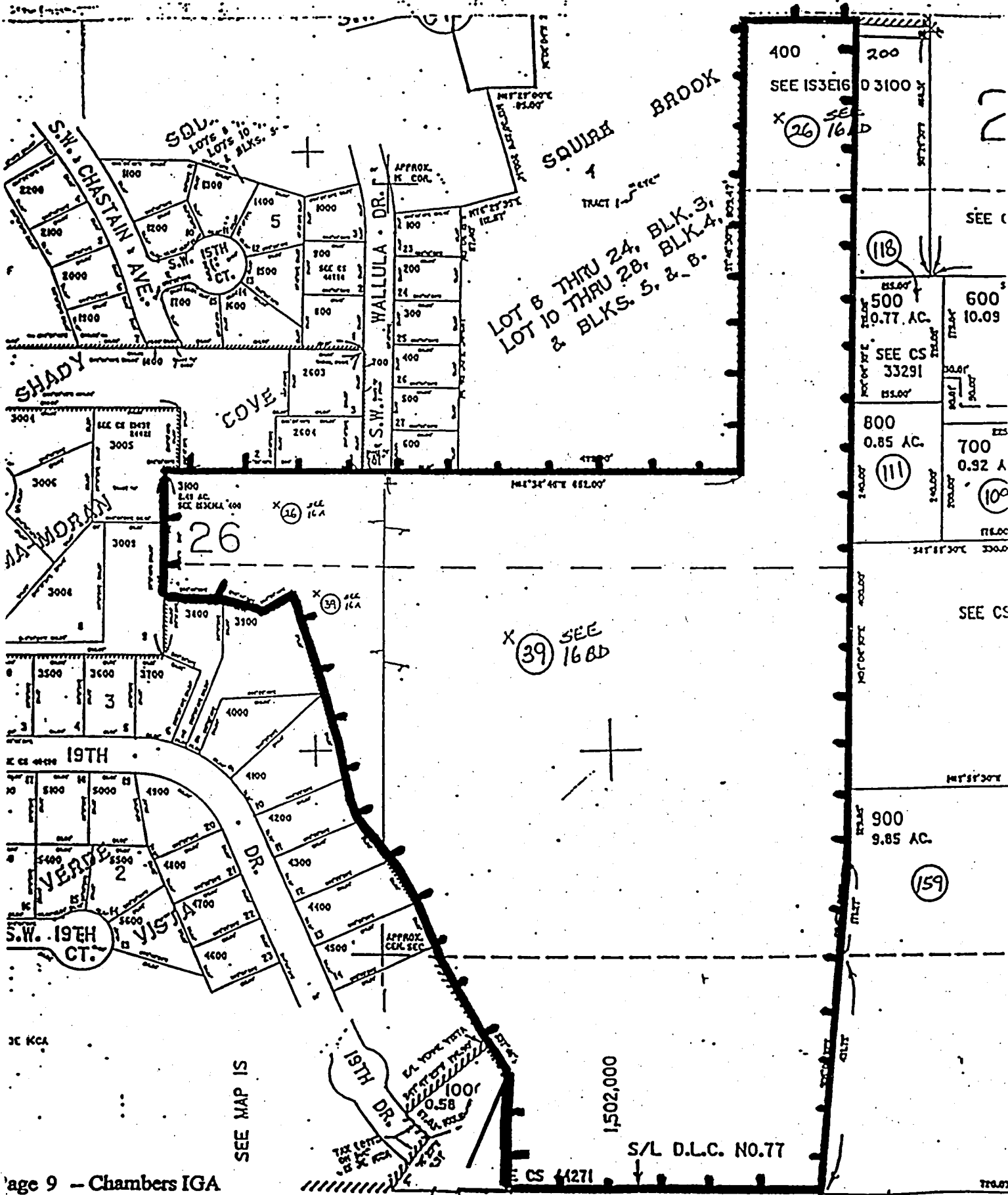
EXHIBIT A  
Legal Description of Property

A tract of land in Section 16, Township 1 South, Range 3 East, Willamette Meridian, in the City of Gresham, County of Multnomah and State of Oregon, said tract of land being more particularly described as follows:

Commencing at the most Easterly corner of Lot 17, Block 3 of the duly recorded plat of VERDE VISTA; thence Northerly and Westerly along the Easterly and Northerly line of said Block 3 on the following courses: North 31° 07' 40" West, a distance of 152.54 feet; North 23° 26' 40" West, a distance of 129.32 feet; North 34° 53' 55" West, a distance of 164.13 feet; North 16° 51' 25" West, a distance of 399.22 feet; South 58° 39' 40" West, a distance of 59.35 feet; North 70° 44' 30" West a distance of 65.00 feet; North 89° 44' 30" West, a distance of 100.00 feet to the Northwest corner of Lot 7, Block 3 of said plat of VERDE VISTA and a point in the East line of the duly recorded plat of LIMA-MORAN; thence North 00° 15' 30" East, along the East line of said plat of LIMA-MORAN, a distance of 201.43 feet, more or less, to a point in the Westerly extension of the South line of the duly recorded plat of SHADY COVE; thence North 89° 47' 09" East along the Westerly extension of and the South lines of said plat of SHADY COVE and the duly recorded plat of SQUIRE BROOK, a distance of 975.96 feet, more or less, to the Southeast corner of Tract I of said plat of SQUIRE BROOK; thence North 00° 15' 24" East, along the East line of said Tract I, a distance of 809.47 feet, more or less; to an interior corner of said Tract I; thence South 89° 24' 30" East along the South line of said Tract I, a distance of 323.08 feet, more or less, to a point in the West line of that certain tract of land conveyed to John Gatenbein, by Deed recorded March 5, 1910 in Deed Book 487, page 66, Deed Records; thence South 03° 39' 20" West, along the West line of said Gatenbein Tract, a distance of 456.62 feet, more or less, to a point in the North line of that certain tract of land conveyed to Ione LeGette (Becker) by Deed recorded October 2, 1936 in Deed Book 357, page 269, Deed Records; thence South 89° 19' 08" West, along the North line of said LeGette Tract, a distance of 99.33 feet, more or less, to the Northwest corner of said Ione LeGette (Becker) Tract established by Decree in Suit No. 325865 entered on January 16, 1968, of said county; thence South 00° 57' 08" West, along the West line of said LeGette Tract, a distance of 984.14 feet to an angle corner in said West line; thence South 04° 25' 24" West along the West line of said LeGette Tract, a distance of 170.07 feet to an angle corner in said West line; thence South 05° 00' 45" West, along the West line of said LeGette Tract, a distance of 429.44 feet to a point in the South line of the William G. Cathey Donation Land Claim; thence North 89° 32' 25" West, along the South line of said Cathey Donation Land Claim, a distance of 513.24 feet to a point; thence North 02° 01' 30" West, a distance of 220.85 feet to a point; thence North 37° 45' 10" West, a distance of 57.28 feet to the point of beginning.



EXHIBIT A-1  
Map of Property

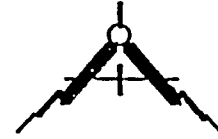


ENGINEERING  
PLANNING  
SURVEYING  
LAND DEVELOPMENT

Registration:  
Oregon  
Idaho  
Washington

KENT W. COX and ASSOCIATES, INC.  
Consulting Engineers — Land Surveyors

204 N.E. KELLY AVENUE  
GRESHAM, OREGON 97030-7544  
(503) 667-4464  
FAX (503) 665-9634  
email: kwcox@teleport.com



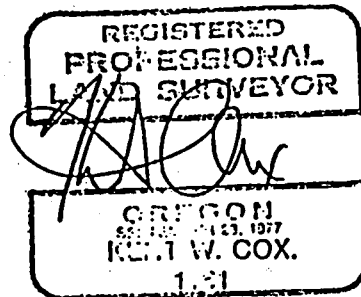
Affiliations:  
American Society of Civil Engineers  
Professional Land Surveyors of Oregon  
American Congress of Surveying and Mapping

**BOUNDARY DESCRIPTION  
FOR  
CITY OF GRESHAM PARKS & RECREATION  
16.335 ACRES PROPOSED FOR OPEN SPACE  
WEST OF REGNER ROAD**

99 122  
Revised October 28, 1999

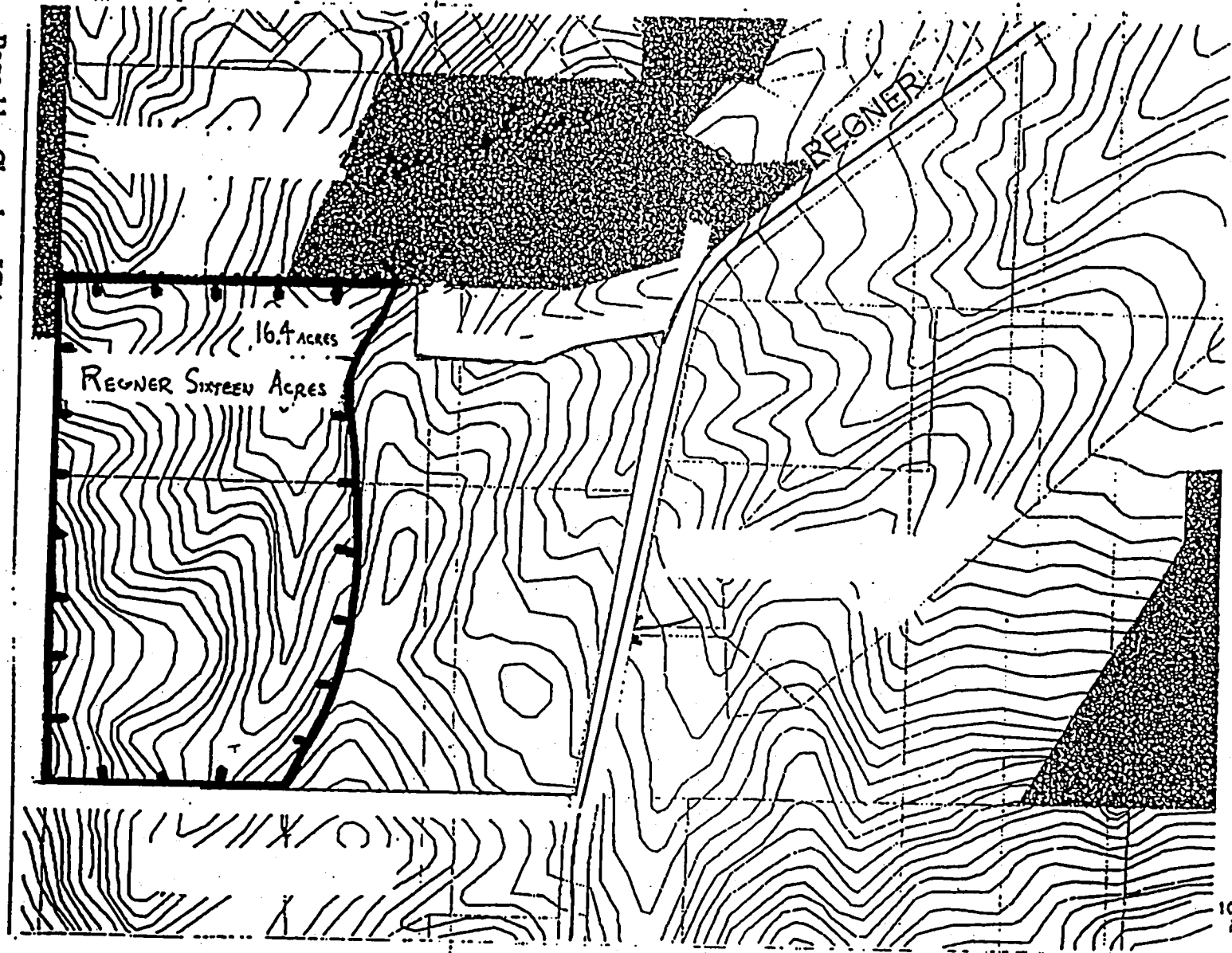
A tract of land located in the Southwest Quarter of the Southwest Quarter of Section 15, Township 1 South, Range 3 East of the Willamette Meridian, City of Gresham, County of Multnomah, State of Oregon and more particularly described as follows:

Beginning at the southwest corner of said Section 15; thence North 00°32'31" West along the west line of said Section 15 a distance of 1087.98 feet; thence North 88°53'37" East parallel to the south line of said southwest quarter of the southwest quarter a distance of 721.50 feet; thence South 01°06'23" East a distance of 96.29 feet; thence South 30°16'38" West a distance of 36.54 feet; thence South 27°22'53" West a distance of 66.86 feet; thence South 04°31'52" East a distance of 121.73 feet; thence South 02°53'30" West a distance of 88.34 feet; thence South 07°45'19" West a distance of 200.00 feet; thence South 03°27'44" West a distance of 200.00 feet; thence South 09°17'48" West a distance of 300.00 feet to a point on the south line of said Section 15; thence South 88°53'37" West along said south line a distance of 581.50 feet to the southwest corner of said Section 15. Containing 16.335 acres more or less. The bearings and distances of this description are based upon Survey Number 55371 on file in the Multnomah County Surveyors office.



RFN/FWS 12-31-99

EXHIBIT B-1  
Map of Regner Sixteen Acre



Legend

- 10' Contours
- Road
- Open Space

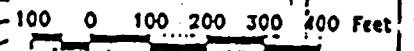
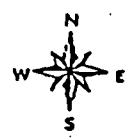


Exhibit C  
Declaration of Real Covenants and Restrictions

Declarant Metro, a municipal corporation and political subdivision of the state of Oregon, is fee owner of approximately 26.5 acres known as the Chambers Property, described in Exhibit 1. Declarant the City of Gresham, a municipal Corporation, is fee owner of approximately 16.4 acres known as the Regner Sixteen Acres, described in Exhibit 2. Declarants hereby covenant and restrict, each to the other, the use of the Chambers Property and the Regner Sixteen Acres to open space uses in perpetuity, and covenant to maintain the following described real property in its natural state in perpetuity.

1. These covenants and restrictions shall run with the land and shall burden each of the below described parcels of land, shall be enforceable against the declarants, their successors and assigns, and shall be enforceable for the benefit of each parcel herein described by the declarants, their successors and assigns, and party who holds any right, title or interest in the parcel herein described.
2. These covenants and restrictions shall also be enforceable in the same manner by or against and for the benefit of any parcel later included by either declarant via a like declaration benefiting the parcels herein described.
3. These covenants and restrictions are enforceable by the declarants until such time as the declarants no longer own the parcels herein described or later included. Thereafter, these covenants and restrictions shall be enforceable by declarants' successors and assigns, and any party holding any right, title or interest in the parcels herein described or later included.
4. If legal proceedings of any type are begun so as to enforce these covenants and restrictions or to seek damages for violations of these covenants and restrictions, the prevailing party shall recover reasonable attorney's fees, including attorney fees on appeal, as determined by the trial or appellate courts. However, attorney's fees may not be recovered by the prevailing party unless legal proceedings to enforce these covenants and restrictions were preceded by ten days written notice to the recorded owners of all parcels of real property subject to these covenants and restrictions at that time.

IN WITNESS WHEREOF, the declarants Metro, a municipal corporation and political subdivision of the state of Oregon, and the City of Gresham, a municipal corporation have executed this Declaration of Covenants and Restrictions on \_\_\_\_\_, 199\_\_.

Declarant METRO

Declarant CITY OF GRESHAM

\_\_\_\_\_  
Mike Burton, Metro Executive Officer

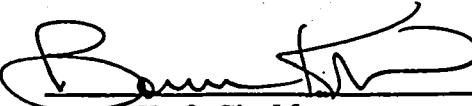
  
\_\_\_\_\_  
Bonnie Kraft, City Manager

Exhibit 1 – Legal Description of Chambers Property  
Exhibit 2 – Legal Description of Regner Sixteen Acres



EXHIBIT 1  
Legal Description of Chambers Property

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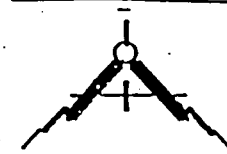
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ENGINEERING  
PLANNING  
SURVEYING  
LAND DEVELOPMENT

Registration:  
Oregon  
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KENT W. COX and ASSOCIATES, INC.  
Consulting Engineers — Land Surveyors

204 N.E. KELLY AVENUE  
GRESHAM, OREGON 97030-7544  
(503) 667-4464  
FAX (503) 665-9634  
email: kwcox@teleport.com



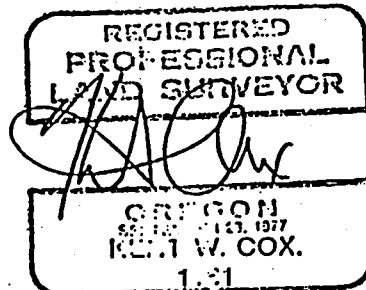
Affiliations:  
American Society of Civil Engineers  
Professional Land Surveyors of Oregon  
American Congress of Surveying and Mapping

BOUNDARY DESCRIPTION  
FOR  
CITY OF GRESHAM PARKS & RECREATION  
16.335 ACRES PROPOSED FOR OPEN SPACE  
WEST OF REGNER ROAD

99 122  
Revised October 28, 1999

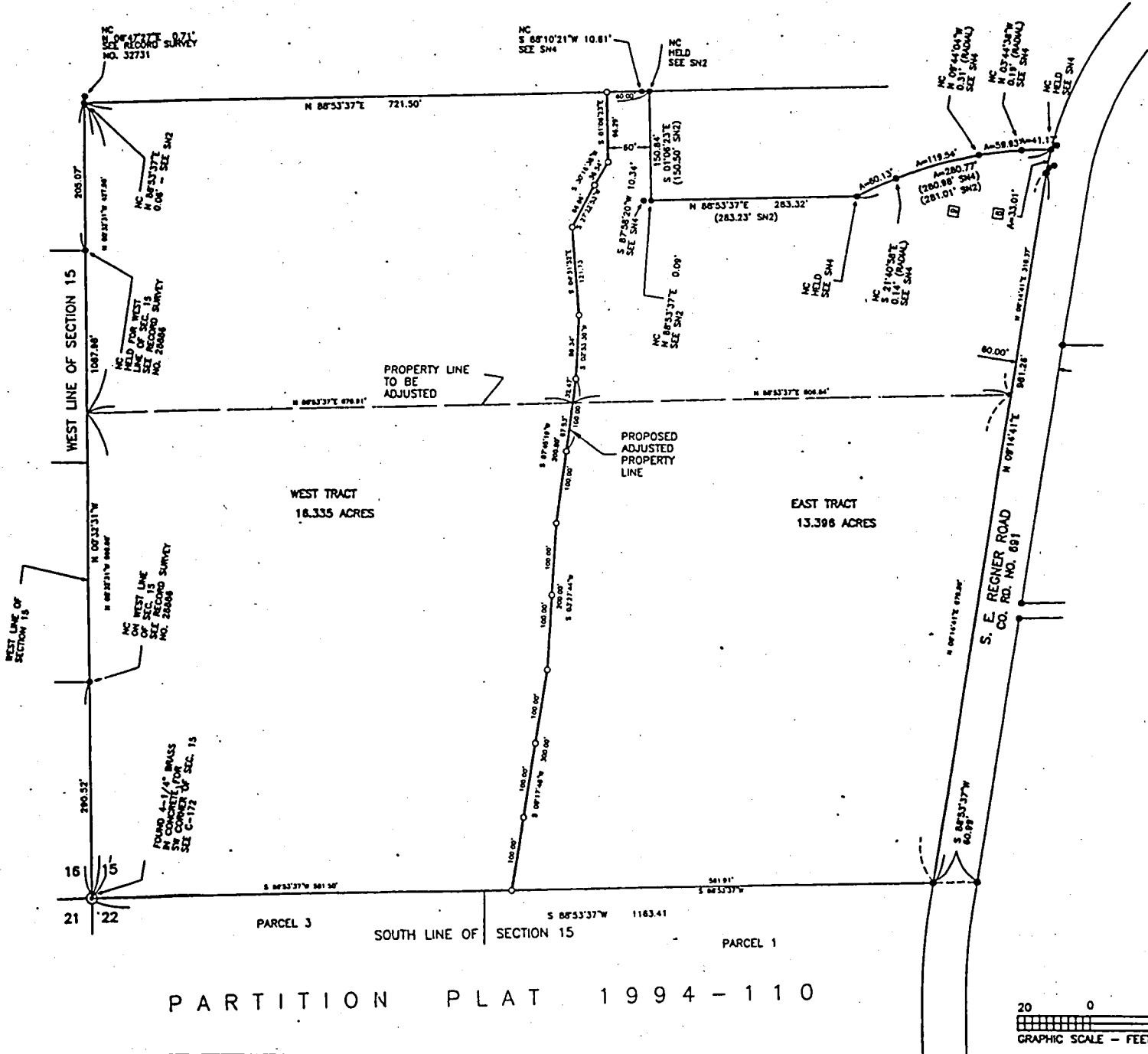
A tract of land located in the Southwest Quarter of the Southwest Quarter of Section 15, Township 1 South, Range 3 East of the Willamette Meridian, City of Gresham, County of Multnomah, State of Oregon and more particularly described as follows:

Beginning at the southwest corner of said Section 15; thence North 00°32'31" West along the west line of said Section 15 a distance of 1087.98 feet; thence North 88°53'37" East parallel to the south line of said southwest quarter of the southwest quarter a distance of 721.50 feet; thence South 01°06'23" East a distance of 96.29 feet; thence South 30°16'38" West a distance of 36.54 feet; thence South 27°22'53" West a distance of 66.86 feet; thence South 04°31'52" East a distance of 121.73 feet; thence South 02°53'30" West a distance of 88.34 feet; thence South 07°45'19" West a distance of 200.00 feet; thence South 03°27'44" West a distance of 200.00 feet; thence South 09°17'48" West a distance of 300.00 feet to a point on the south line of said Section 15; thence South 88°53'37" West along said south line a distance of 581.50 feet to the southwest corner of said Section 15. Containing 16.335 acres more or less. The bearings and distances of this description are based upon Survey Number 55371 on file in the Multnomah County Surveyors office.



