

A G E N D A

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



METRO

Agenda

MEETING: METRO COUNCIL REGULAR MEETING
DATE: June 01, 2006
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. CONSENT AGENDA

3.1 Consideration of Minutes for the May 25, 2006 Metro Council Regular Meeting.

4. ORDINANCES - SECOND READING

4.1 **Ordinance No. 06-1118**, For the Purpose of Amending Metro Code Chapter 5.02 to Establish Metro's Solid Waste Disposal Charges and System Fees For Fiscal Year 2006-07. Newman

5. RESOLUTIONS

5.1 **Resolution No. 06-3700**, For the Purpose of Entering an Order Relating To the Measure 37 Claim of Darrin Black (*Public Hearing.*)

6. CHIEF OPERATING OFFICER COMMUNICATION

7. COUNCILOR COMMUNICATION

ADJOURN

Television schedule for June 1, 2006 Metro Council meeting

| | |
|--|---|
| <p>Clackamas, Multnomah and Washington counties, and Vancouver, Wash. Channel 11 -- Community Access Network www.yourtv.org -- (503) 629-8534 2 p.m. Thursday, June 1 (live)</p> | <p>Portland Channel 30 (CityNet 30) -- Portland Community Media www.pcmv.org -- (503) 288-1515 8:30 p.m. Sunday, June 4 2 p.m. Monday, June 5</p> |
| <p>Gresham Channel 30 -- MCTV www.mctv.org -- (503) 491-7636 2 p.m. Monday, June 5</p> | <p>Washington County Channel 30 -- TVC-TV www.tvctv.org -- (503) 629-8534 11 p.m. Saturday, June 3 11 p.m. Sunday, June 4 6 a.m. Tuesday, June 6 4 p.m. Wednesday, June 7</p> |
| <p>Oregon City, Gladstone Channel 28 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.</p> | <p>West Linn Channel 30 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.</p> |

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

Agenda items may not be considered in the exact order. For questions about the agenda, call Clerk of the Council, Chris Billington, (503) 797-1542. Public hearings are held on all ordinances second read and on resolutions upon request of the public. Documents for the record must be submitted to the Clerk of the Council to be considered included in the decision record. Documents can be submitted by e-mail, fax or mail or in person to the Clerk of the Council. For additional information about testifying before the Metro Council please go to the Metro website www.metro-region.org and click on public comment opportunities. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING) ORDINANCE NO. 06-1118
METRO CODE CHAPTER 5.02)
TO ESTABLISH METRO'S SOLID WASTE) Introduced by: Michael Jordan, Chief Operating
DISPOSAL CHARGES AND SYSTEM FEES) Officer, with the concurrence of David Bragdon,
FOR FISCAL YEAR 2006-07) Council President

WHEREAS, Metro Code Chapter 5.02 establishes solid waste charges for disposal at Metro South and Metro Central transfer stations; and,

WHEREAS, Metro Code Chapter 5.02 establishes fees assessed on solid waste generated within the District or delivered to solid waste facilities regulated by or contracting with Metro; and,

WHEREAS, Metro's costs for solid waste services and programs have changed; and

WHEREAS, pursuant to its charge under Metro Code section 2.19.170, the Solid Waste Rate Review Committee has reviewed the Solid Waste & Recycling department's proposed FY 2006-07 budget, rate methodology and cost allocations; and,

WHEREAS, Solid Waste Rate Review Committee recommends that the Metro Council adopt the rates set forth in this ordinance; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Metro Code Section 5.02.025 is amended to read:

5.02.025 Disposal Charges at Metro South & Metro Central Station

- (1) The following charges for each ton of solid waste delivered for disposal:
 - (A) A tonnage charge of ~~\$46.80~~46.20 per ton,
 - (B) The Regional System Fee as provided in Section 5.02.045,
 - (C) An enhancement fee of \$.50 per ton, and
 - (D) DEQ fees totaling \$1.24 per ton;
- (2) All applicable solid waste taxes as established in Metro Code Chapter 7.01, which excise taxes shall be stated separately; and
- (3) ~~A~~The following Transaction Charge ~~of \$7.50~~ for each Solid Waste Disposal Transaction:-