RENEWED 12-31-99

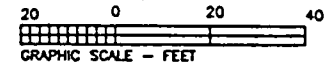
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REGISTERED  
**PROFESSIONAL  
 LAND SURVEYOR**  
 OREGON  
 JANUARY 15, 1987  
**DANIEL T. BURTON**  
 #2348  
 RENEWS 12/31/99

**LEGEND**

- SET 5/8" = 30" IRON ROD WITH YELLOW PLASTIC CAP MARKED "K.W. COX ASSOC. INC." SET ON (TO BE SET)
- FOUND MONUMENT AS NOTED
- HC 5/8" IRON ROD WITH NO LD. CAP
- MEAS. MEASURED
- S.N. SURVEY NUMBER ON FILE IN THE MULTNOMAH COUNTY SURVEYOR'S OFFICE
- CALC. CALCULATED
- BASIS OF SURVEY: SN 53371



**PARTITION PLAT 1994-110**

City of Gresham  
 Agreement No. 761

DATE:	SCALE:
10/25/99	1" = 100'
DRAWN BY:	FILE NO.:
D.T.B.	99122hg.dwg

**KENT W. COX AND ASSOCIATES, INC.**  
 CONSULTING ENGINEERS - LAND SURVEYORS  
 204 NORTHEAST KELLY AVENUE  
 GRESHAM, OREGON 97030 (503) 667-4464  
 ENGINEERING PLANNING SURVEYING LAND DEVELOPMENT

SKETCH MAP FOR: CITY OF GRESHAM PARKS & RECREATION  
 TRACTS OF LAND  
 IN THE SW 1/4 OF SECTION 15, T.1S., R.3E., W.M.  
 CITY OF GRESHAM, MULTNOMAH COUNTY, OREGON.

SHEET **1**



## Staff Report

### **CONSIDERATION OF RESOLUTION NO. 00-2901 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF GRESHAM FOR THE MANAGEMENT OF PROPERTY IN THE EAST BUTTES/BORING LAVA DOMES TARGET AREA**

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**Date:** February 16, 2000

**Presented By:** Charles Ciecko  
Jim Desmond

#### Proposed Action

Resolution No. 00-2901 requests authorization for the Executive Officer to execute an intergovernmental agreement (IGA) with the City of Gresham ("the City") for management of a property in the East Buttes-Boring Lava Domes target area.

#### Existing Legislation

Metro Code 2.04.026 (a) (2) requires that the Executive Officer obtain the authorization of the Metro Council prior to entering into an agreement pursuant to ORS Chapter 190 for the transfer of an interest in real property (including agreements to record deed restrictions on Metro Property).

The Greenspaces Master Plan identified a desired system of natural areas, which included the East Buttes/Boring Lava Domes area. Metro purchased this East Buttes property under the Open Spaces, Parks and Streams bond measure passed by the voters of the region in 1995, which indicates that properties may be operated and maintained by cooperative arrangements consistent with the Greenspaces Master Plan. The property is included in the East Buttes/Boring Lava Domes Refinement Plan adopted by the Metro Council via resolution 96-2361. The Open Spaces Implementation Work Plan encourages agreements with other park providers as a strategy to reduce landbanking costs.

#### Background and Analysis

In December of 1999, Metro purchased from the Chambers family 22.17 acres, and received from the Chambers family a donation of four adjacent acres in the East Buttes/Boring Lava Domes target area ("the Property"). The Property is on the western slope of Gresham Butte, surrounded on three sides by City-owned open space. The acquisition of the Property by Metro solidifies public ownership on Gresham Butte, and will allow the City to protect the forested backdrop to the newly constructed Gresham Butte trail.

The City requested that Metro acquire the property after the owner submitted for City review several subdivision development designs. The City lacked adequate funds to participate in the acquisition of the property, but agreed to assist Metro's acquisition efforts in two other ways. First, the City agreed to manage the Property as a component of the City's Gresham Butte open space natural area, pursuant to the terms of an IGA. Second, the City agreed to take off

of the market 16.4 open space acres (the City Tract) located within the forested corridor that Metro is attempting to protect. In order to ensure that both the Property and the City Tract are managed as open space, Metro and the City agreed to record covenants, conditions, and restrictions with the deeds of their respective properties.

The IGA between Metro and Gresham provides for the following:

1. Guidelines for the City's management of the Property as open space;
2. The City's commitment to retain ownership of the City Tract;
3. The City's commitment to record covenants, conditions, and restrictions with the deed of the City Tract, ensuring that the City Tract is managed as open space, and
4. Metro's commitment to record covenants, conditions, and restrictions with the deed of the Property, ensuring that the Property is managed as open space.

### **Findings**

Authorization of the Executive Officer's execution of the IGA with the City is recommended based on the following:

- Gresham Butte is the northern anchor to an open space corridor in which Metro owns approximately 325 acres. The IGA ensures that a 26-acre block on Gresham Butte will be managed consistently with surrounding properties, as an open space natural area.
- The location of the Property within an area owned and managed by the City makes the City an appropriate manager of the site.
- The City Tract, currently marketed by the City as a development property, is a key property in the open space corridor which Metro is invested in protecting, increasing the buffer between forested wildlife habitat and residential development along Regner Road. The IGA protects the natural character of the City Tract by requiring the City to retain ownership and to manage it as open space.
- Metro's commitment to record covenants, conditions, and restrictions with the deed of the Property, as required in the IGA, is consistent with the City's management of surrounding open space properties on Gresham Butte.
- Under the IGA, the Property is more likely to become available for public use and benefit at an earlier date than if Metro retains all operations and management responsibilities and the property is landbanked for an indefinite period of time.
- The IGA will relieve Metro of management costs arising from the Property, while fulfilling acquisition objectives related to objectives established in the East Buttes/Boring Lava Domes target area.

**Budget Impact**

The City would become responsible for the management, maintenance and operation of the Property, in conjunction with its own adjacent park facilities. This would reduce Metro's land-banking costs and future operation and maintenance expenses.

**Executive Officer's Recommendation**

The Executive Officer recommends passage of Resolution No. 00-2901.

*Agenda Item Number 11.1*

**Resolution No. 00-2891, For the Purpose of Authorizing an Exemption from Competitive Bidding Requirements and Authorizing Issuance of RFP #00R-1-REM for Replacement of Two Compaction Systems at Metro Central Station.**

***Contract Review Board***

**Metro Council Meeting  
Thursday, March 2, 2000  
Metro Council Chamber**

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION)  
FROM COMPETITIVE BIDDING REQUIREMENTS )  
AND AUTHORIZING ISSUANCE OF RFP #00R-1-REM )  
FOR THE REPLACEMENT OF TWO COMPACTION )  
SYSTEMS AT METRO CENTRAL STATION )

RESOLUTION NO. 00-2891

Introduced by Mike Burton,  
Executive Officer

WHEREAS, Metro needs to replace two compaction systems at its Metro Central Station utilizing the request for proposals attached as Exhibit A; and

WHEREAS, ORS 279.015 requires that public contracts shall be based upon competitive bids except when exempted upon approval of certain findings; and

WHEREAS, Metro Code Section 2.04.054 provides that all Metro public contracts shall be based upon competitive bid with the exception that specific contracts may be exempted by resolution of the Metro Contract Review Board, subject to the requirements of ORS 279.015, including certain findings; and

WHEREAS, the RFP is designed to select the most cost-effective compaction systems for the project as described in the accompanying staff report; and

WHEREAS, for the justifications set forth in the attached Exhibit B, the Metro Contract Review Board finds that exempting the award of a contract resulting from the RFP for replacement of two compaction systems at the Metro Central Station from the competitive bidding requirements of ORS 279.015 and Metro Code Section 2.04.052 is unlikely to encourage favoritism in the award of such contract or substantially diminish competition for such contract, and result in substantial cost savings to Metro; now, therefore,

BE IT RESOLVED:

1. That the Metro Contract Review Board adopts as its findings the justifications, information and reasoning set forth in Exhibit B and incorporated by reference into this Resolution as if set forth in full; and

2. That based upon such findings, the Metro Contract Review Board exempts from competitive bidding requirements the contract to be solicited through the attached Request for Proposals; and
3. That the Metro Council authorizes issuance of RFP #00R-1-REM, attached as Exhibit A.
4. That the Metro Council, pursuant to Section 2.04.026(b) of the Metro Code, authorizes the Executive Officer to execute a contract with the most qualified proposer.

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

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David Bragdon, Presiding Officer

**APPROVED AS TO FORM:**

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Daniel B. Cooper, General Counsel

CG:clk  
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**EXECUTIVE SUMMARY**  
**RESOLUTION 00-2891**  
**COMPACTOR REPLACEMENTS AT METRO CENTRAL STATION**

**PROPOSED ACTION**

- Adopt Resolution No. 00-2891, which exempts the procurement from the competitive bid process, authorizes release of RFP #00R-1-REM and authorizes the Executive Officer to execute a contract for the replacement of two compactors at the Metro Central Station.

**WHY NECESSARY**

- Two compactors installed at Metro Central Station in 1991 need to be replaced as scheduled in the agency's 1999-00 and 2000-01 budgets and the Capital Improvement Plan as well as in REM's Renewal and Replacement Study, because they have reached the end of their useful life.
- The frame on the unit scheduled for replacement in the current fiscal year (Unit #1) has broken and is being rewelded on a regular basis. Catastrophic failure of the unit is increasingly probable.
- Maintenance costs for both units are rising, while payloads are below those newer units on the market can produce. Higher payloads mean fewer trips through the Columbia Gorge National Scenic Area (about 3% annually once both stations are retrofitted with the newer units) and lower transport costs.
- Replacement of the units should increase station efficiency as waste can be loaded for transport faster. Together with lower maintenance costs and increased payloads, replacement should be cost-effective for Metro over the life of the units.

**ISSUES/CONCERNS**

- Use of a proposal process requires an exemption from the competitive bid process. As part of the exemption process, the Contract Review Board must adopt findings showing that such an exemption is: unlikely to encourage favoritism or substantially diminish competition for public contracts; and would result in substantial cost savings. Such findings are attached to the resolution being adopted.
- These findings show that the use of a proposal process allows Metro to maximize potential savings by balancing the cost of the systems with increased payloads, producing transport cost savings as well as lower maintenance costs; and that the all firms manufacturing the unit are likely to submit a proposal.
- A previous procurement using a bid process to purchase a single unit (the one with a broken frame) was cancelled in September when the Metro Council accepted an appeal of award. Staff is recommending an RFP process for these two units as more appropriate. This process has been successfully used in all previous compactor procurements.
- A two-unit purchase should result in lower per unit costs than that of a single unit. Given the length of time needed to manufacture the units, the contract should cross fiscal years when adequate funds will be available.

**BUDGET/FINANCIAL IMPACTS**

- This project is included in the CIP and is budgeted in FY1999-00 at \$903,000, and for \$926,400 in the proposed 2000-01 budget.
- Annual savings accruing directly to Metro for increasing average load weight by one ton per load (29.2 tons per load to 30.2 tons per load) is estimated to be about \$100,000 per year.

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 00-2891 FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS AND AUTHORIZING ISSUANCE OF RFP #00R-1-REM FOR THE REPLACEMENT OF TWO COMPACTION SYSTEMS AT METRO CENTRAL STATION

Date: January 31, 2000

Presented by: Terry Petersen

### PROPOSED ACTION

Adopt Resolution No. 00-2891, which exempts the procurement from the competitive bid process, authorizes release of RFP #00R-1-REM and authorizes the Executive Officer to execute a contract for the replacement of two compactors at the Metro Central Transfer Station.

### EXISTING LAW

Metro Code provides that all Metro public contracts shall be based upon competitive bid unless exempted by the Metro Contract Review Board, subject to the requirements of Oregon law. Per Metro Code, Council must approve the issuance of a RFP and the execution of a contract that has a significant impact on Metro.

### FACTUAL BACKGROUND AND ANALYSIS

Metro Central Station (MCS) is a solid waste transfer station that receives waste from both commercial haulers and the general public. The station operator compacts the waste into loads for transport 150 miles one-way to the Columbia Ridge Regional Landfill, located in Gilliam County, Oregon. The waste is compacted to minimize the number of trips to the landfill. In 1999, MCS will receive approximately 390,000 tons of waste for disposal, resulting in the transport of over 12,000 loads.

Waste received at the facility is unloaded in one of three bays running the length of the station, depending on the type of waste being delivered. Bay #1 receives primarily commercial compacted waste, upon which some material recovery occurs. Bay #2 receives loose waste from drop boxes that is manually sorted to generate most of the station's recovery. Bay #3 receives residential waste from packer trucks from which no significant amount of materials is recovered (unrecovered material from Bay #2 is also handled in Bay #3).

After unloading and materials recovery, waste is pushed to a conveyor that loads a compactor. A compactor operator builds a load of waste in the compactor to desired specifications. The load of waste is then extruded into a trailer for transport to the landfill.

#### *The Existing Compactors*

There are three compactors at MCS. This project is for replacement of the compactors in Bay #1 and Bay #3. The unit in Bay #1 is a SSI two-bale compactor that has been the workhorse of the facility. It has been identified in *1999-2000 Budget* for replacement. The compactor for Bay #3



is an AMFAB single bale that is scheduled for replacement in the *Proposed FY2000-01 Budget*. Both are listed in the Department's *Renewal and Replacement Study* and agency's *Capital Improvement Plan*. The compactor for Bay #2 is not used on a regular basis, and has not been scheduled for replacement. All three compactors were installed in 1991.

Since being identified for replacement, the Bay #1 compactor has sustained damage to its support structure. Due to this damage, staff initiated replacement prior to the start of FY1999-00. The approach used during this procurement was a request for bids (RFB). The RFB resulted in two bids from the only firms manufacturing such equipment. Award of a contract to the low bidder by the Executive Officer was appealed to the Metro Council in its capacity as the Contract Review Board. The appeal was accepted and the procurement cancelled in the Fall of 1999. Since that time staff has been reevaluating its approach to this procurement.

#### *Proposed Approach*

Staff has determined that it is prudent to replace both compactors during this next procurement for two reasons. Given the long lead time for the manufacture of units (4 to 6 months), if the #3 replacement is ordered now together with #1, installation and payment will not be complete until FY2000-01 where funds are budgeted (in fact it will be difficult get the #1 replaced this fiscal year). Secondly, staff has found that the per-unit cost is less when two are purchased at one time. This was evidenced during the unsuccessful bid process for replacement of the Bay #1 compactor. The price submitted by the unsuccessful bidder (and successful appellant) was \$9,000 higher than its per unit cost for replacing two compactors at Metro South Station which was a much more difficult installation.

A proposal process is recommended in place of a bid process. This recommendation is based partly on what was learned during the unsuccessful bid process. During this procurement both firms submitting bids presented a significant amount of data differentiating the performance of their particular units. Within the structure of a bid process, staff was unable to evaluate the relative merits of a machine's particular features since the lowest bid generally prevails.

The equipment being sought under this procurement is complicated and each manufacturer has a unique design and a variety of features available. Different features of a particular unit may result in long term savings to Metro even though the unit may not be the lowest cost. For example, if one manufacturer's unit produces higher payloads than its competitor's yet costs more, Metro may still be better off purchasing it because we may save more money in lower transport costs than the additional initial capital cost, over the life of the unit. Reliability, maintenance and operational costs are additional factors to be considered in determining the cost-effectiveness of a particular system since Metro must pay a portion of these costs. Such an analysis can only be conducted under a proposal process. This is because in a low bid process the manufacturer cannot offer innovations that enhance the life or cost-effectiveness of the unit if it increases the bid price. Potential savings available to Metro under a proposal process are detailed in the attached "Findings" as Exhibit B.

The proposal process will not diminish competition, but rather enhance it. Both firms manufacturing this equipment are expected to submit proposals and both submitted bids during the last procurement. The procurement approach will not change competition on this level. The

proposal process will permit the firms to customize their proposed equipment. Since these machines are essentially one of a kind, the proposal process promotes innovation and should raise the quality and long term cost-effectiveness of the products proposed as detailed in the "Findings". The RFP process therefore increases elements of competition for this procurement in a manner a bid process cannot. Metro has successfully utilized this approach to purchase all seven previous compactors used in Metro transfer stations without diminishing competition.

#### BUDGET IMPACT

This project was budgeted in FY1999-00 at \$903,800 and \$926,400 in FY2000-01. These payments will be made from the Renewal & Replacement Account, which has sufficient funds.

#### EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 00-2891.

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EXHIBIT "A"

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**REQUEST FOR PROPOSALS**  
**for**  
**REPLACEMENT OF TWO SOLID WASTE COMPACTION SYSTEMS**  
**at the**  
**METRO CENTRAL TRANSFER STATION**

**RFP #00R-1-REM**

Metro  
Regional Environmental Management  
600 NE Grand Avenue  
Portland, OR 97232

## EXHIBIT "B"

### FINDINGS SUPPORTING AN EXEMPTION FROM THE COMPETITIVE BIDDING PROCESS FOR A REQUEST FOR PROPOSALS FOR THE REPLACEMENT OF TWO COMPACTION SYSTEMS AT THE METRO CENTRAL TRANSFER STATION

#### 1. BACKGROUND

Metro owns the Metro Central Transfer Station (MCS), which is a solid waste transfer station that receives waste from both commercial haulers and the general public. Waste received at the facility is processed to recover materials prior to preparation for shipment to a landfill for disposal. The waste to be disposed is first compacted in order to minimize the cost of shipment as well as the number of trips through the Columbia Gorge National Scenic Area.

MCS has three compaction systems. Two of these systems need to be replaced as identified in the agency's *1999-00 Budget*, the *Proposed 2000-01 Budget*, the *Capital Improvement Plan* and the Regional Environmental Management Department's *Renewal and Replacement Study*.