- (A) For each Solid Waste Disposal Transaction completed at staffed scales, the Transaction Charge shall be \$8.50.
 - (B) For each Solid Waste Disposal Transactions that is completed at the automated scales, the Transaction Charge shall be \$3.00.
 - (C) Notwithstanding the provisions of subsection (A), the Solid Waste Disposal Transaction Charge shall be \$3.00 in the event that a transaction that is otherwise capable of being completed at the automated scales must be completed at the staffed scales due to a physical site limitation, a limit or restriction of the computer operating system for the automated scales, or due to a malfunction of the automated scales.
- (b) Notwithstanding subsection (a) of this section,
- (1) ~~There~~ There shall be a minimum solid waste disposal charge at the Metro South Station and at the Metro Central Station for loads of solid waste weighing ~~260~~240 pounds or less of \$17, which shall consist of a minimum Tonnage Charge of ~~\$9.50~~8.50 plus a Transaction Charge of ~~\$7.50~~8.50 per Transaction.
 - (2) The Chief Operating Officer may waive collection of the Regional System Fee on solid waste that is generated outside the District and collected by a hauler that is regulated by a local government unit.
- (c) Total fees assessed in cash at the Metro South Station and at the Metro Central Station shall be rounded to the nearest whole dollar amount, with any \$0.50 charge rounded down.
- (d) The Director of the Solid Waste & Recycling Department may waive disposal fees created in this section for Non-commercial Customers of the Metro Central Station and of the Metro South Station under extraordinary, emergency conditions or circumstances.

Section 2. Metro Code Section 5.02.029 is amended to read:

5.02.029 Disposal Charge for Recoverable Solid Waste

- (a) There is hereby established a Recoverable Solid Waste Disposal Charge that shall be collected on all Recoverable Solid Waste accepted at the Metro South Station or Metro Central Station.
- (b) The Recoverable Solid Waste Disposal Charge shall be based on Metro's actual costs in managing Recoverable Solid Waste. The amount of the Recoverable Solid Waste Disposal Charge shall consist of a Recoverable Solid Waste Variable Charge as defined in this section and a Transaction Charge as defined in Section 5.02.025. The Recoverable Solid Waste Disposal Charge shall be in lieu of all other base disposal charges, user fees, regional transfer charges, rehabilitation and enhancement fees, and certification non compliance fees that may be required by of this chapter.
- (c) The Variable Charge for Recoverable Solid Waste shall be the greater of:
 - (1) The highest price charged by private solid waste operators for similar Recoverable Solid Waste as reported quarterly in the Market Price Report published by Metro Recycling Information; or

(2) The sum of:

(i) The contractual price paid by Metro to any contract operator of Metro South Station and Metro Central Station for recovering and processing Recoverable Solid Waste;

(ii) An amount equal to \$1.10 per ton for deposit into the Renewal & Replacement Account ~~The Metro Facility Fee as defined in Section 5.02.025 of this chapter and expressed on a per-unit basis~~; and

(iii) An amount equal to 21.6 percent of the Regional System Fee as ~~defined by set forth in~~ Metro Code Section 5.02.045 ~~and expressed on a per-unit basis~~.

(d) Notwithstanding subsection (b) of this section, there shall be a minimum charge for loads of Recoverable Solid Waste as established by the Director of the Regional Environmental Management Department.

(e) Notwithstanding any other provision of this section, the charge for the disposal of a single Christmas tree shall be the Transaction Charge as set forth in Metro Code Section 5.02.025.

(f) All Fees charged for disposal of Recoverable Solid Waste shall be clearly posted at Metro South Station and at Metro Central Station.

Section 3. Metro Code Section 5.02.035 is amended to read:

5.02.035 Litter Control Surcharge

(a) A surcharge of \$25 per ton, up to a maximum amount of \$100, shall be levied against any customer who disposes of solid waste or a Recoverable Solid Waste at Metro Central Station or at Metro South Station if, when entering the facility, any portion of the customer's waste or Recoverable Solid Waste is unsecured and visible to Metro scalehouse personnel.

(b) No surcharge shall be levied under this section if the solid waste or Recoverable Solid Waste is only visible through a secure covering.

(c) Notwithstanding subsection (a) of this section, a surcharge of \$3 per Solid Waste Disposal Transaction shall be levied against any customer who disposes of a single load of solid waste or recoverable solid waste that weighs ~~260~~240 pounds or less and that is unsecured and visible to Metro scalehouse personnel.

(d) The surcharge provided for in this section shall be collected in the same manner as Metro collects all other disposal fees and charges at the facility.

Section 4. Metro Code Section 5.02.045 as amended by Ordinance No. 06-1103 effective May 11, 2006 is amended to read:

5.02.045 System Fees

(a) The Regional System Fee shall be ~~\$14.54~~13.57 per ton of solid waste, prorated based on the actual weight of solid waste at issue rounded to the nearest one-hundredth of a ton.

(b) Any waste hauler or other person transporting solid waste generated, originating, or collected from inside the Metro region shall pay Regional System Fees to Metro for the disposal of such solid waste. Payment of applicable system fees to the operator of a Designated Facility shall satisfy the obligation to pay system fees, provided that, if such solid waste is transported to a Designated Facility outside of the Metro region, then such waste hauler or other person must have informed the operator of the Designated Facility that the solid waste was generated, originated, or collected inside the Metro region. In any dispute regarding whether such waste hauler or other person informed such operator that the solid waste was generated, originated, or collected inside the Metro region, such waste hauler or other person shall have the burden of proving that such information was communicated.

(c) Designated Facility operators shall collect and pay to Metro the Regional System Fee for the disposal of solid waste generated, originating, collected, or disposed of within Metro boundaries, in accordance with Metro Code Section 5.01.150.

(d) When solid waste generated from within the Metro boundary is mixed in the same vehicle or container with solid waste generated from outside the Metro boundary, the load in its entirety shall be reported at the disposal site by the generator or hauler as having been generated within the Metro boundary and the Regional System Fee shall be paid on the entire load unless the generator or hauler provides the disposal site operator with documentation regarding the total weight of the solid waste in the vehicle or container that was generated within the Metro boundary and the disposal site operator forwards such documentation to Metro, or unless Metro has agreed in writing to another method of reporting.

(e) System fees described in this Section 5.02.045 shall not apply to exemptions listed in Section 5.01.150(b) of this Code.

Section 5. Metro Code Section 5.02.047 is amended to read:

5.02.047 Regional System Fee Credits

~~six~~twelve

System Fee Credit Schedule

| Facility Recovery Rate | | |
|------------------------|-------------------|-----------------------------------|
| From Above | Up To & Including | System Fee Credit of no more than |
| 0% | 30% | 0.00 |
| 30% | 35% | 9.92 |
| 35% | 40% | 11.46 |
| 40% | 45% | 13.28 |
| 45% | 100% | 14.00 |

(b) The Chief Operating Officer:

(1) Shall establish administrative procedures to implement subsections (b) and (c) of Metro Code Section 5.02.046; and

(2) May establish additional administrative procedures regarding the Regional System Fee Credits, including, but not limited to establishing eligibility requirements for such credits and establishing incremental System Fee Credits associated with Recovery Rates which fall between the ranges set forth in paragraph (a) of this section.

(c) Any person delivering Cleanup Material Contaminated By Hazardous Substances that is derived from an environmental cleanup of a nonrecurring event, and delivered to any Solid Waste System Facility authorized to accept such substances shall be allowed a credit in the amount of ~~\$12.59~~11.07 against the Regional System Fee otherwise due under Section 5.02.045(a) of this Chapter.

(d) During any Fiscal Year, the total aggregate amount of credits granted under the Regional System Fee credit program shall not exceed the dollar amount budget without the prior review and authorization of the Metro Council.

(e) The Director of the ~~Regional Environmental Management~~ Solid Waste and Recycling Department shall make a semi-annual report to the Council on the status of the credit program. The report shall include that aggregate amount of all credits paid during the preceding six months and the amount paid to each facility eligible for the credit program. The report shall also project whether the appropriation for the credit program will be sufficient to meet anticipated credit payment requests and maintain existing contingency funding.

Section 6. Effective Date

The provisions of this ordinance shall become effective on September 1, 2006, or 90 days after adoption by Metro Council, whichever is later.

ADOPTED by the Metro Council this _____ day of _____, 2006.

David Bragdon, Council President

ATTEST:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 06-1118 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.02 TO ESTABLISH METRO'S SOLID WASTE DISPOSAL CHARGES AND SYSTEM FEES FOR FISCAL YEAR 2006-07

Date: May 18, 2006

Prepared by: Douglas Anderson

EXECUTIVE SUMMARY

Adoption of the FY 2006-07 Solid Waste Rate Ordinance would implement the rates shown in boldface in the following table. As a result, on September 1, 2006, the Metro tip fee would fall by \$1.55 per ton to \$69.86 and the Regional System Fee collected from privately-owned disposal sites would fall 97¢ to \$13.57 per ton.

Solid Waste Disposal Charges Effective September 1, 2006 through August 31, 2007

| Rate Components | Current Rates | This Ordinance | Change |
|----------------------------|------------------|-------------------|----------|
| Transaction Fees | | | |
| Scalehouse users | \$7.50 | \$8.50 | \$1.00 |
| Automated scale users | \$7.50 | \$3.00 | (\$4.50) |
| <u>Per-ton rates:</u> | | | |
| Tonnage charge | \$46.80 | \$46.20 | (\$0.60) |
| Regional System Fee | \$14.54 | \$13.57 | (\$0.97) |
| Excise tax | \$8.33 | \$8.35 | \$0.02 |
| DEQ & host fees | \$1.74 | \$1.74 | - 0 - |
| Metro Tip Fee | \$71.41 | \$69.86 | (\$1.55) |
| Minimum load charge | \$17 | \$17 | \$0.00 |

Notes

Boldface type indicates the rates that are amended by this ordinance.