#### 2. FINDINGS

##### 2.1. Findings supporting exemption from competitive bid process regarding favoritism and competition

The Metro Contract Review Board finds that exempting the replacement of two compaction systems at MCS from competitive bidding requirements is unlikely to encourage favoritism in the award of a contract or to substantially diminish competition for such a contract. This finding is supported by the following:

- 2.1.1. Solicitation Advertisement: Pursuant to ORS 279.025, the solicitation will be advertised as appropriate in regional publications. In addition, solicitation documents will be available both through Metro's website page that highlights contracting opportunities, as well as at regional plan and procurement centers. Additionally, each known manufacturer of such equipment in the United States will receive a set of the solicitation documents and be contacted directly by staff. Accordingly, this solicitation process is designed to encourage competition and to discourage favoritism.
- 2.1.2. Full Disclosure: To avoid favoritism and ensure full disclosure of all project requirements, the RFP solicitation package will include:
  - A detailed description of the project
  - Technical specifications for acceptable systems
  - Minimum performance specifications
  - Contractual terms and conditions
  - Selection process description
  - Evaluation criteria

- Complaint process and remedies

2.1.3. Selection Process: To avoid favoritism the selection process will include the following elements-

2.1.3.1. A pre-proposal period to ask questions, request clarifications and suggest changes to the RFP or solicitation process generally.

2.1.3.2. The evaluation process will include the following steps:

- Proposals will be evaluated for completeness and compliance with the requirements listed in the RFP
- References regarding experience, qualifications and operating history will be investigated and evaluated
- The information regarding other aspects of the proposal such as technical characteristics, product support and cost will be discussed and evaluated
- Firms submitting proposals considered complete and responsive will be interviewed regarding the features of the proposed systems and any questions regarding the proposal
- Proposals will then be independently scored by the voting members of the selection committee

2.1.3.3. Metro will then enter into negotiations with the highest ranked firm (or firms if different firms are selected to provide one of the two systems being solicited) to attempt to negotiate a contract. If negotiations are unsuccessful, negotiations will be conducted with the next ranked firm.

2.1.3.4. Once a contract has been negotiated, competing firms will be notified and given an opportunity to appeal award in accordance with the provisions of the Metro Code.

2.1.4. Competition: There are only two manufacturers of the systems being requested. The exemption from competitive bidding will not diminish competition because both are committed to making a proposal for this project.

## 2.2. Findings supporting exemption from the competitive bid process regarding cost savings

The Metro Contract Review Board finds that awarding the contracts for the replacement of two compaction systems at MCS pursuant to an exemption from competitive bidding requirements will result in substantial cost savings to Metro. The finding is supported by the following:

2.2.1. Increased Payloads: Exemption from the competitive bid requirements permits Metro to solicit proposals for systems that increase the payloads of each load transported for disposal. The performance requirements contained in the RFP would increase average payloads at MCS by over a ton. Metro saves approximately fifty cents for each additional ton in a payload. The RFP process allows Metro to evaluate the cost effectiveness of achieving this payload by comparing savings to the systems' cost.

**2.2.2. Maintenance Savings:** Metro's contract with the operator of MCS is structured such that maintenance costs are shared depending on the type of maintenance required. Metro's exposure is particularly high in the event of a catastrophic failure, or the failure of a large component such as a cylinder in a compactor. The RFP process allows Metro to evaluate proposed systems for their reliability and historical maintenance costs and to factor this evaluation into the selection process. Metro can then establish the cost effectiveness of the lifecycle of the system considering maintenance costs, not just the initial system's capital cost. Metro can reduce total costs of the project by selecting a proposal whose combined capital and maintenance cost over the life of the unit are less than the combined capital and maintenance cost of other proposals.

**2.3. Additional information justifying exemption from competitive bidding requirements**

**2.3.1.** It is a policy of Metro to minimize the number of loads of waste transported through the Columbia Gorge National Scenic Area. Exemption of the solicitation from competitive bidding requirements allows evaluation of proposals on factors other than cost, permitting incorporation of this policy into the procurement.

*Agenda Item Number 12.1*

**Resolution No. 00-2908, For the Purpose of Amending the Jackson Bottom-Dairy McKay Creeks Target Area Refinement Plan.**

***Executive Session Held Pursuant to ORS 192.660(1)(e). Deliberations with persons designated to negotiate real property transactions.***

Metro Council Meeting  
Thursday, March 2, 2000  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING ) RESOLUTION NO. 00-2908  
THE JACKSON BOTTOM – DAIRY/ )  
MCKAY CREEKS TARGET AREA )  
REFINEMENT PLAN )  
)

WHEREAS, in July 1992, Metro completed the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, at the election held on May 16, 1995, the Metro area voters approved the Open Spaces, Parks and Streams Bond Measure (Measure 26-26) which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements pursuant to bond covenants, Council-adopted "refinement plans," and Council-adopted work plan; and

WHEREAS, The Jackson Bottom – Dairy/McKay Creeks regional target area was designated as a greenspace of regional significance in the Greenspaces Master Plan and identified as a regional target area in the Open Spaces, Parks and Streams Bond Measure; and

WHEREAS, on June 27, 1996, Metro Council adopted a refinement plan for the Jackson Bottom – Dairy/McKay Creeks target area which aims to protect water quality, wildlife habitat and to enhance education and stewardship opportunities on Dairy and McKay Creeks primarily through the acquisition of land adjacent to the existing Jackson Bottom Wetland Preserve, in order to expand a regionally significant public natural area; and

WHEREAS, the refinement plan for the Jackson Bottom – Dairy/McKay Creeks Target Area promotes cooperative acquisitions with local public and private partners but does not target specific, locally significant properties or specify the extent of Metro's commitment to such partnerships; and

WHEREAS, at the suggestion of the City of Hillsboro, neighborhood activists, and the landowner, Metro has examined an 11 acre parcel north of the Jackson Bottom – Dairy/McKay Creeks acquisition target area which contains both banks of a segment of an unnamed McKay Creek tributary (the Fishback Property); and

WHEREAS, Metro's biological assessment concluded that the Fishback Property has local significance as an intact habitat fragment which presents educational and natural resource dependent recreation opportunities for the surrounding population; and

WHEREAS, a potential partnership opportunity exists as the City of Hillsboro and other potential partners would consider contributing a portion of the purchase price of the Fishback Property and would agree to manage the property as part of its local natural area park system; and



WHEREAS, the neighborhood surrounding the Fishback Property is aware of the natural resource value of the property and supports the public acquisition of the property; and

WHEREAS, if the property is not acquired for park purposes, the Fishbacks will sell the property to a developer in order to facilitate the subdivision and development of the property; and

WHEREAS, acquisition of the Fishback Property would serve the Jackson Bottom – Dairy/McKay Creeks Target Area refinement plan goal of pursuing partnerships with the City of Hillsboro in order to protect wildlife habitat and water quality in Dairy and McKay Creeks while creating passive recreation, education and stewardship opportunities; and

WHEREAS, amendment of the refinement plan map illustrating acquisition targets in the Jackson Bottom – Dairy/McKay Creeks Target Area tributaries to include the Fishback Property would allow Metro and the City of Hillsboro to take advantage of this acquisition opportunity and to serve the target area objectives described above; now therefore,

BE IT RESOLVED,

That the Metro Council amends the Jackson Bottom – Dairy/McKay Creeks regional target area refinement plan map to include the Fishback Property.

That Metro Council's authorization for Metro's acquisition of the Fishback Property, as identified in Exhibit A, is conditioned on the following:

1. Acquisition partners for the property shall commit funds to the acquisition of the Fishback Property.
2. Metro's financial commitment to the acquisition shall not exceed 50% of the purchase price for the Fishback Property, or \$500,000, whichever is less.
3. The City of Hillsboro will manage the property according to the terms of an Intergovernmental Agreement with Metro.

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

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David Bragdon, Presiding Officer

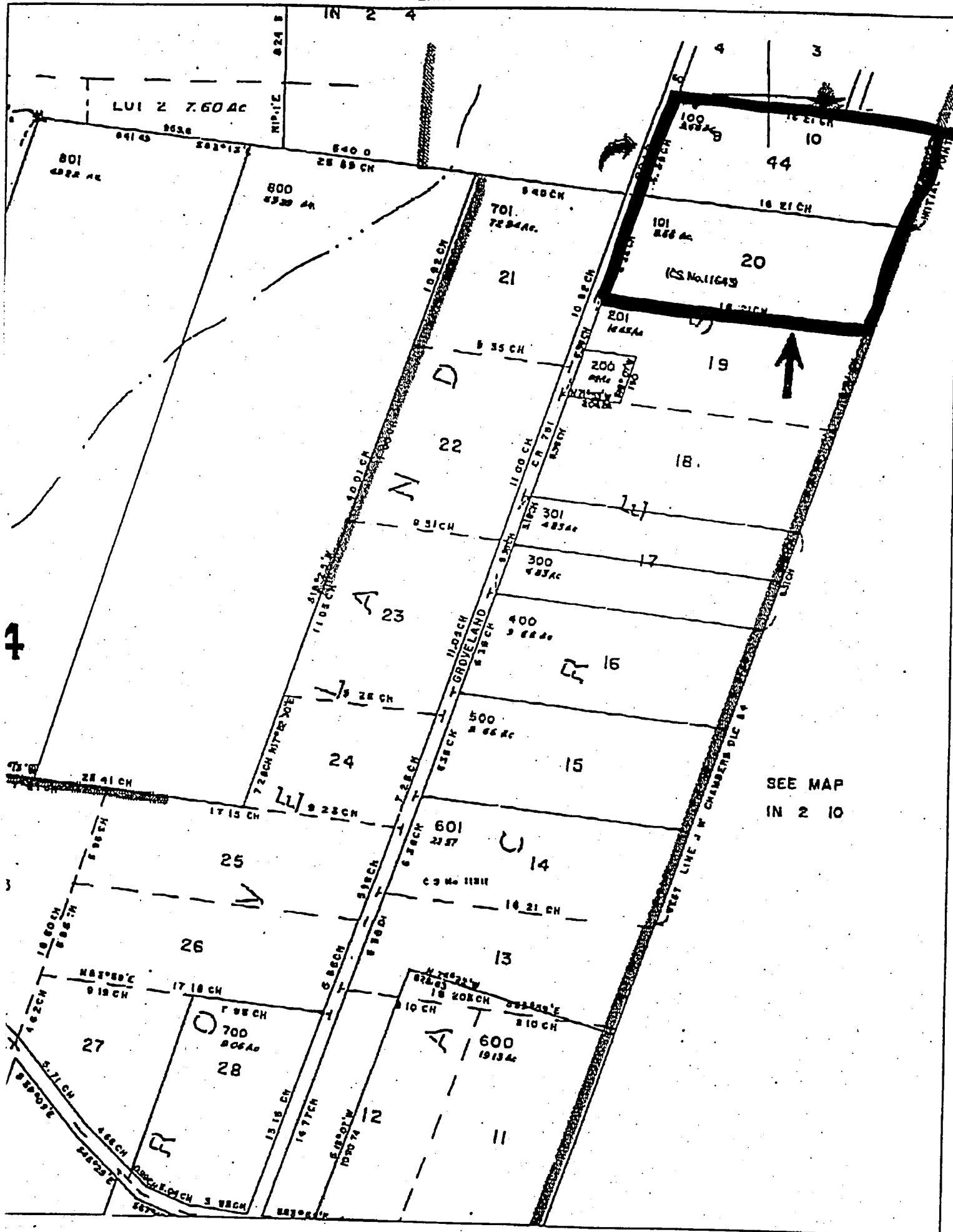
Approved as to Form:

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Daniel B. Cooper, General Counsel

**EXHIBIT A**

**Lots 20 and 44, according to the duly filed plat of GROVELAND ACRES, filed December 14, 1910, in Plat Book 4, Page 18, Records of the County of Washington and State of Oregon. SUBJECT to the rights of the public in and to that portion of the premises lying within the limits of Groveland Road.**



SEE MAP  
IN 2 10

**Staff Report**

**CONSIDERATION OF RESOLUTION NO. 00-2908 FOR THE PURPOSE OF AMENDING THE JACKSON BOTTOM – DAIRY/MCKAY CREEKS TARGET AREA REFINEMENT PLAN**

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**Date: February 15, 2000**

**Presented by:**

**Charles Ciecko  
Jim Desmond**

**PROPOSED ACTION**

**Resolution No. 00-2908, requests amendment of the Jackson Bottom – Dairy/McKay Creeks target area refinement plan map.**

**EXISTING LAW**

Metro Code 2.04.026 (a) (3) requires that the Executive Officer obtain the authorization of the Metro Council prior to executing any contract for the purchase of real property. The Open Spaces Implementation Work Plan, adopted by the Metro Council via Resolution 96-2424, was established to implement the Open Spaces, Parks and Streams bond measure passed by the voters of the region in 1995. The Work Plan established acquisition parameters that authorize the Executive Officer to purchase property, within certain criteria, in the Council-approved target area refinement plan maps. Via Resolution 96-2342, the Metro Council approved the Jackson Bottom – Dairy/McKay Creeks target area refinement plan tax-lot specific map. This resolution proposes to amend that refinement plan map to include another property (the Fishback property) that was previously not included.

**BACKGROUND AND ANALYSIS**

In May 1995, voters in the region passed a bond measure enabling Metro to purchase open space properties with \$135.6 million worth of bond funds. The bond measure identified fourteen regional target areas and six regional trails and greenways for property acquisition, including the Jackson Bottom – Dairy/McKay Creeks regional target area.

The refinement plan adopted by the Metro Council on June 27, 1996 (Resolution 96-2342), for the Jackson Bottom – Dairy/McKay Creeks regional target area has a dual focus. The refinement plan identifies an acquisition target area surrounding the existing Jackson Bottom Wetland Preserve, a public natural area designated as regionally significant in Metro's Greenspaces Master Plan, and the lower reaches of Dairy and McKay creeks, which feed into Jackson Bottom. The refinement plan also targets a rare wetland area west of Jackson Bottom, in the upper Dairy Creek watershed, for acquisition. Refinement plan objectives for both of these areas include wildlife habitat protection, water quantity and quality protection, and the establishment of passive recreation and educational/stewardship opportunities.

The refinement plan also contains a partnership objective, designed to encourage cooperative land conservation projects involving Metro, the City of Hillsboro, and other local agencies. However, the Jackson Bottom – Dairy/McKay Creeks target area refinement plan does not

Identify locally significant natural areas or establish a strategy for achieving its local partnership objective.

Because it is outside the target area as currently defined, Metro has not negotiated to purchase the Fishback property, an 11-acre parcel at the northern edge of Hillsboro. The Fishback property contains both banks of a segment of an unnamed tributary to McKay Creek. The same tributary bisects the Emma Jones Nature Preserve, a 10.6-acre natural area managed by the City of Hillsboro located just upstream from the Fishback property. The Fishback property is densely forested with diverse tree species including Douglas fir and Oregon ash. Native vegetation such as Oregon grape and sword fern dominates the understory, rather than invasive species like Himalayan blackberry. Resident raptors and deer also provide evidence of the health of the forest on the Fishback property. However, because the Fishback property is an isolated forest remnant within a developed area, Metro Regional Parks and Greenspaces staff have concluded that it is a locally significant natural area, outside of the scope of the existing Jackson Bottom – Dairy/McKay Creeks target area refinement plan.

While the Fishback property, is outside of the current boundaries of the refinement plan, its acquisition would nonetheless serve target area objectives. First, acquisition of the Fishback property could serve the partnership objective of the refinement plan because the City of Hillsboro and other potential local partners would manage the site in the long-term, and pay for a significant portion of the purchase price. Second, acquisition of the Fishback property serves McKay Creek habitat and water quality protection objectives because if it is not publicly acquired, the property will be sold and subdivided by a private developer, which would eliminate the existing forested habitat and affect water quality in a tributary to McKay Creek. Third, acquisition of the Fishback property would establish a passive recreation opportunity for North Hillsboro, which, with the exception of the Emma Jones Nature Preserve, currently lacks such a natural area amenity. Finally, local neighborhood advocates have urged Metro to make this acquisition, and have indicated their willingness to assist the City in developing educational and stewardship opportunities at the property, which would fulfill a goal for this target area.

In order to take advantage of this acquisition opportunity, and to more effectively achieve refinement plan objectives of partnering with local agencies to enhance McKay Creek habitat and water quality, recreation and education opportunities, Metro should amend the Jackson Bottom – Dairy/McKay Creeks regional target area refinement plan map to include the Fishback property, provided that financial partners can be secured and Metro's financial participation is limited to no more than 50% of the purchase price, or \$500,000, whichever is less.

## **FINDINGS**

Amendment of the Jackson Bottom – Dairy/McKay Creeks regional target area refinement plan map is recommended based upon these findings:

- The Refinement Plan for the Jackson Bottom – Dairy/McKay Creeks regional target area states the following as acquisition goals:

Expand Jackson Bottom Wetlands complex at the confluence of Dairy Creek and the Tualatin River. Protect other significant wetlands associated with Dairy Creek and its tributaries. Provide a linear greenway connection extending north along Dairy and McKay Creeks for multiple values:

- Wildlife habitat
- Water quality and water quantity management (floodplain protection)
- Education and stewardship opportunities
- Greenway corridor to regional open space at Jackson Bottom and the Tualatin River
- Passive recreation

Acquisition of the Fishback property would protect remnant wildlife habitat and contribute to the maintenance of water quality on a McKay Creek tributary, while providing passive recreation and educational opportunities for a densely populated area that is currently underserved by public natural areas.

- The Refinement Plan for the Jackson Bottom – Dairy/McKay Creeks regional target area states the following as a partnership objective:
  - Pursue partnership opportunities with the City of Hillsboro, City of Cornelius, Friends of Jackson Bottom, and the Unified Sewerage Agency to leverage the regional bond dollars targeted to the Dairy and McKay Creeks target area

Amendment of the target area refinement plan map to add the Fishback property would serve this objective by allowing Metro to participate in a partnership through which Metro would contribute a portion of the acquisition funds not to exceed 50% of the purchase price or \$500,000, whichever is less, while the City of Hillsboro and other potential partners would provide long-term management and additional acquisition funds.

- Without Metro's participation in the acquisition of the Fishback property, the property will likely be developed as a residential subdivision.
- The Fishback property, along with the nearby Emma Jones Nature Preserve, offers the opportunity to create a 21-acre public natural area on a McKay Creek tributary that is otherwise completely developed.
- Strong support for this amendment exists from neighboring landowners and other citizens who have petitioned for Metro's acquisition of the Fishback property.

### **BUDGET IMPACT**

Bond funds would supply acquisition money, with local share funds and funds from other partners providing at least 50% of acquisition costs. Land banking costs are expected to be minimal. The City of Hillsboro has committed to assuming long-term management responsibilities for the Fishback property. An intergovernmental agreement, to be negotiated and approved by Metro Council in the future, shall govern this arrangement.

### **EXECUTIVE OFFICER'S RECOMMENDATION**

The Executive Officer recommends passage of Resolution No. 00-2908.

*Agenda Item Number 12.2*

**Resolution No. 00-2910, For the Purpose of Amending the Rock Creek Greenway Target Area Refinement Plan.**

***Executive Session Held Pursuant to ORS 192.660(1)(e). Deliberations with persons designated to negotiate real property transactions.***

Metro Council Meeting  
Thursday, March 2, 2000  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING ) RESOLUTION NO. 00-2910  
THE ROCK CREEK GREENWAY )  
TARGET AREA REFINEMENT PLAN )  
)

WHEREAS, in July 1992, Metro completed the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, at the election held on May 16, 1995, the Metro area voters approved the Open Spaces, Parks and Streams Bond Measure (Measure 26-26) which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements pursuant to bond covenants, Council-adopted "refinement plans," and Council-adopted work plan; and

WHEREAS, The Rock Creek Greenway regional target area was designated as a greenspace of regional significance in the Greenspaces Master Plan and identified as a regional target area in the Open Spaces, Parks and Streams Bond Measure; and

WHEREAS, on June 19, 1996, Metro Council adopted a refinement plan for the Rock Creek Greenway target area (Resolution 96-2377) which aims to protect water quality and wildlife habitat, enhance education and stewardship opportunities, and enhance community identity "access to nature" in rapidly developing areas; and

WHEREAS, the refinement plan stated that one of the acquisition goals for Tier 1 priority sites is to protect and purchase properties in the floodplain/riparian corridor along Bronson and Beaverton creeks; and

WHEREAS, the refinement plan for the Rock Creek Greenway target area promotes cooperative acquisitions with local public and private partners but does not target specific, locally significant properties or specify the extent of Metro's commitment to such partnerships; and

WHEREAS, at the request of the Tualatin Hills Park and Recreation District, neighborhood activists, and the landowner, Metro has examined a 22-acre parcel adjacent to Beaverton Creek and surrounded by the Tualatin Hills Nature Park; and

WHEREAS, Metro's biological assessment concluded that the 22 acres is essential to protect and enhance the Nature Park, which is of regional significance as concluded by the Greenspaces Master Plan; and

WHEREAS, a potential partnership opportunity exists with the Tualatin Hills Park and Recreation District contributing a portion of the purchase price of the property and agreeing to manage the property as part of its park system; and



WHEREAS, strong support has been demonstrated from many citizens in the City of Beaverton and Washington County; and

WHEREAS, if the property is not acquired for park purposes, the property will likely be developed; and

BE IT RESOLVED,

That the Metro Council amends the Rock Creek Greenway regional target area refinement plan map to include the subject property (22 acres) as referenced in "Exhibit A."

That Metro Council's authorization for Metro's acquisition of the property, as identified in Exhibit A, is conditioned on the following:

1. Tualatin Hills Park and Recreation District shall commit funds to the acquisition of the property.
2. Metro's financial commitment to the acquisition shall not exceed 50% of the purchase price plus 50% of standard closing costs.
3. Tualatin Hills Park and Recreation District will manage the property according to the terms of an Intergovernmental Agreement with Metro.
4. The Purchase and Sale Agreement and terms of the transaction are otherwise in compliance with the Acquisition and Due Diligence provisions of the Open Spaces Implementation Work Plan.

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

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

Approved as to Form:

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

**EXHIBIT A**

**Parcel 1 and Parcel 2, partition plat #1995-054, in the City of Beaverton, County of Washington, and State of Oregon.**

## Staff Report

### **CONSIDERATION OF RESOLUTION NO. 00-2910 FOR THE PURPOSE OF AMENDING THE ROCK CREEK GREENWAY TARGET AREA REFINEMENT PLAN**

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**Date: February 17, 2000**

**Presented by: Charles Ciecko  
Jim Desmond**

#### PROPOSED ACTION

**Resolution No. 00-2910, requests amendment of the Rock Creek Greenway target area refinement plan map.**

#### EXISTING LAW

Metro Code 2.04.026 (a) (3) requires that the Executive Officer obtain the authorization of the Metro Council prior to executing any contract for the purchase of real property. The Open Spaces Implementation Work Plan, adopted by the Metro Council via Resolution 96-2424, was established to implement the Open Spaces, Parks and Streams bond measure passed by the voters of the region in 1995. The Work Plan established acquisition parameters that authorize the Executive Officer to purchase property, within certain criteria, in the Council-approved target area refinement plan maps. Via Resolution 96-2301, the Metro Council approved the Rock Creek Greenway target area refinement plan tax-lot specific map. This resolution proposes to amend that refinement plan map to include another property (the Polygon property) that was previously excluded.

#### BACKGROUND AND ANALYSIS

In May 1995, voters in the region passed a bond measure enabling Metro to purchase open space properties with \$135.6 million worth of bond funds. The bond measure identified fourteen regional target areas and six regional trails and greenways for property acquisition, including the Rock Creek Greenway regional target area.

The refinement plan adopted by the Metro Council on March 14, 1996, (Resolution 96-2301) for the Rock Creek Greenway regional target area had a broad recommendation, stating that "the long term vision for the Rock Creek Greenway is proposed as follows:

Protect/enhance continuous floodplain and riparian corridor of Rock Creek from the headwater areas in Forest Park to the mouth at the Tualatin River for multiple values:

- wildlife habitat
- community identity "access to nature" in rapidly developing area
- linear connection with larger parks and natural areas such as Forest Park and Jackson Bottom

- water quality/water quantity management
- education and stewardship opportunities.”

The refinement plan prioritized acquisition objectives, including Tier 1 sites that included 1) key upland sites adjacent to the Rock Creek floodplain within the UGB; 2) the flood plain/riparian corridor along Bronson and Beaverton creeks; and 3) creation of a regional natural area north of West Union Road at the confluence of Rock Creek and Holcomb Creek.

Tier 2 objectives included 1) acquiring key links to complete continuous public floodplain, expansion of the natural area at the confluence of Rock Creek and Holcomb Creek; and 2) expansion of the headwaters area to link Rock Creek Greenway with Forest Park. The refinement plan also included broad partnership objectives, including “pursue partnership opportunities with ...Tualatin Hills Parks and Recreation District.... to leverage the regional open space bond dollars targeted to the Rock Creek corridor.”

An opportunity has presented itself for the acquisition of a 22.19-acre parcel surrounded on three sides by the 190-acre Tualatin Hills Nature Park. This parcel is owned by the Archdiocese of Portland and currently subject to an option agreement in favor of a development company, Polygon Northwest. The site is directly adjacent to Beaverton Creek, a tributary of Rock Creek, specifically identified as part of the Tier 1 objectives of the refinement plan. The site is densely forested with diverse tree species and includes three high quality wetland areas. Biologically and physically, the site is connected to and basically a part of Tualatin Hills Nature Park, though now at risk for high-density development.

Polygon has proposed a high-density development of the site which is adjacent to light rail, and therefore, of a particularly high potential market value. The proposed development is now pending an appeal at LUBA, though that appeal was stayed so that Polygon could attempt to negotiate a sale to Tualatin Hills Park and Recreation District. The development proposal attracted significant opposition and a citizens group was formed, known as the Make Our Park Whole Committee, which has intervened in the LUBA appeal.

THPRD has entered into an agreement with Polygon to purchase the property, provided that THPRD can identify a financial partner for 50% percent of the purchase price. THPRD has approached Metro to contribute half of the agreed purchase price. The terms of the transaction have been approved by the THPRD Board of Directors at its meeting held February 9, 2000.

While the site is outside of the boundaries currently established for Tier 1 and Tier 2 on Rock Creek, its acquisition would nonetheless serve target area objectives. The property is a key site in the Rock Creek floodplain and within the UGB. Furthermore, it is an important link to protect the biological integrity of the Tualatin Hills Nature Park, recognized by itself as a regionally significant natural area in the 1992 Greenspaces Master Plan. This acquisition is of the highest priority to THPRD and would serve to accomplish the partnership objectives established in the refinement plan for the Rock Creek corridor. The nature park, at more than 190 acres, is regional in scope and within walking distance of light rail. If Metro does not participate in this purchase, THPRD will not be able to raise the funds needed to close the transaction, and the property will likely be developed despite the strong opposition of many citizens to the development

proposal. While the outcome of the LUBA appeal is uncertain, it is considered likely that the developer would be able to have a development approved at the site, although perhaps not of the precise size and configuration of the one previously presented to and rejected by the Beaverton City Council.

In order to take advantage of this acquisition opportunity, and to more effectively achieve refinement plan objectives, Metro should amend the Rock Creek Greenway regional target area Refinement Plan map to include the Polygon property, provided that Metro's financial participation is limited to no more than 50% of the base purchase price plus 50% of standard closing costs.

## **FINDINGS**

Amendment of the Rock Creek Greenway regional target area refinement plan map is recommended based upon these findings:

- The refinement plan for the Rock Creek Greenway regional target area states the following as acquisition goals:

Protect/enhance continuous floodplain and riparian corridor of Rock Creek from the headwater areas in Forest Park to the mouth of the Tualatin River for multiple values:

- wildlife habitat
- community identity "access to nature" in rapidly developing area
- linear connection with larger parks and natural areas such as Forest Park and Jackson Bottom
- water quality/water quantity management
- education and stewardship opportunities

Acquisition of the Polygon property would 1) protect a key site within the Rock Creek floodplain within the UGB; 2) preserve important habitat directly adjacent and surrounded by the Tualatin Hills Nature Park, a regionally significant natural area enjoyed by more than 125,000 citizens of the region each year.

- The refinement plan identifies the protection of the floodplain/riparian corridor along Bronson and Beaverton creeks as a Tier 1 priority, and the Polygon parcel is directly adjacent to Beaverton Creek although previously not included in the Rock Creek target area refinement plan.
- The refinement plan for the regional target area states the following as a partnership objective:
  - Pursue partnership opportunities with the City of Hillsboro, Washington County, Tualatin Hills Parks and Recreation District, Tri-Met, and Unified Sewerage Agency to leverage the regional open space bond dollars targeted to the Rock Creek corridor.

Amendment of the target area refinement plan map to add the Polygon property would serve this objective by allowing Metro to participate in a partnership through which Metro would contribute up to 50% of the acquisition funds, while THPRD and other potential partners would provide the balance of acquisition funds and the long term management of the site.

- Without Metro's participation in the acquisition of the Polygon property, the property would likely be developed as a high density mixed use development.
- Strong support for this amendment exists from many citizens of the city of Beaverton and Washington County including the Make Our Park Whole Committee, and other citizens who have petitioned THPRD for the acquisition of the Polygon property.

### **BUDGET IMPACT**

Bond funds would supply acquisition money, with funds from THPRD and other potential partners providing the balance of the purchase price plus all related costs. There would be no land banking costs, as management will be taken on immediately by THPRD. THPRD has committed to assuming long-term management responsibilities for the Polygon property as part of the Tualatin Hills Nature Park. An Intergovernmental Agreement, to be negotiated and approved by Metro Council in the future, shall govern this arrangement.

### **EXECUTIVE OFFICER'S RECOMMENDATION**

The Executive Officer recommends passage of Resolution No. 00-2910.

**MINUTES OF THE METRO COUNCIL MEETING**

February 17, 2000

Fairview City Council Chamber

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

Councilors Absent: None

Presiding Officer Bragdon convened the Regular Council Meeting at 2:15 pm.

**1. INTRODUCTIONS**

**Mayor Roger Vonderharr**, Fairview welcomed the Council and gave an overview of Fairview. He said that massive amounts of planning and infrastructure requirements were also needed in older areas like Fairview where the population has grown from 2,000 to 7,000 since 1990 and expected to reach 12,000 by 2010. The area had little or no industry to help absorb the costs of providing that planning. He asked Council to do what it could to help with these problems and to recognize the burden placed on the small city by providing services to Metro facilities.

**Councilor McLain** said that Fairview was a model for other jurisdictions trying to do infill to an older established area. She asked what he saw as the most difficult challenge for the city in blending the established residents with new people coming in.

**Mayor Vonderharr** responded that helping people to understand that change was not always bad, it had been a great challenge. It was important to facilitate interaction between the two factions. In fact, the Halsey intersection had been deliberately designed to help tie the two parts of the city together. It was a matter of removing barriers and had been one of their primary goals. Mobility was another factor, not necessarily for cars, but for bus service and encouraging pedestrian access to businesses.

**Councilor Park** suggested that Councilors should visit Blue Lake Park, a Metro facility, while in the vicinity, and gave directions.

**Mayor Vonderharr** suggested that the Council walk to the railroad overpass in order to ascertain just how hazardous an area it was. Blue Lake Park had a bicycle path to the North connecting it to the 40-mile loop and was one of the few access points to the bikeway in East County. He pointed out that neither Fairview or Gresham had bicycle access to the park.

**Councilor Washington** commended the City for its work on high-density development. Fairview Village was a great example of how to curb urban sprawl.

**Mayor Vonderharr** said that the City not only had many levels of density, but he believed that anyone, in any income bracket, could afford to buy a house there.

**Councilor Kvistad** thanked the mayor and staff for the tour and their time and hospitality.

**Charlie Haugh**, Holt & Haugh, Inc., developer of Fairview Village, gave a summary of the tour he had given earlier to Metro Councilors and staff. In the next year retail would be added to the project and tenants included Multnomah County Library, restaurants, coffee shops, etc. The development's price and product range was probably the widest available in the Metro area. Prices ranged from condominiums at \$85-150k, single family houses at \$250k up and row houses in between. Carriage units could be used for an office or storage by the owner or used as a rental. Copies of the handouts are included in the public record. He said it would have been much easier to build a standard 95-acre subdivision, but that they consciously bucked the trend with a return to the early 1900s concept of building a community rather than just housing. He commended the City for helping them every step of the way.

**Councilor Park** thanked him for having the courage to build something new that was a financial gamble to the developers.

**Councilor Bragdon** said one of the striking things about the development was that it helped make the environment better. He asked how obstacles were overcome in the financial arena.

**Mr. Haugh** said that the stream had been virtually choked out in the beginning. Their work over the past 4-5 years had brought the fish population back 1000%. Because the development was allowed up to the creek; that allowed them to put money into its restoration. A process was in place to maintain the creeks and keep them from being harmed. Each piece of the project had different financing; the infrastructure financing was particularly difficult. Hopefully, with Fairview Village to point to, the next project would be easier to finance. The banking industry has begun to recognize the value of mixed development.

**Councilor Park** introduced Bob Wiggins, Metro Citizens for Citizen Involvement (MCCI) member, as a longtime East County resident and activist. He had worked with Glen Otto for many years on many projects, including the creation of Metro in the State legislature.

**2. CITIZEN COMMUNICATIONS**

None

**3. EXECUTIVE OFFICER COMMUNICATIONS**

None

**4. AUDITOR COMMUNICATIONS**

None

**5. BUDGET/FINANCE COMMUNICATIONS**

**Councilor McLain** reported that the February 16 meeting consisted of General Fund department presentations by Growth Management, Transportation, Parks and Greenspaces, Executive Office and Council. John Houser and Michael Morrissey, Council analysts, were reviewing the presentations and would return to the next meeting, March 1, with questions for each department. Presiding Officer Bragdon had proposed a package of amendments to the Council budget. She invited other Councilors to review them.

**6. MPAC COMMUNICATIONS**



Councilor Park said that MPAC would meet next Wednesday, February 23 at 5:00 PM in Council Chambers to discuss Goal 5 habitat and the Endangered Species Act (ESA), as well as a presentation on Jobs Research issues.

**7. CONSENT AGENDA**

**7.1 Consideration of minutes of the February 10, 2000 Regular Council Meeting.**

**Motion:** Councilor Washington moved to adopt the meeting minutes of February 10, 2000 Regular Council meeting.

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

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

**8. ORDINANCES –FIRST READING**

**8.1 Ordinance No. 00-849 was removed from the agenda.**

**9. ORDINANCES –SECOND READING**

**9.1 Ordinance No. 00-847, For the Purpose of Adopting the Annual Budget for Fiscal Year 2000-01, making appropriations, and levying ad valorem taxes, and declaring an emergency.**

Presiding Officer Bragdon opened a public hearing on Ordinance No. 00-847.

Councilor McLain said that she had received a call from MCCI with their concerns as to how much of their FTE was being used for MCCI material and work. She expected a formal presentation from them. The second set of presentations would be on Support Services on March 1.

Presiding Officer Bragdon closed the public hearing.

**10. RESOLUTIONS**

**10.1 Resolution No. 00-2892A, For the Purpose of Approving Portland Regional Federal Transportation Priorities.**

**Motion:** Councilor Kvistad moved to adopt Resolution No. 00-2892A.

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

Councilor Kvistad said that a new draft of the resolution had been handed out and was included in the public record. It dealt with a broad spectrum of transportation issues. The priority list had been developed at the Transportation Committee and JPACT meetings and had come forward with a unanimous vote. It will be taken to Washington DC by Councilor Monroe on behalf of Council.

**Councilor McLain** said that she had received many comments from constituents regarding the Intelligent Transportation System (ITS) signs on Highway 26. Most felt that the money could be better used making traffic flow better rather than telling drivers why they were stopped.

**Councilor Atherton** asked what had happened to the language regarding the Columbia River ports and communities down river and their concerns, and if including language saying that Metro approved going forward if Environmental Protections were enforced had been discussed.

**Councilor Kvistad** said that some JPACT members did not favor these ideas, so it was decided not to include it, as a unanimous vote was desired. These ideas would be brought forward at a later date.

**Councilor Monroe** pointed out that language that responded to ESA concerns with the Columbia River channel deepening was included. The JPACT position was that deepening the channel would allow the region to remain competitive with other ports, but without exacerbating the endangered species problem.

**Councilor Park** noted that the purpose of standards was to make sure that any project undertaken was done in a responsible manner. He expressed his pleasure at seeing the Stark Street project was back on the list. It was a vital area for redevelopment and to provide greater pedestrian safety.

**Councilor Kvistad** said that the issue of dredging affected the entire Columbia River corridor, not just the Metro region. Like the I-5 corridor; it should be looked at in its entirety, and not stop at the state line. The resolution looked at the entire region's needs, including Clark County, and covered most of the priorities Metro has discussed over the past few years. He believed that this was a good document to take to Washington DC and recommended passage.

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

**10.2 Resolution No. 00-2893, For the Purpose of Appointing Jerry Powell, James Strathman, and Bernard Deazley to the Solid Waste Rate Review Committee.**

**Motion:** Councilor McLain moved to adopt Resolution No. 00-2893.

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

**Councilor McLain** said that the Solid Waste Rate Review Committee had been set up to give Metro advice and direction on what the rate for solid waste per ton and disposal fees should be. It was an extremely important advisory group. These three fine citizens had been selected out of 11 applicants to fill the vacant positions and she asked for a vote in favor.

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

**10.3 Resolution No. 00-2894, For the Purpose of Authorizing Issuance of a Request for Proposals for Personal Services Agreement(s) for Design Services and Transportation Analysis for the First Phase of the South Corridor Transportation Alternatives Study.**

**Motion:** Councilor Kvistad moved to adopt Resolution No. 00-2894.

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

**Councilor Kvistad** said that when the South/North Project failed, Metro recognized that a commuting and transportation problem south of the Portland still existed and made a \$2 million commitment to Clackamas County to fund a study of the corridor to improve it. This resolution authorized the Request for Proposals (RFP) to begin. Councilor Monroe would head the effort.

**Councilor Monroe** reported that the first meeting of the South Corridor Steering group held February 16 had gone well. The group included Mayor Carolyn Tomei, Milwaukie; Mayor John Williams Jr., Oregon City; Clackamas County Commissioner Bill Kennemer; the City of Portland Transportation Planning Director; representatives from Tri-Met; and several others. He thanked Richard Brandman, Metro Transportation Director, for doing the principal staff work for the meeting. The group's task was to take public testimony and work with business and government leaders in the South Corridor to determine the best options to bring forward for an Environmental Impact Study (EIS) by June 2000. The goal was to reach agreement on a project or projects for which to seek Federal and local funding by June 2001, at the end of the EIS process.

**Councilor Monroe** said the council wanted to make it clear that just because Clackamas County said no, at least for now, to light rail, didn't mean their transportation needs disappeared. The county's severe transportation needs that existed today would only get worse. The council recognized that much of the growth that Metro anticipated for the region would occur in Clackamas County. Therefore, the RTP (Regional Transportation Plan) included various proposed highway improvement projects in the county, but they needed high-capacity transportation improvements as well. The steering committee took its job very seriously. They would continue to meet (next sometime in early April 2000) until they could decide which projects needed to proceed to the DEIS (Draft Environmental Impact Study) process.

**Councilor Kvistad** said he didn't hear Clackamas County say no for now. He heard them say loudly just no. The council needed to move forward quickly with their work. He suggested that once the project was finished, he and Councilor McLain might want to talk to the region about arranging transportation for parts of Washington County that hadn't ever been served by bus routes. He asked the council to support the resolution and recommended an aye vote.

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

**Councilor Monroe** said that people, regions and counties sometimes change their minds.

**10.4 Resolution No. 00-2895, For the Purpose of Authorizing Issuance of a Request for Proposals for Personal Services Agreement(s) for Land Use Planning, Transportation and Environmental Analysis of Urbanizable Lands on the Eastern Edge of the Regional Urban Growth Boundary.**

**Motion:** Councilor Park moved to adopt Resolution No. 00-2895.

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

**Councilor Park** said it was a unique request for proposal. The Transportation and Community and System Preservation Pilot Program (TCSP) was a \$500,000 pilot grant program awarded by the Federal Highway Administration to Metro in May 1999. It was designed to fund concept planning in the Pleasant Valley/Damascus area, formally known as Urban Reserve Areas (URAs) 4 through 11. The grant program was also intended to help Metro work directly with the cities of Gresham and Portland, and Clackamas County to address land-use, transportation and related

environmental impacts of development issues that would arise as the area urbanized. He added that the program would prove successful if it resulted in more developments similar to Fairview Village.