Minimum load charges are based on 260 pounds in a single load in FY 2005-06, and 240 pounds in FY 2006-07.

Ordinance No. 06-1118 implements the Solid Waste Advisory Committee's (SWAC) recommendation that Metro's fees reflect the different costs of serving various customer classes. SWAC's recommendation is implemented through a two-part transaction fee: one fee for users of the staffed scalehouses, and a different transaction fee for users of the automated scale system. All users would pay the same tip fee.

These rates fully recover the net solid waste operating costs in the FY 2006-07 Approved Budget; they meet the Rate Covenant of the Solid Waste Revenue Bonds relating to the debt service coverage; and fulfill the Metro Charter's Section 15 limitation that charges for the provision of good or services may not exceed the costs of providing the goods or services.

BACKGROUND

A Two-Part Transaction Fee

In 1998, Metro adopted a fixed fee for each transaction to cover the fixed costs of operating the transfer stations—for example, scalehouse and management costs. Variable costs—primarily, payments to the big three contracts for operations, transport and disposal—are recovered by the tip fee.

The FY 2006-07 Rate Ordinance refines the structure of the transaction fee by introducing a two-part rate. Since implementing the transaction fee in June 1998, Metro has levied a single charge, currently \$7.50, regardless of the type of user. Empirical work during the last year has shown that Metro's fixed costs vary significantly by customer classes. In particular, small loads delivered by public self-haulers via the staffed scalehouses are among the most costly to manage. The Rate Policy Subcommittee of SWAC, which met from September 2005 through February 2006, was charged with examining this issue and making policy recommendations. By balancing an analysis of cost with rate design principles, the Rate Policy Subcommittee recommended that Metro implement a split transaction fee based on two customer classes, defined between users of the staffed scalehouses vs. users of the automated scale system.

This recommendation was brought before the Metro Council at its March 28 Work Session. The Council concurred with subcommittee's recommendation and directed that it be brought before the Rate Review Committee. The Council further asked that staff provide an analysis of the economic effect of the new rates on generators and on solid waste facilities. In addition, the Council asked for an assessment on recycling. These analyses are provided in this staff report below.

Based on an analysis of costs and usage, on April 12, 2006 the Rate Review Committee recommended that Council adopt an \$8.50 fee for transactions at the scalehouses and \$3.00 for automated transactions.

Economic Analysis of this Year's Rate Changes

The analyses in this section are divided into three parts: generators, facilities, and Metro customers.

Generators. Generators pay Metro's disposal charges through their monthly bills for garbage collection. Disposal costs range from an average of about 22 percent of the residential bill, up to 60 percent or more for large commercial generators. The economic effect on a range of generators is shown in the following table.

Effect of Proposed Rate Changes on Monthly Collection Costs

| Generator | Average Current Monthly Garbage Bill (total cost) | Decrease in Monthly Bill due to Metro's Rate Changes | |
|-----------------------|---|---|-----------------------------------|
| | | Per Month | Per Day |
| Residential | \$21.60 | -16¢ | < -1/2 ¢ |
| Small Business | \$86.40 | -93¢ | -3¢ |
| Medium Office | \$336 | -\$4.56 | -15¢ |
| Sit-Down Restaurant | \$2,736 | -\$51.93 | -\$1.73 |
| | <u>Current Disposal Cost</u> | <u>Decrease in Cost per Load</u> | |
| Drop Boxes (roll-off) | \$186 | -\$8.37 (at automated scales) | -\$2.87 (at staffed scales) |

The changes range from less than half a penny a day for residential generators, up to a savings of \$1.73 per day for a medium-sized sit-down restaurant that discards almost 300 tons of waste per year.* As source-separated recycling is relatively price-inelastic (especially for small-quantity generators for whom participation is governed more by convenience and service frequency than costs), very little effect on recycling and recovery can be expected from the small changes shown in the table. Furthermore, generators will probably not see their garbage bills fall by the amount in the table, as haulers' rising fuel costs will most likely offset a portion of the savings from disposal.

Private Facility Economics. Metro's Regional System Fee and Excise Tax are levied on waste that is landfilled. Accordingly, the system fee and excise tax are a cost to private solid waste facilities. Combined, the proposed rates are \$21.92 (\$13.57 RSF + \$8.35 ET) next year. This is down from \$22.87 (\$14.54 + \$8.33) this year. Thus, disposal Private solid waste facilities will receive a 95¢ per ton reduction in Metro fees based on the proposed rates.

However, most private facilities rely on tip fees for the majority of their revenue. If this ordinance is adopted, Metro's tip fee would drop \$1.55 per ton, from \$71.41 to \$69.86. If the effect of the two-part transaction is considered, the reduction is even steeper. So while the Regional System Fee and Excise Tax provide some cost relief to private facilities, this will be more than offset by the drop in the tip fee, if private facilities reduce their tip fee to match Metro's tip fee.