He said the planning for URAs 4 and 5, primarily the western portion of Pleasant Valley into Portland and the eastern-southern sections into Gresham, was included within the Urban Growth Boundary in 1999. In the future, Metro planned to focus on more of the detailed areas to the south – the other portion of Clackamas County.

They would be working with other agencies and interest groups in the area, and would balance development with sensitivity toward the natural environment. He mentioned the headwaters of Johnson Creek and other similar areas, and said they were very important to preserve and manage. Portland State University would be evaluating their progress as the program developed. Grant tasks would be closely coordinated with Clackamas County, which received a transportation growth management grant from the state to conduct ongoing concept planning for URAs 6 through 11. Hopefully, by working together, the two agencies will produce better value and results. The coordination effort was written into the work plan and the allocation was shown.

He said it was important to note that Metro wouldn't be seeking funds from the program for the administrative role the agency would be assuming. Instead, they planned to use existing staff. When the University of Oregon received a grant, from an individual or the federal government, the university typically retained 20 percent for administrative fees. Oregon State University often claimed 50 percent. He thanked Mary Weber who negotiated with all the parties. Everybody wished they had more money, but they all got something for their part of the project.

It was a cutting edge program and would be successful. The total grant was \$510,000 (\$10,000 from an Urban Reserve Grant Fund that would help Portland finance their portion of the project). He thanked the congressional delegates (Senators Gordon Smith and Ron Wyden, Representatives Earl Blumenauer and Darlene Hooley) and others. The project would produce successful 2040 Growth concepts similar to the Fairview Village design and protect the environment at the same time. He asked the council to support the resolution and urged an aye vote.

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

**10.5 Resolution No. 00-2896A, For the Purpose of Granting Time Extensions to the Functional Plan Compliance Deadline for Clackamas County and the Cities of Fairview, Happy Valley, Hillsboro, Lake Oswego, Milwaukie, Oregon City, Portland, West Linn and Wilsonville.**

**Motion:** Councilor Monroe moved to adopt Resolution No. 00-2896A.

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

**Councilor Monroe** said the Metro Code allowed the council to grant time extensions to jurisdictions if they could demonstrate substantial progress or proof of a good cause for having failed to complete the regional functional plan (RFP) requirements on time. The council had such a request from 10 regional jurisdictions (Clackamas County, and the cities of Fairview, Happy Valley, Hillsboro, Lake Oswego, Milwaukie, Oregon City, Portland, West Linn and Wilsonville). He noted that not all of the jurisdictions that were not in compliance had made such a request. He said the council should honor the Metro Code and grant jurisdictions that have made a good faith

request the time extension permitted in the code. He asked the council to support the resolution and urged an aye vote.

**Councilor McLain, Councilor Park and Mrs. Wilkerson** discussed the Metro Code policy and criteria for granting approval of official, written requests for exceptions submitted by Hillsboro, Forest Grove, Cornelius and/or possibly other jurisdictions.

**Councilor Monroe** said the council had a nice chat about exceptions, but the resolution only dealt with extensions. He asked the council to support the resolution and urged an aye vote.

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

**10.6 Resolution No. 00-2897, For the Purpose of Granting a Time Extension to the Cities of Lake Oswego, Rivergrove, and West Linn for Compliance with Title 3 of the Urban Growth Management Functional Plan.**

**Motion:** **Councilor Washington** moved to adopt Resolution No. 00-2897.

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

**Councilor Washington** said the resolution provided for another extension, but dealt with Title 3 and floodwater conservation. As Councilor Monroe mentioned earlier, the council had the authority to grant extensions. On June 18, 1999, the cities and counties reported on their progress for compliance with the Title 3 requirements of the RFP. Local jurisdictions throughout the region made considerable progress in dealing with flood management, erosion, sediment control and protection of water quality resource areas. Each jurisdiction had elements of the requirements in place, and was working toward amending current standards to be consistent with Title 3.

Lake Oswego requested an extension until June 2000. They were largely in compliance with the requirements of Title 3. However, they needed to adopt balance, cut and fill regulations for development in the flood plains, and update water quality and flood plain area maps.

Rivergrove also asked for an extension until June 2000. They met the requirements of Title 3 and established balance, cut and fill regulations for development in the flood plains. They proposed code language, prepared and reviewed by Metro staff, that met the remainder of the requirements of the RFP. There were some minor amendments to the proposed code that would help the city achieve compliance with Title 3.

West Linn requested an extension until March 2000. The city provided Metro with proposed code language that met the remainder of the requirements of the RFP. Metro staff reviewed the language and identified minor amendments to the proposed codes that would also bring West Linn into compliance with Title 3 requirements. The proposed code was currently proceeding through the public hearing process. The city anticipated adoption of the code by the March 2000 extension deadline. The process wasn't as simple as it appeared at the outset. Therefore, Councilor Washington asked the council to support the resolution and urged an aye vote.

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

**10.7 Resolution No. 00-2900, For the Purpose of Confirming the Appointment of Terry Petersen to the position of Director of the Regional Environmental Management Department.**

**Motion:** Councilor Washington moved to adopt Resolution No. 00-2900.

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

**Presiding Officer Bragdon and Councilors McLain, Kvistad, Monroe, Park, Atherton, and Washington** all praised Dr. Petersen's performance and credentials, and congratulated him on his appointment.

**Councilor Washington** asked the council to support the resolution and urged an aye vote.

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

**10.8 Resolution No. 00-2903, for the Purpose of Granting a Time Extension to the Functional Plan Compliance Deadline for the City of Gresham.**

**Motion:** Councilor Monroe moved to adopt Resolution No. 00-2903.

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

**Councilor Monroe** said the resolution granted a time extension, permitted by the Metro Code, to Gresham to comply with Title 3 requirements. He asked the council to support the resolution and urged an aye vote.

**Councilor Park** said the resolution affected Gresham, where he was a resident and owned property. He thanked his two fellow councilors on the growth committee for presenting Resolution No. 00-2903 separately from the other resolutions so he could abstain from voting on it and avoid any appearance of favoritism as a Metro councilor.

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

## **11. COUNCILOR COMMUNICATIONS**

**Councilor Kvistad** said he was campaigning for the Office of State Treasurer. Due to his rigorous campaign schedule and the size of the state territory he planned to cover, there would be times during the next few months when he would not be able to attending some council meetings. He apologized in advance and said he appreciated the council's understanding. However, he planned to make every effort to attend all his regularly scheduled council meetings every week.

**Councilor Park** thanked the city of Fairview and Mayor Roger Vonderharr for the tour and use of their new Fairview Village residential complex and meeting facilities. It was an excellent example of what could be accomplished. He also complemented the Post Office complex.

**Councilor McLain** told Councilor Kvistad and the other councilors they had an opportunity to add to the Federal and State Legislative Agenda Committee's list of lobbying issues the council planned to examine. Several people attended the committee meeting on Wednesday, February 16, 2000. However, there were two or three councilors who didn't have an opportunity, at that time, to add their suggestions to the list. The list had not been finalized, so she encouraged input from the councilors.

She also said the committee had been directed to create a work plan. She offered councilors an opportunity to contribute to that document as well. She planned to work with Michael Morrissey, Senior Council Analyst, this week on three areas. They would review the guiding principles that Metro used last year by employing a white paper approach suggested by Councilor Park. The approach dealt with a proactive list of items the council wanted to manage closely. It also involved an inventory of the council's outreach and lobbying efforts. Plus, they discovered at least two or three other important items they wanted to include in the work plan.

She mentioned Goal 5 issues and said that all the councilors had been involved in the outgoing open houses. They planned to examine the three approaches of Goal 5: a safe harbor, local alternatives and a district plan. She said there were some very important issues out there to be discussed. One, how well would the approaches help the council with the Rule 4D response? Two, if the council had local alternatives and district plans, were the standards clear and concise enough to meet either the Rule 4D response or the council's own safe harbor issues? Three, dealt with utilities, daily operations, and emergencies and repairs. A big concern that surfaced in Hillsboro recently was how to handle utility issues and knowing where the council put the lines before. They weren't as creative, or maybe they didn't have the opportunity, like Fairview, to dig one ditch and put everything underground in the appropriate place. Finally, she mentioned rural land issues: the 10-10 plan, the agricultural plan for outside the Metro urban growth boundary and property rights.

**Presiding Officer Bragdon** said the council would have a brief executive/work session following today's council meeting to discuss threatened litigation.

**12. EXECUTIVE SESSION; HELD PURSUANT TO ORS 192.660(1)(h), TO CONSULT WITH LEGAL COUNSEL CONCERNING THE LEGAL RIGHTS AND DUTIES OF A PUBLIC BODY WITH REGARD TO CURRENT LITIGATION.**

**Presiding Officer Bragdon** opened an Executive Session for ORS 192.660(1)(h) at 3:50 p.m.

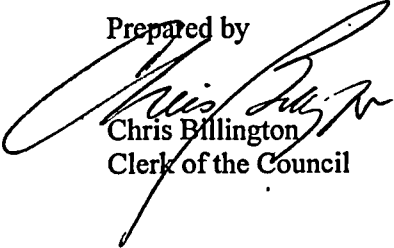
**Present:** Presiding Officer Bragdon, Councilor Washington, Councilor Park, Councilor Atherton, Councilor Kvistad, Councilor McLain, Councilor Monroe, Dan Cooper, General Counsel, Jeff Stone, Council Chief of Staff, Chris Billington, Clerk of the Council, Elaine Wilkerson GM Director, Andy Cotugno, Transportation Director.

**Presiding Officer Bragdon** closed the Executive Session at 4:02 p.m.

**11. ADJOURN**

There being no further business to come before the Metro Council, **Presiding Officer Bragdon** adjourned the meeting at 4:05 p.m.

Prepared by

  
Chris Billington  
Clerk of the Council

**Attachments to the Record  
 Metro Council Meeting of February 17, 2000**

<b>Doc. No.</b>	<b>Document Title</b>	<b>TO/FROM</b>
021700c-01	Fairview Village Compact Disk	
021700c-02	<i>The Village News</i> , Autumn 1999, Volume 2/Number 1	
021700c-03	Handout - Rosewalk Loft Rowhouses at Fairview Village	
021700c-04	Minutes of the Metro Council Meeting, February 10, 2000	
021700c-05	Growth Management Committee Report: Consideration of Resolution No. 00-2895, for the Purpose of Authorizing Issuance of a Request for Proposals for Personal Services Agreement(s) for Land Use Planning, Transportation and Environmental Analysis of Urbanizable Lands on the Eastern Edge of the Regional Urban Growth Boundary.	Council/Park
021700c-06	Metro Growth Management Committee Report: Consideration of Resolution No. 00-2896A, for the Purpose of Granting Time Extensions to the Functional Plan Compliance Deadline for Clackamas County and the Cities of Fairview, Happy Valley, Hillsboro, Lake Oswego, Milwaukie, Oregon City, Portland, West Linn and Wilsonville.	Council/Washington
021700c-07	Growth Management Committee Report: Consideration of Resolution No. 00-2897, for the Purpose of Granting a Time Extension to the Cities of Lake Oswego, Rivergrove and West Linn for Compliance with Title 3 of the Urban Growth Management Functional Plan.	Council/Monroe
021700c-08	Portland Regional Federal Transportation Priorities, Exhibit "A" to Resolution No. 00-2892	Council/Cotugno



**STAFF REPORT****CONSIDERATION OF ORDINANCE NO. 00-849, FOR THE PURPOSE OF AMENDING THE METRO CODE REGARDING CAMPAIGN FINANCE AND DISCLOSURE**

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Date: February 28, 2000

Prepared by: Michael Morrissey

**Proposed Action:** Ordinance No. 00-849 amends Metro code by adding a new chapter, number 2.18 Campaign Finance Regulation, to Title II of the code, Administration and Procedures. This chapter provides additional campaign finance reporting disclosure to the public, consistent with current state and federal disclosure requirements.

**Current Law:** State election statutes in Oregon Revised Statutes (ORS) Chapter 260, call for the disclosure of campaign contributions over 50\$. This disclosure takes the form of Contribution and Expenditure (C&E) reports that are filed on a regular basis with county elections officials.

**Budget Impact:** A small expense could be incurred by the Clerk of the council for compiling records and making them available to the public.

**Factual Background and Analysis:** The new code chapter calls for filing with the Clerk of the Council reports that currently required by state law ORS 260 and any applicable federal law. The effect of this action is to make required campaign reports and disclosures, for candidates for a metro elected office or for Metro officials who are candidates for other elected positions, more immediately available to the public. Currently this information is available at County elections offices.

The Clerk of the Metro Council shall be responsible for compiling the reports and disclosures detailed in this ordinance and making them available to the public.

**METRO OPERATIONS COMMITTEE REPORT**

CONSIDERATION OF ORDINANCE NO. 00-850, FOR THE PURPOSE OF AUTHORIZING A LOAN TO METRO FROM THE OREGON ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT'S SPECIAL PUBLIC WORKS FUND LOAN PROGRAM; AND DECLARING AN EMERGENCY

Date: February 24, 2000

Presented by: Councilor Washington

**Committee Action:** At its February 23, 2000 meeting, the Metro Operations Committee voted 3-0 to recommend Council adoption of Ordinance No. 00-850. Voting in favor: Councilors Atherton, Washington and Monroe.

**Background:** Ordinance 00-850 authorizes acceptance of a loan from the Oregon Economic and Community Development Department (OECDD) Special Public Works Fund (SPWF), to finance the replacement of Hall D at the Expo Center. The entire project cost of \$15,631,000 will be financed through this loan.

- **Existing Law:** Resolution 99-2833, adopted in September of 1999, authorizes Metro application to OECDD for a \$5,000,000 loan. The amount has since revised, to the full project cost of \$15,631,000.

State Law: ORS 285B.410-482, and various Metro ordinances, including Ordinance 91-439 "General Revenue Master Ordinance," govern Metro's ability to apply for and accept this loan.

- **Budget Impact:** The full loan amount will be \$15,631,000. The term will be 25 years with an interest rate of approximately 5.5%.
- **Committee Issues/Discussion:** The committee approved the ordinance following the staff presentation.

**METRO OPERATIONS COMMITTEE REPORT**

CONSIDERATION OF RESOLUTION NO. OO-2898, FOR THE PURPOSE OF AUTHORIZING PARTICIPATION IN A LOCAL IMPROVEMENT DISTRICT TO FUND THE STEEL BRIDGE PEDESTRIAN WALKWAY.

Date: February 24, 2000

Presented by: Councilor Washington

**Committee Action:** At its February 23, 2000 meeting, the Metro Operations Committee voted 3-0 to recommend Council adoption of Resolution 00-2898. Voting in favor: Councilors Atherton, Washington and Monroe.

**Background:** The City of Portland is requesting Metro participation in a Local Improvement District (LID), for the purpose of design and construction of a new pedestrian walkway across the Willamette River, attached to the south side of the Steel bridge. The walkway will connect existing walkways on the west and east banks of the river. The total LID amount pertaining to Metro is \$204,545. MERC has agreed to be responsible for these charges, which will be offset by Transportation System Development credits issued by the City of Portland, in the amount of \$144,909. The resolution authorizes the Executive Officer to sign the "Petition for Creation of a Local Improvement District (LID) to Fund Capital Improvements Related to the River Access and Transportation Project."

- **Existing Law:** Metro contract code requires Council approval of all real property transactions and approval of all contracts committing the district to the expenditure of appropriations not provided for in the current fiscal year and which has significant impact on Metro.
- **Budget Impact:** The net cost for participation in the Local Improvement District, approximately \$60,000 will all be borne by MERC. There is therefor no fiscal burden to the General fund or other Metro funds not related to MERC.

**Committee Issues/Discussion:** There was no substantive committee discussion.

**REGIONAL ENVIRONMENTAL MANAGEMENT COMMITTEE REPORT**

**CONSIDERATION OF RESOLUTION NO. 00-2891, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS AND AUTHORIZING ISSUANCE OF RFP #00R-1-REM FOR REPLACEMENT OF TWO COMPACTION SYSTEMS AT METRO CENTRAL STATION**

Date: February 29, 2000

Presented by: Councilor Park

**Committee Recommendation:** At its February 9 meeting, the committee considered Resolution No. 00-2891 and voted unanimously to send the resolution to the Council with a do pass recommendation. Voting in favor: Councilors Park and McLain and Chair Washington.

**Existing Law:** The adopted Capital Improvement Plan includes the purchase of two new compactors at the Metro Central Transfer Station. The adopted budget includes funding for the purchase of one compactor during the current fiscal year (\$903,800) and the proposed budget for FY 00-01 includes \$926,400 for the purchase of the second compactor.

In 1999, staff issued a Request for Bids (RFB) for the purchase of the first compactor. Two bids were received and a successful bidder was selected. However, the unsuccessful bidder appealed the decision to the Council. The Council upheld the appeal and directed staff to initiate a new procurement process.

Metro Code Section requires that all contracts be based on competitive bids, unless exempted by the Contract Review Board (the Council) based on findings that the use of an alternative method would not limit the competitive nature of the contracting process. The Code further provides that the release of a Request for Proposals (RFP) for a contract that has been designated as having a significant impact. The contract for the compactor procurement was designated in the adopted as having a significant impact.

Approval of this resolution will result in the release of a Request for Proposals to solicit for both compactors in a single procurement.

**Committee Issues/Discussion:** Terry Petersen, Regional Environmental Management Director, presented the staff report. He noted that the staff chose to use an RFP procurement process to provide greater flexibility to consider factors other than price in reviewing the proposals received. This will permit the evaluation committee to examine issues such as performance and lifespan of the equipment and will allow bidders to customize their equipment to meet Metro's specific needs. Petersen explained that the staff is using a single procurement for both compactors because it believes that it may result in a lower per unit price.

Councilor Park asked about the nature of the procurement process. Petersen explained that the proposed resolution would authorize release of the procurement documents. Proposals would then be received and reviewed by an evaluation committee. The committee would recommend a successful proposer to the Executive Officer. Following successful completion of negotiations between Metro and the proposed contractor a contract would signed. The awarding of the contract could be appealed to the Council.

Councilor McLain asked if staff anticipated that the same two bidders would participate in the new procurement. Petersen indicated that they would, and that a new potential third bidder also had expressed interest. Councilor McLain asked about the makeup of the evaluation committee. Petersen responded that the committee members have not yet been named, but that the committee would likely include department staff and possibly a representative of the Metro Central operator (Allied/BFI).