Historically, private facilities have tracked Metro's tip fee, but this relationship may be breaking down. Most facility operations have informed Metro that rising fuel prices, labor and the cost of capital dictate that their tip fees will equal or exceed Metro's rate next year. It remains to be seen how these price dynamics will affect flow among facilities.**

Metro's Customers. Metro customers will see very small changes in cost due to the new rates, except for very large loads which will experience a noticeable decrease (see table below). The cost falls for the majority of load sizes. The cost rises only for users of the scalehouses delivering up to about two-thirds of a ton. In calendar year 2005, 229,177 transactions (of the 356,010 total) arrived with load sizes less than 0.65 tons. This user class is almost perfectly correlated with public self-haulers. Thus, the new rate structure has the intended effect of charging users their fair share of the costs for which they are responsible.

Customers' Cost Per Load at Metro Transfer Station *
(Selected Load Sizes)**

| Load Size | Current Cost | Cost under Proposed Rates | | Increase / (Decrease) | |
|----------------|--------------|---------------------------|-----------|-----------------------|-----------|
| | | Scalehouse | Automated | Scalehouse | Automated |
| min (240 lbs.) | \$17.00 | \$17.00 | \$17.00 | \$0.00 | \$0.00 |
| ¼ Ton | \$25.35 | \$25.97 | \$20.47 | \$0.61 | (\$4.89) |
| ½ Ton | \$43.21 | \$43.43 | \$37.93 | \$0.23 | (\$5.28) |
| 0.65 ton | \$53.92 | \$53.92 | \$48.41 | \$0.00 | (\$5.51) |
| 1 Ton | \$78.91 | \$78.36 | \$72.86 | (\$0.55) | (\$6.05) |
| 3 Tons | \$221.73 | \$218.08 | \$212.58 | (\$3.65) | (\$9.15) |
| 5 Tons | \$364.55 | \$357.80 | \$352.30 | (\$6.75) | (\$12.25) |
| 10 Tons | \$721.60 | \$707.10 | \$701.60 | (\$14.50) | (\$20.00) |

* Drop box disposal is a single event with wide variability in hauling distances, so disposal costs only are shown.

** It is highly unlikely that facilities will lose flow from their own hauling companies, so the main "play" is among waste controlled by independent haulers and commercial self-hauling.

*** Figures are shown unrounded for purposes of illustration. Actual charges are rounded down to the nearest 50¢.

Other Changes

The other changes to Chapter 5.02 are routine, except for one. In Section 1 of the Ordinance, Metro Code subsection 5.02.025(b) is amended to authorize the Chief Operating Officer to waive the Regional System Fee at Metro facilities for a very narrow group: franchised haulers who collect waste outside the district and deliver that waste to a Metro transfer station, currently representing about 12,000 tons. In point of fact, these haulers do not have to deliver waste to Metro (Metro has no flow control authority over out-of-district waste); and furthermore, there are now several cheaper disposal options available to them. In recent years, Metro has experienced an erosion of almost 40 percent of the amount of out-of-district waste it receives from these franchised haulers; and Metro is at risk of losing 80 percent of the remaining 12,000 tons—almost all of this due to pricing. The main purpose of this exemption is to slow or stop the erosion of tonnage that is brought to Metro from outside the district. The fiscal cost is about 12¢ per ton increase in the Regional System Fee. This would protect about \$100,000 in general fund (excise tax) revenues; and preserve transaction fees and tonnage charges against the department's operating costs. Furthermore, there is policy precedent for such an action. In recent years the Council has *explicitly* removed the requirement on private facilities to collect the RSF on out-of-district putrescible waste. So now, Metro is the only facility that continues to collect Regional System Fees on out-of-district route waste. Accordingly, this amendment would also align Metro with its own policies toward private facilities in this area. The department's detailed analysis of this issue is available on request.

INFORMATION/ANALYSIS

- 1. Known Opposition.** There is no known opposition.
- 2. Legal Antecedents.** Metro's solid waste rates are set in Metro Code Chapter 5.02. Any change in these rates requires an ordinance amending Chapter 5.02. Metro reviews solid waste rates annually, and has amended Chapter 5.02 when changes are warranted.
- 3. Anticipated Effects:** This ordinance better aligns Metro's prices with the customer classes that are responsible for costs at the transfer stations. The prices changes are not expected to have a significant impact on source-separated recycling. All else equal, the new price structure mildly erodes the financial position of any private facility that matches Metro's rates exactly; however, most private facilities have indicated that they intend to charge a higher tip fee than Metro in order to maintain their economic margins which are also affected by the increasing costs of fuel, labor and capital. See the analysis in **Background**.
- 4. Budget Impacts.** These rates are designed to recover fully the department's net operating cost for FY 2006-07. These rates are in full compliance with the Rate Covenant of the Solid Waste Revenue Bonds relating to debt service coverage.