Councilor McLain reviewed the proposed evaluation criteria. She noted that about 70% of the points would be awarded for factors other than price. She indicated support for this weighting of the criteria because performance of the equipment and the experience of the contractor were as important as the price to be paid.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING	)	RESOLUTION NO. 00-2910A
THE ROCK CREEK GREENWAY	)	
TARGET AREA REFINEMENT PLAN	)	
	)	

WHEREAS, in July 1992, Metro completed the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, at the election held on May 16, 1995, the Metro area voters approved the Open Spaces, Parks and Streams Bond Measure (Measure 26-26) which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements pursuant to bond covenants, Council-adopted "refinement plans," and Council-adopted work plan; and

WHEREAS, The Rock Creek Greenway regional target area was designated as a greenspace of regional significance in the Greenspaces Master Plan and identified as a regional target area in the Open Spaces, Parks and Streams Bond Measure; and

WHEREAS, on June 19, 1996, Metro Council adopted a refinement plan for the Rock Creek Greenway target area (Resolution 96-2377) which aims to protect water quality and wildlife habitat, enhance education and stewardship opportunities, and enhance community identity "access to nature" in rapidly developing areas; and

WHEREAS, the refinement plan stated that one of the acquisition goals for Tier 1 priority sites is to protect and purchase properties in the floodplain/riparian corridor along Bronson and Beaverton creeks; and

WHEREAS, the refinement plan for the Rock Creek Greenway target area promotes cooperative acquisitions with local public and private partners but does not target specific, locally significant properties or specify the extent of Metro's commitment to such partnerships; and

WHEREAS, at the request of the Tualatin Hills Park and Recreation District, neighborhood activists, and the landowner, Metro has examined a 22-acre parcel adjacent to Beaverton Creek and surrounded by the Tualatin Hills Nature Park; and

WHEREAS, Metro's biological assessment concluded that the 22 acres is essential to protect and enhance the Nature Park, which is of regional significance as concluded by the Greenspaces Master Plan; and

WHEREAS, a potential partnership opportunity exists with the Tualatin Hills Park and Recreation District contributing a portion of the purchase price of the property and agreeing to manage the property as part of its park system; and

WHEREAS, strong support has been demonstrated from many citizens in the City of Beaverton and Washington County; and

WHEREAS, if the property is not acquired for park purposes, the property will likely be developed; and

BE IT RESOLVED,

That the Metro Council amends the Rock Creek Greenway regional target area refinement plan map to include the subject property (22 acres) as referenced in Exhibit A;

That Metro Council's authorization for Metro's acquisition of the property, as identified in Exhibit A, is conditioned on the following:

1. Tualatin Hills Park and Recreation District shall commit funds to the acquisition of the property.
2. Metro's financial commitment to the acquisition shall not exceed 50% of the purchase price or \$2,548,400, whichever is less, plus 50% of standard closing costs.
3. Tualatin Hills Park and Recreation District will manage the property according to the terms of an Intergovernmental Agreement with Metro.
4. The Purchase and Sale Agreement and terms of the transaction are otherwise in compliance with the Acquisition and Due Diligence provisions of the Open Spaces Implementation Work Plan.

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

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

Approved as to Form:

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

EXHIBIT A  
Resolution 00-2910A

Rock Creek target area Polygon property:

Washington County Reference Parcel number: 1S10800-02300

Also referred to as:

Lot 1, partition plat #1995-054, in the City of Beaverton, County of Washington, and State of Oregon.



## Staff Report

### **CONSIDERATION OF RESOLUTION NO. 00-2910A FOR THE PURPOSE OF AMENDING THE ROCK CREEK GREENWAY TARGET AREA REFINEMENT PLAN**

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**Date: February 28, 2000**

**Presented by: Charles Ciecko  
Jim Desmond**

#### **PROPOSED ACTION**

**Resolution No. 00-2910A, requests amendment of the Rock Creek Greenway target area refinement plan map.**

#### **EXISTING LAW**

Metro Code 2.04.026 (a) (3) requires that the Executive Officer obtain the authorization of the Metro Council prior to executing any contract for the purchase of real property. The Open Spaces Implementation Work Plan, adopted by the Metro Council via Resolution 96-2424, was established to implement the Open Spaces, Parks and Streams bond measure passed by the voters of the region in 1995. The Work Plan established acquisition parameters that authorize the Executive Officer to purchase property, within certain criteria, in the Council-approved target area refinement plan maps. Via Resolution 96-2301, the Metro Council approved the Rock Creek Greenway target area refinement plan tax-lot specific map. This resolution proposes to amend that refinement plan map to include another property (the Polygon property) that was previously excluded.

#### **BACKGROUND AND ANALYSIS**

In May 1995, voters in the region passed a bond measure enabling Metro to purchase open space properties with \$135.6 million worth of bond funds. The bond measure identified fourteen regional target areas and six regional trails and greenways for property acquisition, including the Rock Creek Greenway regional target area.

The refinement plan adopted by the Metro Council on March 14, 1996, (Resolution 96-2301) for the Rock Creek Greenway regional target area had a broad recommendation, stating that "the long term vision for the Rock Creek Greenway is proposed as follows:

Protect/enhance continuous floodplain and riparian corridor of Rock Creek from the headwater areas in Forest Park to the mouth at the Tualatin River for multiple values:

- wildlife habitat
- community identity "access to nature" in rapidly developing area
- linear connection with larger parks and natural areas such as Forest Park and Jackson Bottom

- water quality/water quantity management
- education and stewardship opportunities.”

The refinement plan prioritized acquisition objectives, including Tier 1 sites that included 1) key upland sites adjacent to the Rock Creek floodplain within the UGB; 2) the flood plain/riparian corridor along Bronson and Beaverton creeks; and 3) creation of a regional natural area north of West Union Road at the confluence of Rock Creek and Holcomb Creek.

Tier 2 objectives included 1) acquiring key links to complete continuous public floodplain, expansion of the natural area at the confluence of Rock Creek and Holcomb Creek; and 2) expansion of the headwaters area to link Rock Creek Greenway with Forest Park. The refinement plan also included broad partnership objectives, including “pursue partnership opportunities with ... Tualatin Hills Parks and Recreation District.... to leverage the regional open space bond dollars targeted to the Rock Creek corridor.”

An opportunity has presented itself for the acquisition of a 22.19-acre parcel surrounded on three sides by the 190-acre Tualatin Hills Nature Park. This parcel is owned by the Archdiocese of Portland and currently subject to an option agreement in favor of a development company, Polygon Northwest. The site is directly adjacent to Beaverton Creek, a tributary of Rock Creek, specifically identified as part of the Tier 1 objectives of the refinement plan. The site is densely forested with diverse tree species and includes three high quality wetland areas. The site is biologically and physically similar to Tualatin Hills Nature Park, though now zoned with a light-rail overlay, encouraging high-density residential development.

Polygon has proposed a high-density development of the site which is adjacent to light rail, and therefore, of a particularly high potential market value. The proposed development is now pending an appeal at LUBA, though that appeal was stayed so that Polygon could attempt to negotiate a sale to Tualatin Hills Park and Recreation District. The development proposal attracted significant opposition and a citizens group was formed, known as the Make Our Park Whole Committee, which has intervened in the LUBA appeal.

THPRD reached a preliminary agreement with Polygon to purchase the property, provided that THPRD can identify a financial partner for 50% percent of the purchase price. THPRD has approached Metro to contribute half of the agreed purchase price. The basic terms of the transaction have been approved by the THPRD Board of Directors at its meeting held February 9, 2000.

While the site is outside of the boundaries currently established for Tier 1 and Tier 2 on Rock Creek, its acquisition would nonetheless serve target area objectives. The property is a key site in the Rock Creek floodplain and within the UGB. Furthermore, it is an important link to protect the biological integrity of the Tualatin Hills Nature Park, recognized by itself as a regionally significant natural area in the 1992 Greenspaces Master Plan. This acquisition is of the highest priority to THPRD and would serve to accomplish the partnership objectives established in the refinement plan for the Rock Creek corridor. The nature park, at more than 190 acres, is regional in scope and within walking distance of light rail. If Metro does not participate in this purchase, THPRD will not be able to raise the funds needed to close the transaction, and the property will likely be developed despite the strong opposition of many citizens to the development

proposal. While the outcome of the LUBA appeal is uncertain, it is considered likely that the developer would be able to have a development approved at the site, although perhaps not of the precise size and configuration of the one previously presented to and rejected by the Beaverton City Council.

In order to take advantage of this acquisition opportunity, and to more effectively achieve refinement plan objectives, Metro should amend the Rock Creek Greenway regional target area Refinement Plan map to include the Polygon property, provided that Metro's financial participation is limited to no more than 50% of the base purchase price plus 50% of standard closing costs.

## **FINDINGS**

Amendment of the Rock Creek Greenway regional target area refinement plan map is recommended based upon these findings:

- The refinement plan for the Rock Creek Greenway regional target area states the following as acquisition goals:

Protect/enhance continuous floodplain and riparian corridor of Rock Creek from the headwater areas in Forest Park to the mouth of the Tualatin River for multiple values:

- wildlife habitat
- community identity "access to nature" in rapidly developing area
- linear connection with larger parks and natural areas such as Forest Park and Jackson Bottom
- water quality/water quantity management
- education and stewardship opportunities

Acquisition of the Polygon property would 1) protect a key site within the Rock Creek floodplain within the UGB; 2) preserve important habitat directly adjacent and surrounded by the Tualatin Hills Nature Park, a regionally significant natural area enjoyed by more than 125,000 citizens of the region each year.

- The refinement plan identifies the protection of the floodplain/riparian corridor along Bronson and Beaverton creeks as a Tier 1 priority, and the Polygon parcel is directly adjacent to Beaverton Creek although previously not included in the Rock Creek target area refinement plan.
- The refinement plan for the regional target area states the following as a partnership objective:
  - Pursue partnership opportunities with the City of Hillsboro, Washington County, Tualatin Hills Parks and Recreation District, Tri-Met, and Unified Sewerage Agency to leverage the regional open space bond dollars targeted to the Rock Creek corridor.

Amendment of the target area refinement plan map to add the Polygon property would serve this objective by allowing Metro to participate in a partnership through which Metro would contribute up to 50% of the acquisition funds or \$2,548,400, whichever is less, while THPRD and other potential partners would provide the balance of acquisition funds and the long term management of the site.

- Without Metro's participation in the acquisition of the Polygon property, the property would likely be developed as a high density mixed use development.
- Strong support for this amendment exists from many citizens of the city of Beaverton and Washington County including the Make Our Park Whole Committee, and other citizens who have petitioned THPRD for the acquisition of the Polygon property.

### **BUDGET IMPACT**

Bond funds would supply acquisition money, with funds from THPRD and other potential partners providing the balance of the purchase price plus all related costs. There would be no land banking costs, as management will be taken on immediately by THPRD. THPRD has committed to assuming long-term management responsibilities for the Polygon property as part of the Tualatin Hills Nature Park. An Intergovernmental Agreement, to be negotiated and approved by Metro Council in the future, shall govern this arrangement.

### **EXECUTIVE OFFICER'S RECOMMENDATION**

The Executive Officer recommends passage of Resolution No. 00-2910A.

**From:** Larry Shaw  
**To:** David Bragdon  
**Date:** Thu, Feb 10, 2000 8:52 AM  
**Subject:** Re: Jenkins-Kim

MC 3.01.065(g) provides for public comment at the 1st reading. "If new or amended findings are prepared, parties to the case...will be given an opportunity to provide the Council with oral or written testimony regarding the new order and findings". So, there is no provision for anybody to speak in this case where there has been the opportunity for the parties to address the findings at 1st reading.

>>> David Bragdon 02/04 7:37 PM >>>

Prior to Feb. 23 can you please give all Councilors and Ms Billington a brief (no more than 1 page) synopsis of what parties are and are not to "comment" at a Second Reading of this type of Ordinance?

My preference is to keep the whole process brief and my inclination is that everyone who has something to say has already said it. But you can overrule me on that.

Thanks.

# **GENSTAR**

*Development Company and Land Company*

**Fax Transmittal**

*Northwest Office*  
11735 SW Queen Elizabeth, Suite 101  
King City, OR 97224  
Fax: (503) 598-1849      Tel: (503) 968-2323

<b>DATE:</b>	3/2/00
<b>FROM:</b>	Jennifer Elson
<b>TO:</b>	Sharon
<b>COMPANY:</b>	Metro Legal Counsel's Office
<b>FAX NUMBER:</b>	(503) 797-1792
<b>COMMENTS:</b>	Please see attached letter regarding the South Hillsboro Annexation Petition.
<b># OF PAGES:</b>	(including cover) 2
<b>OPERATOR:</b>	

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Genstar Land Company Northwest  
11735 S.W. Queen Elizabeth  
Suite 101  
King City, OR 97224  
Tel: (503) 968-2323  
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---

March 2, 2000

Councilor David Bragdon  
Presiding Officer  
Metro Council  
600 NE Grand Ave.  
Portland, OR 97232

Re: South Hillsboro Annexation Petition  
File: SSM/3-2

Dear Councilor Bragdon:

Please consider this as a formal request for the Metro Council to continue the hearing on the jurisdictional annexation petition of the South Hillsboro Urban Reserve Area.

As you know, Genstar's interest lies in the 460-acre St. Mary's property. The annexation petition submitted to you includes signatures of additional property owners representing a significant portion of the land included in the South Hillsboro Urban Reserve Concept Plan.

We appreciate your consideration of this request. Please call us at 968-2323 if you have any questions

Yours truly,

Doug Draper  
Vice President



**TUALATIN  
HILLS  
PARK &  
RECREATION  
DISTRICT ADMINISTRATION OFFICE**

15707 S.W. Walker Road • Beaverton, Oregon 97006 • (503) 645-6433 • Fax (503) 531-8230

Ronald D. Willoughby  
General Manager

**BOARD OF DIRECTORS**

Janet Allison  
Bruce Dalrymple  
John Griffiths  
Mark Knudsen  
Terry Moore

February 22, 2000

Mr. David Bragdon, Presiding Officer  
Metropolitan Service District  
600 Northeast Grand Avenue  
Portland, OR 97232-2736

Dear Mr. Bragdon,

Please accept this correspondence as support and encouragement for the Metro Council to amend the Rock Creek area Refinement Plan to include the 22.16 acres of land located adjacent to the Tualatin Hills Nature Park.

The Tualatin Hills Park and Recreation District is committed to the acquisition of this property with our partners Metro and the City of Beaverton. The protection and preservation of this property will not only add to the existing Park but will also improve and enhance habitat values and water quality.

The Board of Directors of the Park District have approved the purchase partnership and have authorized the steps necessary to fulfill our obligation.

The City of Beaverton is supportive of this action as well and has encouraged the negotiation process with the property owner. The City is a purchase partner as well.

Your approval of the change to this plan and acquisition partnership will benefit the residents of the region who visit and enjoy the Tualatin Hills Nature Park.

Sincerely,

Ronald D. Willoughby  
General Manager

cc: THPRD Board of Directors  
Mike Burton, Metro Executive Officer  
Rob Drake, Mayor City of Beaverton





## CITY of BEAVERTON

4755 S.W. Griffith Drive, P.O. Box 4755, Beaverton, OR 97076 TEL: (503) 526-2481 V/TDD FAX: (503) 526-2571

**ROB DRAKE**  
**MAYOR**

February 28, 2000

Mr. David Bragdon  
Metro Presiding Officer  
660 NE Grand Avenue  
Portland, Oregon 97232

Dear Presiding Officer Bragdon:

The City of Beaverton fully supports and encourages Metro to include the purchase of the property owned by the Archdiocese of Oregon into the Rock Creek area Refinement Plan.

This property is located in Beaverton and consists of 22 acres that are adjacent to the Tualatin Hills Park and Recreation District's Nature Park. Purchasing this property would shield and sustain an already existing natural habitat for wildlife.

The City strongly urges Metro to assist with purchasing this vital parcel of land. Acquiring these 22 acres will greatly benefit those who visit, live or work near the Nature Park and would enhance our community as a whole.

Please call me if you need more information at 526-2481.

Sincerely,

Rob Drake  
Mayor

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF DIRECTING METRO ) RESOLUTION NO. 00-2912  
COMMENTS TO THE NATIONAL MARINE )  
FISHERIES SERVICE CONCERNING THEIR ) Introduced by Presiding Officer  
PROPOSED 4(d) RULE ) Bragdon  
)

WHEREAS, In 1998 and 1999 the National Marine Fisheries Service listed salmon and steelhead species in the Metro region as threatened under the Endangered Species act; and

WHEREAS, In December, 1999, and January 2000 NMFS released its proposed 4(d) rules defining prohibited "take" of Lower Columbia Steelhead and Chinook Salmon, and proposing fish conservation programs that may be approved as exceptions to prohibited "take"; and

WHEREAS, At least four such fish conservation programs in the draft rule, including "urban development", affect the Metro region; and

WHEREAS, Metro's adopted and ongoing Title 3 work to implement state Goals 5, 6 and 7, which meet requirements of the state and the Metro Regional Framework Plan, may also be the basis for an "urban development" fish conservation program, under the final 4(d) rules; and

WHEREAS, A timely response to NMFS seeking clarification of the proposed 4(d) rules, with the goal of enabling Metro's program to qualify under the final 4(d) rules, must be made by March 6, 2000 for Metro communications to be reflected in NMFS final 4(d) rules, due in June 2000; and

WHEREAS, Resolution 99-2815 adopted by the Metro Council, established the framework for a Metro response to the ESA listings, including the assistance of the Metro Executive and Salmon Recovery Coordinator, through regular reporting to the Council; and

WHEREAS, the Metro Council and the Metro Executive considered detailed comments on the proposed 4(d) rules at its informal meeting on February 29, 2000; and

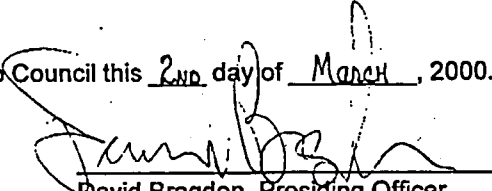
WHEREAS, the Metro Council desires to forward comments, questions and suggested rule revisions to NMFS related to the proposed 4(d) rules;

now, therefore,

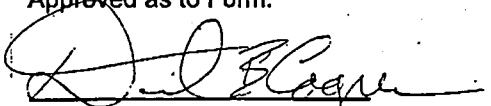
BE IT RESOLVED;

That the Metro Council authorizes the Executive Officer to submit the Metro response to the National Marine Fisheries Service regarding the proposed 4(d) rules, as shown in "Exhibit A."

ADOPTED by the Metro Council this 2<sup>ND</sup> day of MARCH, 2000.

  
David Bragdon, Presiding Officer

Approved as to Form:

  
Daniel B. Cooper, General Counsel

Garth Griffin  
Branch Chief, Protected Resources Division  
National Marine Fisheries Service  
525 N.E. Oregon Street, Suite 525  
Portland, Oregon 97232

Dear Mr. Griffin:

Metro is providing the attached comments on the proposed Endangered Species Act (ESA) section 4(d) protective regulations for threatened species of salmon and steelhead. Metro's comments apply to the draft rules published in the Federal Register on December 30, 1999 (64 FR 73479)(steelhead 4(d) rule) and on January 3, 2000 (65 FR 170) (salmon 4(d) rule). Thank you for your efforts to allow comments on both rules simultaneously.

Metro's attached comments address several important aspects of the proposed rules. We recognize the innovative approaches advanced in these draft rules, and we hope the National Marine Fisheries Service (NMFS) will proceed towards promulgation of the final rule with an open mind in ensuring that this approach is maintained and even improved.

There are four important policy considerations we wish you to consider as you weigh our comments and those of others concerned about the fate of northwestern rivers and their native salmon.

First, the rules must focus on restoration of already degraded conditions. The built environment in the urban areas has reduced the health of the urban watersheds and salmon abundance. Regulatory efforts that simply affect new development are not adequate to assist in the ultimate goal of salmon recovery. We believe that even if all future urban development is perfectly planned and implemented to have no adverse impact on watershed health, the region's salmon and steelhead will still falter towards extinction because the built environment will not be changed. The ESA protective regulations must apply to all development in order to foster protection of existing urban natural resources and increase the restoration of degraded riparian areas within Metro's boundaries.

Second, the federal agencies with regulatory responsibilities in the region must stand together and united towards a common goal of recovery. Metro believes the "federal family" often takes contradictory positions as each agency makes individual decisions reflecting its specific agency mission or authority. It was the need for a coordinated approach to transportation, land use and solid waste planning that prompted the legislative formation of Metro. Metro has worked to meet its coordinating responsibilities promptly and efficiently. Federal agencies balance their own competing statutory or treaty obligations, and the result is that natural resource protection is

often ambiguous and conflicting. Such actions create doubt in the minds of the public as to whether conservation gains from the sacrifices of some sectors for salmon recovery are contradicted by other sectors.

Third, Metro supports accountability for enforcement, reporting, implementation, and funding proposed in the draft rule. However, attaining the level of implementation envisioned by NMFS will, and should, require a substantial commitment of new resources to adequately implement, enforce, and report on these efforts to protect and restore watershed health and salmonid abundance. Funding a greater level of implementation monitoring and enforcement will be a bitter pill for most local governments to swallow. A sustained, substantial federal investment must accompany our efforts in order to enable us to substantially aid in regional salmon and watershed recovery efforts.

Fourth, while Metro realizes that the section 4(d) rules for salmon and steelhead are only one part of an overall ESA recovery effort, we believe NMFS must move expeditiously towards developing an ESA recovery plan that will result in a de-listing of these listed species. The ESA describes the basic recovery planning criteria fairly well, but Metro recognizes the complexity of producing a plan that contains even those basic elements. Nevertheless, Metro believes that NMFS must set forth recovery goals without delay. The entire region must come to understand where it is being asked to go as they embark on and struggle with a host of activities all generally pursued under the guise of "ESA salmon recovery." Setting these goals is NMFS' responsibility. Metro is committed to contributing to both setting and meeting these goals. Please engage us early and often in moving forward on this most important aspect of the ESA.

Metro sincerely appreciates the effort to which you and your skilled staff is making. We look forward to productive discussions about our comments, and about how NMFS may consider and revise the draft rules. Please contact David Moskowitz, Metro's Salmon Recovery Coordinator, at 503/797-1579 if you have any questions about our comments.

Sincerely yours,

Mike Burton  
Executive Officer

cc: Honorable Governor John Kitzhaber, MD  
Metro Council  
Honorable Erik Sten, City of Portland  
Metro Policy Advisory Committee (MPAC)  
Paul Risser, chair, Willamette Restoration Initiative  
Bruce Laing, Tri-County ESA Coordinator

Enclosures

1                   **COMMENTS ON THE DRAFT SECTION 4(D) PROTECTIVE REGULATIONS**  
2                   **METRO REGIONAL SERVICES**

3  
4                   Metro Regional Services (Metro) offers the following comments on draft protective regulations for five  
5                   populations of Pacific steelhead and salmon (*See* 64 FR 73479 (December 30, 1999) and 65 FR 170  
6                   (January 3, 2000)). Metro provides these comments based on its charter and statutory authorities, and upon  
7                   Metro Council Resolution No. 99-2815A (September 30, 1999) which states that "Metro will proactively  
8                   seek comprehensive solutions to ESA listings for salmon and steelhead in cooperation with other  
9                   jurisdictions and organizations working on this issue."

10                   **PRINCIPLE ISSUES**

11                   Metro supports the basic approach NMFS has taken in this draft rule as an important, innovative and  
12                   dynamic effort to provide protection for listed salmonids in the Pacific Northwest. Our comments,  
13                   concerns, clarifications and suggested revisions are offered as constructive criticism and are meant to help  
14                   improve the effectiveness of the implementation and enforcement of ESA Section 9 prohibition against  
15                   take. Metro's comments will address several of the proposed 13 programs in the order in which they are  
16                   presented in the draft rule. Metro will provide general comments, as well as specific rule amendment  
17                   language. In general, Metro's comments and amendment language will be directed at the draft regulatory  
18                   language. NMFS must also sufficiently address its own background or preamble language as necessary to  
19                   reflect any changes to the final regulatory language. We begin with general comments addressing critical  
20                   regulatory issues raised by the proposed rule.  
21

22  
23                   *Metro's Planning Focus Benefits Salmonid Habitat*

24                   Metro believes NMFS should recognize that the 2040 Growth Concept is already benefiting salmonid  
25                   habitat by preventing growth patterns typical of many cities within the range of listed species, and possibly  
26                   even minimizing the size of the Portland Metro urbanized region. Through Metro's Urban Growth  
27                   Management Functional Plan, the region's development can have an overall positive affect on fish habitat  
28                   by accommodating growth while limiting the extent of human intervention in the natural landscape through  
29                   the application of the compact urban form.  
30

31                   *Metro's Role*

32                   Metro is willing to act as a model with its Urban Growth Management Functional Plan for urban  
33                   development. However, Metro requests that NMFS help Metro by considering the suggested rule  
34                   amendments enclosed within our comments.  
35

36                   *Scope of the Urban Development Limitation*

37                   Metro believes that NMFS should apply the limitations in the proposed rule to all new development and re-  
38                   development. The affect of development on fish habitat is the same whether it occurs in previously

1 undeveloped areas or in areas already developed. This change would provide the opportunity for counties  
2 and cities to apply consistent riparian land use practices to development.

3  
4 *Funding*

5 The federal government must assist Metro, other local jurisdictions within the Metro Region, the State of  
6 Oregon, as well as the other states and local jurisdictions with additional funding for the implementation,  
7 enforcement, and monitoring proposed as critical aspects of this draft rule. This region, and Metro in  
8 particular in certain cases, ought to be identified as key target areas for federal appropriations in the federal  
9 budget. Programs such as the Land and Water Conservation Fund, Federal Highway administration  
10 Transportation Improvement Program (TIP), as well as agency budgets from the Environmental Protection  
11 Agency, Department of Interior, and Department of Commerce should specifically identify salmonid  
12 recovery and protection programs for additional federal assistance.

13  
14 TAKE AVOIDANCE GUIDANCE

15 Metro has already accomplished an initial assessment of its institutional functions, and the results of that  
16 assessment are set forth in "Watershed and Fish Conservation, Protection and Restoration Activities: Initial  
17 Report to Metro Council" Fall, 1999. Metro will continue to review its activities with a sharper focus  
18 based on the draft "Take Guidance" in the draft rules (See 64 FR 73479, at 73481 (December 30, 1999)  
19 and 65 FR 170, at 172 (January 3, 2000)). Metro will continue to assess its activities for take avoidance,  
20 and these assessments will be reported in quarterly reports to the Metro Council.

21  
22 Metro requests clarification of the relationship between take avoidance and the designation of critical  
23 habitat. As we understand it currently, NMFS has proposed critical habitat for steelhead and salmon in the  
24 Lower Columbia and Upper Willamette River Evolutionarily Significant Units ("ESU") (See 64 FR 5740  
25 (February 5, 1999) and 63 FR 11482 (March 9, 1998)). This critical habitat includes "all river reaches  
26 accessible" by listed salmon or steelhead and consists of the water, substrate, and adjacent riparian areas in  
27 these reaches. It would be helpful to know if NMFS applies the take prohibition throughout the general  
28 range of the specific ESUs (i.e., geographic extent) or only to the areas of proposed or final critical habitat  
29 (i.e., where the species is actually present). Metro assumes that because stream and upland reaches not  
30 currently supporting salmonids still may provide essential habitat features such as clean water, sediment  
31 inputs, nutrients and woody debris to downstream, occupied reaches, that NMFS would apply the take  
32 prohibition equally to both occupied and unoccupied areas.

33  
34 Metro appreciates the guidance NMFS has provided in the draft rule regarding what activities may  
35 constitute a "take" of listed salmonids. Metro intends to seek additional clarification from NMFS  
36 regarding some activities that Metro conducts. These are a class of activities that could remotely constitute  
37 a take under the draft rule. However, they do not appear to fall within the general types of activities

1 described in the proposed rule under the take guidance, and also do not come within the programs or sets of  
2 criteria described as limits in the proposed rule.

3  
4 For those activities that Metro departments believe have the potential to "take" listed salmonids, Metro is  
5 modifying current procedures to avoid the possibility of ESA violations. Other Metro activities may fall  
6 into one of the 13 programs that NMFS has suggested are adequately protective of listed salmonids. As to  
7 those Metro functions, Metro can take additional action to ensure that specific Metro procedures qualify to  
8 be part of the "adequately protective" programs.

#### 9 10 TAKE AVOIDANCE GUIDANCE AND IMPLEMENTATION

11 It would be helpful if the final rule included some very basic "checklist-type" of advice or guidance for  
12 local jurisdictions or affected individuals. Metro suggests the following language:

13  
14 The basic rule of the ESA is that it is prohibited to take listed species.

15 The 4(d) rules describe categories of activities that are likely to or may be likely to cause a take.

16 All entities and individuals should avoid take.

17 The 4(d) rules provide limitations on the prohibition against take.

18  
19 If an activity may affect listed species or their habitat, and has a federal nexus (permitting, authorizing, or  
20 funding), a section 7 consultation may be required to be initiated between the action agency and the NMFS.

21  
22 If an otherwise lawful activity will result in the incidental take of listed species, a section 10 permit may be  
23 obtained to allow "incidental takes" provided that the project proponent prepares a conservation plan which  
24 NMFS must approve before any permits may be issued.

25  
26 All local governments should be able to take advantage of any "limit."

27  
28 The rules should allow for minor deviations from the requirements of a program adopted as a limit where  
29 the deviation would not affect the protection provided for the listed species.

#### 30 31 INTEGRATED PEST MANAGEMENT PROGRAMS

##### 32 *General Comments*

33 The draft rule describes how Portland Parks and Recreation Department's Integrated Pest Management  
34 plan (Portland Park's IPM) exemplifies these practices. However, the draft rule does not provide language  
35 that would allow other local jurisdictions to adopt the same or substantially similar programs and seek  
36 NMFS approval through development of an operational memorandum of understanding (MOU) as is  
37 provided for in other parts of the draft rule. Metro recommends that NMFS amend its rule language to  
38 indicate that other local jurisdictions may consider, adopt and seek approval for their own IPM plans.



1 *Metro's IPM Program*

2 In 1995, Metro adopted an IPM policy for the agency. Under the program, Metro places first priority on  
3 prevention of pests, second on cultural and mechanical practices (i.e. biological controls), and, lastly,  
4 chemical products. Metro believes that the approach and practices in our IPM program are substantially  
5 the same as Portland Park's IPM program. However, the information provided in the proposed rule was  
6 not sufficient to determine whether NMFS would in fact find Metro's program equivalent. Metro already  
7 uses many of the guidelines set forth in Portland Park's IPM. However, Metro conducts activities and  
8 manages sites different from those governed by Portland Park's IPM. Metro is considering tightening its  
9 current operational plan, and undertaking the classification system and define management levels as did  
10 Portland Parks. Metro may write our own specific plan for specific waterways, which would address  
11 specific areas that we manage, as Portland Parks does.

12  
13 Specific activities that differ from those covered by Portland's Park's IPM program include, but are not  
14 limited to the following:

- 15 1. Metro owns the Glendoveer Golf Course, although it contracts the operation of this facility. Since  
16 the City of Portland operates their courses, is this difference of management a factor in the  
17 implementation of the IPM?
- 18 2. Portland Park's IPM plan makes note of lakes and ponds, however it does not mention the specific  
19 use of Sonar (fluridone). Further, Portland does not manage a body of water with private  
20 residences on it. Would these be factors for approval of Metro's IPM?
- 21 3. At Blue Lake, a Metro-owned and operated park, the water in the Lake is held by a weir, but does  
22 drain into the Columbia if the weir is raised. Water-borne chemicals can only enter the Columbia  
23 River if lake water is pumped up and over the existing dike between Blue Lake and the Columbia.  
24 Does this fact affect approval review of Metro's use of Portland Park's IPM?
- 25 4. Some larger broadcast spray areas, specifically the fence line at Glendoveer Golf Course (at  
26 Halsey, SE 148th, and Glisan), are currently conducted under contract by Multnomah County for  
27 Metro. Would this management arrangement affect NMFS approval?

28  
29 Metro also owns and operates thousands of acres of parks and open space properties. Additionally, Metro  
30 approves and funds habitat restoration activities occurring in its Restoration Grants Program. Metro  
31 believes its current IPM operations for Regional Parks and Greenspaces are closely aligned with Portland  
32 Park's IPM. As reviewed, Portland Park's IPM uses herbicide in 25-foot buffers around water, limited to  
33 glyphosate products, Garlon 3A, and surfactant R-11. Metro's open space properties, with the exception of  
34 agricultural leased lands, uses glyphosate almost exclusively in concert with an IPM approach on its entire  
35 property, not just in the riparian zones. If Metro does not exceed the Portland Park's IPM, but, in fact, uses  
36 fewer chemicals than Portland's IPM allows, can Metro gain approval of its IPM under Portland Park's  
37 IPM limitation under the draft rule?

38

1 Metro is currently undergoing a re-examination of this policy and we believe this review should make  
2 Metro's IPM program more congruent with Portland's approved program. However, Metro is seeking some  
3 clarifications of the proposed rule that might make this process easier.  
4

- 5 1. While we recognize that specific elements of a plan must be weighed in the context of the overall plan,  
6 guidance on which elements, or types of elements, NMFS considers the most important would be  
7 helpful.
- 8 2. The rule is unclear regarding how Metro would demonstrate to NMFS that our Integrated Pest  
9 Management program provides sufficient salmonid protection. For example, does Metro only need to  
10 inform NMFS that it has adopted a program similar to the Portland Park's IPM program or would  
11 there be a formal review and approval process? If Metro's program differs in some ways, how would  
12 Metro demonstrate that protection efforts were still sufficient?
- 13 3. It would be helpful if NMFS would explicitly state whether chemical use, although conducted in  
14 compliance with federal labeling requirements (which presumes it is being lawfully used), could  
15 nevertheless be considered activity likely to result in the take of listed species. In short, is chemical  
16 use, unless it is conducted as one component in compliance with an acceptable overall IMP program  
17 reviewed by NMFS, now an "unprotected" use?

#### 18 19 HABITAT RESTORATION ACTIVITIES

##### 20 *General Comments*

21 It is possible for watershed plans to be developed and approved within two years for the Sandy, Clackamas,  
22 Tualatin, and Willamette Rivers basins, but it is by no means certain. Until plans are approved, riparian  
23 zone planting or fencing, large woody debris placement, and corrective road/stream crossings among other  
24 activities may not be considered a taking if those activities comply with approved state guidelines (i.e.  
25 Oregon Aquatic Habitat Restoration and Enhancement Guide).

26  
27 Guidelines for watershed conservation plans include prioritizing, designing, and sequencing restoration  
28 activities based on watershed assessment. This may require that Metro adhere to a watershed plan's  
29 priorities in order to avoid taking a listed species. The unintended result may be that Metro, as well as  
30 other local jurisdictions and individuals request individual NMFS review of proposed projects. This seems  
31 impracticable.

32  
33 NMFS also states that it does not consider herbicide applications or artificial bank stabilization to be  
34 restoration activity. However, using herbicide properly and with clear limitations, such as outlined in  
35 Portland's Waterways Pest Management Policy, may be an essential component to a riparian restoration  
36 project. The draft rule appears to describe a scenario, for riparian restoration purposes, in which activities  
37 such as site preparation, that would include weed abatement whether herbicide is included or not may be  
38 considered a taking. This may be an unintended result of the draft rule if adopted as written.

1  
2 Metro suggests that NMFS consider amending the draft rule language to provide an alternative process for  
3 continuing restoration activities in the event watershed or sub basin assessments are not completed and no  
4 state or federally approved watershed management plans are in place. Metro believes that a prioritized,  
5 integrated restoration program is absolutely necessary to successfully address the limiting factors for  
6 watershed health and salmonid abundance. However, Metro also believes that continuing to allow for  
7 individual restoration projects (often referred to as "random acts of kindness") is essential to maintain  
8 active citizen and watershed council interest and involvement. This local involvement could be seriously  
9 compromised if restoration activities are prohibited while administrative hurdles prevent completion of  
10 either assessments or management plans. Lack of stable funding for watershed council operations,  
11 conflicting state and federal watershed assessment guidelines or protocols, and state legislative squabbling  
12 all are real obstacles to completing the type of assessment and planning work the draft envisions being  
13 completed within two years.

14  
15 *Suggested revisions*

16 Metro proposes three revisions to the proposed rule as written.

- 17 1. A project threshold should be considered. Certain activities such as bank restoration and  
18 revegetation projects could proceed even if watershed assessments and watershed plans have not  
19 been completed within the currently proposed two-year window. However, any in-water work  
20 would be permitted to proceed only if the watershed assessments and watershed plans have been  
21 completed within the eventual mandated time frame, or after completion of a section 7  
22 consultation (envisioned as a limitation under the proposed rule).
- 23 2. The proposed two-year time frame for completing watershed assessment and water plan  
24 development should be extended by a period of time no less than one year. Alternatively,  
25 individual restoration projects could proceed within the proposed time frame if; a) they are not in-  
26 water projects, or 2) the required watershed assessments and watershed management plans are  
27 substantially underway or are expected to be completed within one additional year from the  
28 current proposed two-year period.
- 29 3. Restoration projects underway that are currently following other federal agency review and  
30 approval processes should be allowed to proceed in a watershed whether or not a watershed  
31 assessment or watershed management plan are underway or complete. For example, Metro  
32 currently awards federal funds in cooperation with the U.S. Fish and Wildlife Service (FWS) for  
33 restoration and environmental education projects within various watersheds. This FWS program  
34 review already contains compliance with the National Environmental Policy Act (NEPA) as well  
35 as ESA section 7 consultations with both NMFS and FWS if listed species are present and likely  
36 to be affected by the project's implementation.

1 *Artificial Bank Stabilization*

2 On page 73488 under the heading "Habitat Restoration Limits on the Take Provisions" it is stated that  
3 NMFS considers a habitat restoration activity to be an activity whose primary purpose is to restore "natural  
4 aquatic or riparian habitat processes or conditions." This phrase is also used in proposed rule 50CFR  
5 223.208(a)(8)(iii) on page 73504. However, on page 73488 it is stated that NMFS does not consider  
6 "artificial bank stabilization to be restoration activity." "Artificial bank stabilization" is not defined,  
7 although it should be.

8  
9 The bias against using artificial bank stabilization as an erosion control technique may not be practicable in  
10 an urban setting. Some stream banks have been hardened to contain contaminated soils or other wastes.  
11 Prior development activity has often altered or abolished natural habitat as well as those processes that  
12 would allow a natural system to repair itself. As you are aware, many urban streams have been placed in  
13 culverts or so channelized so that channel migration is limited or impossible. Because of a high percentage  
14 of impervious surfaces in some basins, unnaturally large storm water runoff deluges most urban streams.  
15 In some sites, natural stream bank erosion may eat away at low permeability silts which filter contaminants  
16 from adjacent buried waste. The loss of bank stability could cause buried solid or hazardous waste to drop  
17 into a stream.

18  
19 Metro believes that in an urban setting the goal should be to improve the existing, but degraded, riparian  
20 area to a productive level (i.e. towards properly functioning habitat conditions). In unusual circumstances,  
21 it may be necessary to use artificial bank stabilization techniques to achieve the long-term stability needed  
22 to avoid the above problems and promote favorable water quality attributes. For example, a multi-layered  
23 rock filter at the lower portion of a slope may be necessary where vegetation does not grow. Plastic  
24 geotextiles may be necessary to assist vegetation to prevent erosion of the upper portion during high water  
25 periods and to provide long term shading. These techniques are designed to stop stream bank erosion and  
26 vegetation loss and provide the long-term stability to:

- 27 1. Maintain the soil filter needed to combat water quality degradation by contaminants
- 28 2. Maintain shading by a riparian canopy cover of native vegetation necessary to achieve water quality  
29 attributes such as temperature, pH, dissolved oxygen, etc. essential to species conservation.

30  
31 For example, Metro is undertaking to repair the perimeter bank of the St. Johns Landfill. This project aims  
32 to maintain the long term stability of the silt to serve as a physical barrier between surface water and  
33 millions of tons of solid and hazardous waste and filter contaminants which would impair water quality.  
34 Given the site conditions the best alternative is to use riprap below the vegetation growth line and also  
35 geotextile stabilized earth with native vegetation necessary to achieve the two objectives listed above. This  
36 design strikes the best balance between the goal of restoring "natural" aquatic and riparian processes and  
37 conditions and the goal of restoring properly functioning habitat conditions such as bank stability and  
38 pollutant filtering.

1 *Suggested Revisions*

2 To achieve the multiple goals of preventing contaminated soils or solid wastes from entering waterways,  
3 and to promote improved habitat conditions and water quality, Metro believes that language should be  
4 added to the rules so bank-hardening techniques would be considered habitat restoration under certain  
5 circumstances:

- 6 1. If they contribute to the objective of attaining properly functioning habitat conditions including bank  
7 stabilization, pollutant filtering, and desirable water quality attributes.
- 8 2. If they provide river access or protect water dependent uses such as boat ramps or other like facilities.
- 9 3. If they are required by unusual site conditions.