RECOMMENDATION

The Chief Operating Officer recommends adoption of Ordinance No. 06-1118.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ENTERING AN) Resolution No. 06-3700
ORDER RELATING TO THE DARRIN BLACK)
CLAIM FOR COMPENSATION UNDER) Introduced by Chief Operating Officer
ORS 197.352 (MEASURE 37)) Michael Jordan with the concurrence of
) Council President David Bragdon

WHEREAS, Darrin Black filed a claim for compensation under ORS 197.352 (Measure 37) and Chapter 2.21 of the Metro Code contending that Metro regulations had reduced the fair market value of property he owns in the city of Damascus; and

WHEREAS, the Chief Operating Officer reviewed the claim and submitted a report to the Metro Council, pursuant to section 2.21.040 of the Metro Code, recommending denial of the claim for the reason that the Metro regulation that is the basis for the claim has not reduced the fair market value of the claimant’s property; and

WHEREAS, the Metro Council held a public hearing on the claim on June 1, 2006, and considered information presented at the hearing; now, therefore

BE IT RESOLVED that the Metro Council:

- 1. Enters Order 06-001, attached to this resolution as Exhibit A, which denies the claim for compensation.
- 2. Directs the Chief Operating Officer (“COO”) to send a copy of Order No. 06-001, with Exhibit A attached, to the claimant, persons who participated in the public hearing on the claim, the city of Damascus and the Oregon Department of Administrative Services. The COO shall also post the order and Exhibit A at the Metro website.

ADOPTED by the Metro Council this 1st day of June, 2006

David Bragdon, Council President

Approved as to form:

Daniel B. Cooper, Metro Attorney

Exhibit A to Resolution No. 06-3700

Order No. 06-001

RELATING TO THE DARRIN BLACK CLAIM
FOR COMPENSATION UNDER ORS 197.352 (MEASURE 37)

Claimant: Darrin Black

Property: 21549 SE Tillstrom Road, Damascus, Oregon;
Township 1s, Range 3E, Section 33A, Tax Lot 500 (map attached)

Claim: Temporary 20-acre minimum size for creation of new lots and parcels in Title 11 of the Urban Growth Management Functional Plan has reduced the value of the claimant's land.

Claimant submitted the claim to Metro pursuant to Metro Code Chapter 2.21. This order is based upon materials submitted by the claimant and the report prepared by the Chief Operating Officer ("COO") prepared pursuant to section 2.21.040.

The Metro Council considered the claim at a public hearing on June 1, 2006.

IT IS ORDERED THAT:

The claim of Darrin Black for compensation be denied because it does not qualify for Compensation for reasons set forth in the report of the COO.

ENTERED this 1st day of June, 2006.

David Bragdon, Council President

Approved as to form:

Daniel B. Cooper, Metro Attorney

**CLAIM FOR COMPENSATION
UNDER BALLOT MEASURE 37
AND METRO CODE CHAPTER 2.21**

REPORT OF THE METRO CHIEF OPERATING OFFICER

**In Consideration of Council Order No. 06-001
For the Purpose of Entering an Order
Relating to the Measure 37 Claim of Darrin Black**

May 4, 2006

| | |
|-------------------------------------|---|
| METRO CLAIM NUMBER: | Council Order No. 06-001 |
| NAME OF CLAIMANT: | Darrin Black |
| MAILING ADDRESS: | c/o Michael Hammons, Agent Prudential Northwest Properties—Damascus 20320 SE Highway 212 Clackamas, OR 97015 |
| PROPERTY LOCATION: | 21549 SE Tillstrom Road Gresham, OR 97080 Damascus, Clackamas County, OR 97080 |
| LEGAL DESCRIPTION: | T1S R3E Section 33A Tax Lot 500 |
| DATE OF CLAIM: | August 26, 2005 |
| 180-DAY PROCESSING DEADLINE: | February 17, 2006 |

I. CLAIM

Claimant Darrin Black seeks compensation in the amount of \$1,580,000 for a reduction in fair market value of property owned by the claimant as a result of enforcement of Metro Code Section 3.07.1110 C of Title 11. In lieu of compensation, claimant seeks a waiver of that regulation so claimant can apply to the City of Damascus to divide the 12.78-acre subject property into a maximum of 12 lots and develop a single family dwelling on each lot that does not already contain a dwelling.

The Chief Operating Officer (COO) sent notice of date, time and location of the public hearing on this claim before the Metro Council on May 5, 2006. The notice indicated that a copy of this report is available upon request and that the report is posted on Metro's website.

II. SUMMARY OF COO RECOMMENDATION

The COO recommends that the Metro Council deny the claim for the reasons explained in section IV of this report. The facts and analysis indicate that Metro's action to bring claimant's land into the UGB, designate it Inner Neighborhood (allowing high-density residential development), and applying a 20-acre minimum lot size temporarily while planning is completed did not reduce the fair market value of claimant's property.

III. TIMELINESS OF CLAIM

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from a land use regulation enacted *prior* to the effective date of Measure 37 (December 2, 2004), within two years of that date, or of the date a public entity applies the regulation to the property as an approval criterion in response to an application submitted by the owner, whichever is later; or
2. For claims arising from a land use regulation enacted *after* the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the regulation, or of the date the owner of the property submits a land use application for the property in which the regulation is an approval criterion, whichever is later.

Findings of Fact

The claimant submitted this claim on August 26, 2005. The claim identifies Metro Code section 3.07.1110 C as the basis of the claim. The Metro Council added the regulation that gives rise to this claim on September 10th, 1998 by Ordinance 98-772B, prior to the effective date of Measure 37 (December 2, 2004).

Conclusions of Law

Metro adopted the regulation that gives rise to this claim prior to the effective date of Measure 37. The claim, therefore, is timely.

IV. ANALYSIS OF CLAIM

1. Ownership

Metro Code section 2.22.020(c) defines "owner" to mean the owner of the property or any interest therein. "Owner" includes all persons or entities who share ownership of a property.

Findings of Fact

The claimant acquired an ownership interest in the subject property on June 20, 1979, and has had a continuous ownership interest since that date. Attachment 1 is a site map of the subject property showing the location of the existing residence, Rock Creek, topography, and the location of a possible wetland (ATTACHMENT 1).

Conclusions of Law

The claimant, Darrin Black, is an owner of the subject property as defined in the Metro Code.

2. Zoning History

Findings of Fact

The first zoning of the property was Rural (Agricultural) Single Family Residential District (RA-1), applied on September 8, 1964. The property was rezoned Transitional Timber District (TT-20) on June 19, 1980. The property was rezoned Timber (TBR) on July 20, 1994. The TBR zone includes a minimum lot size of 80 acres for almost all new lots and stringent standards controlling development of single-family dwellings. Following incorporation of the City of Damascus in November 2004, the city signed an Intergovernmental Agreement with the county calling on the county to provide planning services and apply county zoning until the city adopts its own comprehensive plan. Under the current TBR zone, division of the property is prohibited, except for certain types of conditional uses specified in the Damascus Zoning and Development Ordinance (ZDO 406.05, 406.08, 406.10). Additional primary dwellings are also prohibited.

3. Applicability of a Metro Functional Plan Requirement

Findings of Fact

In 2002, Metro Council expanded the urban growth boundary by adopting Ordinance No. 02-969B to add 12,200 acres in the Damascus area. The subject property is located within the Damascus urban growth boundary expansion area.

Section 3.07.1110 C of Metro's Code prohibits any division of land into lots or parcels smaller than 20 acres, except for public schools or other urban services, pending adoption of urban comprehensive plan designations and zoning.

The City of Damascus adopted Resolution No. 05-67 on December 19th 2005 waiving certain of the City's land use regulations, allowing the claimant to apply to divide his property into one-acre lots, consistent with Rural (Agricultural) Single Family Residential District (RA-1). The City's Resolution and Order do not waive or otherwise affect lot size or other regulations to the property adopted by Metro.

Conclusions of Law

Section 3.07.1110 C of the Metro Code applies to the subject property and became applicable after the claimant acquired the property. Thus, the section did not apply to the subject property at the time claimant acquired it. The section does not allow the claimant to partition or subdivide his 12.78-acre property. The claimant would have been able to apply to Clackamas County to create 12 one-acre parcels and develop a single family dwelling on each lot (that did not already contain a dwelling) when he/she acquired the property in 1979.

4. Effect of Functional Plan Requirement on Fair Market Value

Findings of Fact

Section 2.21.040(d)(5) requires the Chief Operating Officer (COO) to determine whether the temporary 20-acre minimum size for the creation of new lots or parcels applicable to territory newly added to the UGB has reduced the value of claimant's land. The COO's conclusion is based upon the analysis of the effect of Metro's action contained in ATTACHMENT 2 (Metro Memorandum to Paul Ketcham and Richard Benner from Sonny Conder and Karen Hohndel dated April 28, 2006 (Conder Memo)).