10  
11 OREGON DEPARTMENT OF TRANSPORTATION'S (ODOT) ROAD MAINTENANCE ACTIVITIES

12 Metro is supportive of the approach in the draft rule. The potential impacts for transportation planning and  
13 development seem reasonable and attainable. ODOT's Road Maintenance Guide is an important tool for  
14 Oregon, and hopefully other local jurisdictions. Metro supports the inclusion of the Guide in the rule. In  
15 regard to extension of the practices identified in the Guide to local cities and counties, Metro's  
16 Transportation Department would be willing to coordinate such an effort. We will follow up on this  
17 suggestion through the Transportation Policy Alternatives Committee (TPAC) to determine local interest.

18  
19 The proposed rule is also in line with our upcoming "Green Streets" project. Metro's "Green Streets  
20 Project" is intended to guide the design of transportation projects to eliminate or minimize the impacts of  
21 transportation planning, development and maintenance on watersheds and fish. The "Green Streets  
22 Project" will result in recommended regional street design standards or guidelines that will eliminate or  
23 largely minimize threats to endangered salmon and steelhead populations. The focus will be on culvert  
24 design, stream protection, and control of storm water runoff. At the conclusion of the study (fall 2001), we  
25 would hope to develop a Memorandum of Agreement with NMFS to include Green Streets design features  
26 as an element of a future 4(d) rule, thereby limiting federal take provisions from projects consistent with  
27 those features.

28  
29 URBAN DENSITY DEVELOPMENT

30 This portion of Metro's comment will identify key issues that relate to how Metro can comply with NMFS  
31 proposed additions to 50 CFR 223, Section 12 as set forth in the proposed 4(d) rule. A technical appendix  
32 is attached which recommends specific amendments to the proposed rule that will clarify the 12 urban  
33 development criteria, and make it more feasible for Metro and other local governments to comply with the  
34 criteria.

35  
36 *All local governments entitled to seek 4(d) protection*

37 Metro strongly supports a regional approach to conserving and recovering listed salmonids. As stated  
38 previously, Metro accepts NMFS's offer to have the Urban Growth Management Functional Plan be a

1 model for achieving the 12 urban development criteria set forth in the proposed 4(d) rule. While Metro is  
2 willing to undertake this challenge, and serve in a coordinating role, Metro believes that other local  
3 governments within Metro's jurisdiction should have an opportunity to qualify their own ordinances for the  
4 4(d) urban development limitation on take protections. However, this will not relieve those cities and  
5 counties from complying with Metro's Functional Plan, and local governments which choose that approach  
6 must answer to NMFS directly for any failure of those ordinances to achieve NMFS's goals.

7  
8 *Limitation on take should apply to all new development*

9 Metro's Urban Growth Management Functional Plan which implements its Region 2040 Growth Concept  
10 applies to all areas inside the regional urban growth boundary and Metro's jurisdictional boundary, not just  
11 to newly urbanized areas as the preamble of the proposed rule seems to suggest. The 2040 Growth  
12 Concept sets for the regions desired urban form for the next 20 years. Applying the limitation on take to  
13 all new development is consistent with the 2040 Growth Concept goal of reducing urban sprawl and  
14 encouraging growth in the urban area in ways and in places that make the most planning sense. Metro  
15 encourages NMFS to apply the limitation on take provisions for urban development to all new  
16 development in the Metro region. If NMFS should choose to apply the limitation to all development, it  
17 would allow counties and cities to adopt development standards that are consistent throughout a  
18 jurisdiction and prevent the uneven application of any regulatory scheme.

19  
20 *NMFS needs a standard for reviewing urban development programs*

21 The draft rule contemplates a procedure by which NMFS will evaluate whether local land use ordinances  
22 qualify for the limitation on take provisions. For example, NMFS must determine whether an ordinance is  
23 "adequately protective" before issuing written approval. What is missing is a standard that NMFS will use  
24 as a threshold for determining whether local ordinances comply with those criteria. Oregon's Statewide  
25 Planning program requires local government comprehensive plans to comply as a whole with all applicable  
26 Statewide Land Use Planning Goals. This is a balancing approach to determine compliance.  
27 Implementing such a standard would provide NMFS with a valuable tool for determining when urban  
28 development programs satisfy the 12 criteria set forth in the proposed rule.

29  
30 *Address potential for unconstitutional taking of private property*

31 In the preamble of the rule, NMFS seems to limit the application of the riparian buffer standards "[t]o the  
32 extent allowed by ownership patterns." Although this appears to be an attempt to allow local governments  
33 implementing the 4(d) programs to avoid committing unconstitutional 5th Amendment takings, it is an  
34 awkward term. It is unclear whether NMFS is willing to risk unconstitutional takings claims as a result of  
35 the ESA take prohibitions, and whether NMFS intends for local governments to be the involuntary front  
36 lines in those cases. At a minimum, NMFS should provide clarification as to the nature and extent of  
37 allowed disturbances that would be acceptable in the 150 feet of the riparian buffer that is beyond the 50  
38 feet closest to the stream where the proposed preamble language recommends no mechanical entry.

1 *Stormwater criteria should allow for regional performance measures*

2 Metro has not yet developed regional stormwater functional plan provisions. Metro encourages NMFS to  
3 identify in the final section 4(d) rule a stormwater program or model ordinance which will aid local  
4 governments in drafting their own ordinances to comply with this criterion. If NMFS does not know of  
5 such a program, Metro strongly believes that crafting broad regional performance measures is feasible if  
6 the focus is on obtaining an overall reduction in the amount of stormwater that enters regional streams.  
7 These performance measures should primarily address on-site retention, off-site detention, treatment of  
8 detained water and managed release to avoid damage to streambeds and banks.

9

10 *Stream bank Armoring or Hardening*

11 Although Metro does not generally endorse stream bank hardening, such measures are appropriate where  
12 bioengineering techniques are not possible and where the armoring is part of a restoration plan. In narrow  
13 circumstances armoring can facilitate revegetation of stream banks that would otherwise be futile. For the  
14 reasons presented under *Habitat Restoration*, bank hardening may be necessary to achieve or protect  
15 desirable water quality attributes and properly functioning habitat conditions that support salmonid  
16 productivity in urban streams. Temporary access by heavy machines may also be necessary to build  
17 structures that promote desirable water quality attributes and filter pollutants. In addition, for bank  
18 hardening projects discussed above and to improve the overall native vegetation community structure, it  
19 may be necessary to remove some or all existing native plants and replace them with the same or similar  
20 native vegetation.

21

22 *Regional Water Supply*

23 Metro and Portland area water providers entered into an intergovernmental agreement in 1996 with the  
24 region's water suppliers to implement the Regional Water Supply Plan. The plan provides for a  
25 coordinated regional approach to supplying regional water needs under the direction of a Regional Water  
26 Providers Consortium. Metro recommends the Regional Water Supply Plan as a model, like the Urban  
27 Growth Management Functional Plan, for satisfying this criterion.

28

29 *Consistency with Other Laws*

30 In at least two places the draft rule clarifies that any development which qualifies for the limitation on take  
31 provisions must also comply with applicable "state and federal laws and permit requirements."

32 "Applicable regional law" should be added to this list to recognize Metro's authority to regulate land use  
33 and other areas such as solid waste processing, transportation, and disposal.

34

35 *Properly Functioning Condition*

36 One important issue that stands out in the document is that NMFS fails to adequately describe performance  
37 measures that are tied to the concept of properly functioning condition. The lack of specificity on  
38 performance measures for activities to achieve which receive the limitation on the prohibition on take as

1 described in the 13 programs that are exceptions to the "take" rule. The lack of specificity relates to  
2 limited knowledge of basic science in the life history of these threatened salmonids.  
3 Answering this question becomes even more difficult as Metro develops programs that may allow for  
4 variations in their riparian protection strategy (Goal 5 riparian rules, functional plan). As jurisdictions  
5 adopt variations from Metro's riparian strategy, how much flexibility will NMFS allow for variations from  
6 the overall standard set by the 12 principles in the urban density development limitation, and still meet the  
7 goals for water quality and fish habitat?

#### 8 9 FUNDING FOR IMPLEMENTATION, ENFORCEMENT, REPORTING

10 One of the 12 principles for the urban density development states that local jurisdictions must provide  
11 adequate funding, enforcement, reporting, and implementation. This principle should apply most  
12 accurately as a part of each of the previous 10 substantive principles described in both the preamble and the  
13 draft regulatory language. This principle is perhaps the most difficult to describe, and the one most subject  
14 to the vagaries of the annual budget process each local jurisdiction must conduct.

15  
16 In the draft rule, NMFS should suggest criteria that would make enforcement, funding, reporting, and  
17 implementation programs adequate. It is highly likely that current programs vary considerably between  
18 local jurisdictions. Local enforcement of ordinances is frequently complaint-driven, and enforcement  
19 capability typically not adequate to address even in-coming complaints – let alone proactively conduct site  
20 inspections on an on-going basis. Local jurisdictions need some guidance in order to adequately budget for  
21 the level of enforcement, reporting, or implementation envisioned by the draft rule. Metro suggests that  
22 NMFS provide an example of the level of adequacy envisioned for satisfying this important principle.

23  
24 On the other hand, the structure of the draft rules will also require significant NMFS staff review to  
25 satisfactorily provide the level and intensity of programmatic review envisioned. This is particularly true  
26 for the limitation for urban density development. Whether NMFS is reviewing "adequate protective  
27 ordinances" from Metro or from individual local jurisdictions, NMFS' requirement to provide review and  
28 findings of adequacy requires adequate NMFS staffing levels and appropriate expertise and the requisite  
29 review authority to work directly with Metro and possibly other local jurisdictions. If NMFS is unable to  
30 secure adequate staff resources to complete its review work, the final rule should have contingent language  
31 providing direction and limited approval to move forward for local jurisdictions who have adopted  
32 integrated, adequate urban density development ordinances, but who are unable to receive complete NMFS  
33 review, findings and approval.



## PROPOSED ESA 4(D) RULE AMENDMENTS – ANNOTATED

The following amendments are intended to improve, (1) the ability of the proposed 4(d) rule urban development criteria to correct the conditions which led to the decision to list steelhead and salmonid as threatened species, and (2) to improve NMFS's ability to review local urban development programs submitted to qualify for a limit on take prohibitions. These amendments are based on Metro's local experience regulating aspects of urban development and providing regional services.

As acknowledged at 64 Fed Reg 73493, Metro administers an urban growth boundary ("UGB") and a program of enforceable regulations for urban development. Oregon's land use system has effectively separated urban development from rural lands for over 25 years. Working within that land use planning system, for the past five years Metro has been preparing enforceable region-wide regulations to coordinate and supplement earlier regulations in city and county comprehensive plans. Water quality and flood management regulations were adopted in Metro's Urban Growth Management Functional Plan in 1996 and 1998. Two years of work on additional riparian area protection for fish and wildlife consistent with statewide planning Goal 5 will yield adopted regulations in June, 2000. 1997 policies on stormwater management in Metro's Regional Framework Plan may be implemented by Metro in 2000. Based on this extensive experience in development and administration of conservation program regulations, these suggested amendments to the proposed 4(d) rules should significantly improve NMFS ability to achieve their purposes.

Specific amendments to the proposed language of 50 CFR 223, Section 12 (64 FR 73505) are suggested below. Language in italics would be deleted, and underlined language would be added.

### I. 12(l) – Administration

#### A. Clarify which local governments may seek urban development limitations on take.

Metro agrees that the Urban Growth Management Functional Plan serves as a good model for urban development activities in the region. However, as this section is currently drafted it implies that all 24 cities and three counties in Metro's jurisdiction would be prevented from submitting their own urban development program for NMFS review and approval. The suggested amendments would allow cities and counties in Metro's jurisdiction to submit their own urban development program if they so desire.

The proposed language would also clarify what constitutes and adequately protective ordinance by stating NMFS's desired outcome from such urban development programs.

“(i) Such development occurs pursuant to city, and county ordinances or Metro Urban Growth Management Functional Plan (Functional Plan) that NMFS has agreed in writing are adequately protective sufficient to assure that plans and development that comply with them will result in development patterns and actions that conserve listed salmonids. or within the jurisdiction of the Metro regional government in Oregon, with ordinances that Metro has found comply with an Urban Growth Management Functional Plan (Functional Plan) that NMFS has agreed in writing are adequately protective.”

- B. Clarify the requirements for complying with the 12 urban development criteria and add a standard of review for local program compliance.

Metro and other local governments need to understand the standard of review to be used by NMFS to determine compliance with the 12 urban development criteria. Metro recommends the following:

“For NMFS to find ordinances or the Functional Plan to be adequately protective, they must address all of the following issues criteria in sufficient detail and in a manner that assures that urban developments will contribute to conserving listed salmonids. City and county ordinances or Metro’s Functional Plan are sufficient to result in development patterns and actions that conserve listed salmonids when on the whole they assure the objective of each of the following 12 criteria and any failure to meet individual criterion requirements is technical or minor in nature.”

From the 25-year experience of the Oregon land use program, this “substantial compliance” standard of review provides substantial discretion for the reviewer while avoiding significant implementation delays from technical litigation. This suggested 4(d) rule amendment changes the current reference to 12 “issues” and “principles” to established “criteria” for NMFS review of a local conservation program. The test is paraphrased from the long standing Oregon state law standard for the state to use in applying the Statewide Land Use Planning goals to city and county comprehensive plans (ORS 197.747) as interpreted by *Schlumberger Technologies v. TriMet*, 145 Or App 12, 17 (1996).

## II. 12(f)(B) - Stormwater

For Metro to help NMFS and local governments achieve adequate stormwater management for the Metro region it is important for NMFS to be more specific with the type of goals that stormwater regulations should achieve. Metro believes that adequate

stormwater management can be achieved through broad performance measures that would apply regionwide. Those performance measures should be directed at four regulatory outcomes: (1) retention of stormwater on-site whenever possible, (2) detention to manage stormwater that cannot be retained on-site, (3) pre-treatment of stormwater prior to discharge, and (4) managed release of treated stormwater from detention facilities.

“Avoid stormwater discharge impacts to water quality and quantity or to the hydrograph of the watershed. Such impacts can be avoided through on-site retention, off-site detention, treatment and managed release of treated stormwater.”

### III. 12(i)(C) – Riparian Buffers

Metro recommends that NMFS directly address the question of whether the riparian buffer criteria could result in an unconstitutional taking of private property for public use. The preamble of the rule on riparian buffers (64 FR 73494) hints at NMFS position by stating that “[t]o the extent allowed by ownership patterns, the development set-back should be ... .” This seems to acknowledge that some properties may be completely or substantially in the 200-foot riparian buffer area. Metro recommends the following language be added to section 12(i)(C):

“For existing lots or parcels which are fully or predominantly within a riparian buffer area that are demonstrated to be rendered unbuildable by implementation of this criterion, local regulations may assure that the lot or parcel will remain buildable with the least practicable disturbance of the riparian area, and may impose conditions that require restoration of the property.”

Metro has found it desirable and necessary to address in its regulations the issue of possible loss of all economic use of existing lots or parcels. Property rights advocates demanded and received such assurances in Metro’s 1996 and 1998 water quality and flood management regulations. A more specific description of a “least practicable disturbance” requirement for allowing one residence per buildable lot in riparian areas is part of Metro’s draft fish and wildlife habitat conservation program. NMFS clarity on this point would be excellent timesaving assistance to develop any local ordinance within riparian regulations to conserve salmonids.

### IV. 12(i)(D) – Stream Crossings

As a land use regulatory standard, the word “possible” is generally interpreted to mean an applicant must demonstrate that complying with the standard is virtually impossible in order to vary from requirement. That is very difficult and potentially unworkable standard. Metro recommends a “practicable” standard for stream crossings.

“Avoid stream crossings wherever possible practicable by considering alternative transportation modes and designs and preferring bridges over culverts, and where on must be provided minimize impacts through choice of mode, sizing and placement of crossings and 100 year floodplain design of all new culverts.”

Metro has long experience with the pitfall of “possible” versus “practicable.” Engineers can propose construction of unlimited solutions with unlimited funds, making a review standard of “possible” impossible to meet. The suggested amendment attempts to incorporate most of the considerations in the preamble of the proposed rule into the criterion.

**V. 12(i)(E) – Streambank Hardening**

An absolute prohibition on bank armoring or hardening goes much farther than is prudent in urban areas such as the downtown Portland Willamette River waterfront. In certain circumstances, limited bank armoring as part of an overall bank restoration program makes restoration possible where it would otherwise not occur. This criterion should allow limited bank hardening combined with restoration.

“Protect historic meander patterns and channel migration zones by generally avoiding hardening of stream banks. Bank hardening may be allowed as part of a bank stabilization and restoration plan that requires revegetation as a component. Bank erosion shall generally be controlled through vegetation or carefully bioengineered solutions. Riprap blankets or similar hardening techniques are not allowed, unless impracticable because of particular site constraints or unless these techniques promote water quality attributes which help attain properly functioning conditions.”

**VI. 12(i)(F) – Wetlands**

Metro agrees with this criterion, and believes that existing Metro regulations will meet the standard. However, clarity on where wetlands must be protected for conservation of listed salmonids as compared to other wetlands is needed. Statewide Planning Goal 5 provides such a distinction, and Metro has incorporated that standard into its fish and wildlife habitat conservation program. Based on that experience, Metro recommends the following additional language:

“Protect wetlands and wetland functions.” “Include all existing natural wetlands within riparian areas along all perennial and intermittent streams within riparian buffers.”

Retain and protect all other existing natural wetlands to the extent practicable."

**VII. 12(i)(H) – Landscaping and Herbicides, Pesticides and Fertilizers**

Metro suggests that NMFS amend this criterion to focus protection on riparian areas and recognize existing regulation of chemicals. In some circumstances, increasing the area of landscaping is desirable. For example landscaped area can act as sponges to retain stormwater which keeps the water and chemicals that may be applied to yards on-site instead of reaching a stream. Application of herbicides and pesticides may also be needed in riparian areas under controlled conditions to combat invasive plant species.

"Require landscape designs which favor planting native species or subspecies to reduce need for watering and application of herbicides, pesticides and fertilizer. At a minimum, require restoration with native plant species or subspecies where riparian buffer areas are disturbed.

**VIII. 12(i)(J) – Water Supply**

Metro recommends amending the criterion to reflect regionwide water supply planning a basis for protecting salmonids. Metro and Portland area water providers entered into an intergovernmental agreement in 1996 with the region's water suppliers to implement the Regional Water Supply Plan. The plan provides for a coordinated regional approach to supplying regional water needs under the direction of a Regional Water Providers Consortium through the year 2050. Metro recommends the Regional Water Supply Plan as a model, like the Urban Growth Management Functional Plan, for satisfying this criterion.

**IV. 12(i)(K) – Enforcement**

Metro relies on its local partners to enforce functional plan requirements that are implemented through local codes. As a result, Metro cannot "provide" enforcement for those local governments. The phrase "all necessary enforcement" implies some undefined absolute rather than a performance measure requiring results. Review of "funding" to adequate levels is inappropriate and unnecessary because "sufficient enforcement" measures would reflect adequate funding. Metro can help ensure urban development programs are properly applied through its oversight operations. Metro can also work with its local partners to monitor urban developments to determine whether those programs are meeting Functional Plan requirements. Based on these observations, Metro recommends the following:

"Provide all necessary enforcement, funding, reporting, and implementation measures. Ensure that ordinances addressing these urban development criteria are

implemented, regularly monitored, and enforced to achieve the purposes of the ordinances or Metro's Functional Plan.

X. 12(j)(12) – Compliance with other laws

Metro has stated above that other local governments within Metro's jurisdiction should have the opportunity to develop their own urban development programs for purposes of obtaining the 4(d) limitation on take. At the same time; Metro's Functional Plan is a holistic approach to regional urban planning of which fish and wildlife protection is just one component. Local ordinances related to protecting listed salmonids must also be consistent with Functional Plan. Therefore, "Metro regional law" should added to this criterion.

The development complies with all other state and Federal environmental or natural resource laws and permits, and where applicable, Metro regional law.

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OGC/KDH/kvw (02/25/2000)