The claimant has submitted comparable sales data to support his assertion that the temporary 20-acre minimum size has reduced the value of his property by \$1,580,000. From a comparable sales analysis, claimant asserts that the property's current fair market value (FMV), with the temporary 20-acre minimum size in place, is worth \$935,000. From a separate comparable sales analysis, claimant asserts that a one-acre parcel for a homesite has a current FMV of \$235,000. Because county zoning at the time claimant purchased the land allowed creation of one-acre homesites, claimant then multiplies \$235,000 times the number of one-acre homesites he could have created (11 homesites, with one lot remaining under the existing dwelling), giving a value of \$2,585,000. To this value claimant adds \$350,000 for the value of the current house; from it claimant subtracts \$420,000 for development costs of the subdivision. These adjustments yield a net FMV of \$2,515,000. Finally, claimant subtracts the \$935,000 FMV of the *regulated* property from the \$2,515,000 net FMV of the *unregulated* property to derive the asserted net reduction in FMV of \$1,580,000.

The Conder Memo analyzes the claimant's information and applies two different methods for determining the effect of Metro's action on the value of claimant's property.

1. "Comparable Sales" Method

This method compares the value of the property in its current regulatory setting with its value today as though Metro's action had not happened. The current regulatory setting is as follows: by Ordinance No: 02-969B, Metro (1) added the property to the UGB; (b) designated the property with the "Inner Neighborhood" 2040 Growth Concept design type designation; and (3) applied a temporary 20-acre minimum lot size to preserve the status quo while the city of Damascus completes the comprehensive planning necessary to allow urbanization of the previously rural (outside the UGB) land. Had Metro's action not happened, the property – given the waiver by the city of Damascus – would be outside the UGB under Clackamas County zoning of RA-1 (Residential-Agriculture, one-acre minimum lot size) (zoning on date of claimant's purchase of property, 1979).

The comparable sales that claimant provides, for reasons explained in the Conder Memo, do not accurately reflect the values with or without Metro's regulatory action. For example, in his valuation, the claimant relies on the assumption that the increase in value associated with being included within the UGB can also be used to assert a loss resulting from being included in the UGB. Data generated by Metro's Data Resource Center and analyzed in the Conder Memo

provide an accurate assessment of values. Attachment 3 is a map showing the sample area of 2004-2005 sales data used by Metro Data Resources Center in its analysis.

Table 4 of the Conder Memo compares today's values of the property with and without Metro's action, adjusting in all cases for costs of development and limitations on development of the site that a prudent investor would take into account. The comparison offers a range of lots and lot sizes to reflect the lack of precise information about site limitations. The table shows that the most conservative assumptions about value under the Inner Neighborhood designation inside the UGB is virtually equivalent to the highest value under RA-1 zoning outside the UGB. With less conservative assumptions, the value under the Inner Neighborhood designation greatly exceeds the value under RA-1 zoning.

2. The Plantinga/Jaeger Method

This method assumes that claimant's purchase price in 1979 accurately reflected the development opportunities allowed by the RA-1 zoning that then applied. The method "indexes" that value to the present and compares the indexed value with today's value with the regulation in question. If the indexed value of the purchase price exceeds the value of the property in today's regulatory setting, the regulation has reduced the value of a claimant's property.

The Conder Memo applies this method using the claimant's purchase price of \$34,950. The memo uses four different indices to measure the increase in the value of the property over time. Table 3 shows that, regardless of the index chosen, the value of claimant's property under today's regulations exceeds the indexed value.

Conclusions of Law

The facts and analysis indicate that Metro's action to bring claimant's land into the UGB, designate it Inner Neighborhood (allowing high-density residential development), and applying a 20-acre minimum lot size temporarily while planning is completed did not reduce the fair market value of claimant's property.

5. Exemptions under ORS 197.352(3)

Findings of Fact

Section 3.07.1110 C of the Metro Code does not restrict or prohibit a public nuisance, the selling of pornography or nude dancing, is not intended to protect public health or safety, and is not required to comply with federal law.

Conclusions of Law

Section 3.07.1110 C of the Metro Code is not exempt from Measure 37 under ORS 197.352(3).

6. Relief for Claimant

Findings of Fact

The Metro Council has appropriated no funds for compensation of claims under Measure 37. Waiver of Metro Code Section 3.07.1110 C to the subject property will allow the claimant to apply to the City of Damascus to divide the subject property into 12 parcels and to develop a single family dwelling on each lot that does not already contain a dwelling. The effect of development as proposed by the claimant will be to reduce the residential capacity of the City of Damascus and of the UGB. It would also make provision of urban services less efficient and more complicated.

Conclusions of Law

Based on the record, the claimant has not established that he is entitled to relief in the form of compensation or waiver of the interim 20-acre minimum lot size requirement under Metro Code Section 3.07.1110 C.

ATTACHMENTS TO THE REPORT OF THE CHIEF OPERATING OFFICER

Attachment 1: Site Map of Darrin Black Property

Attachment 2: Metro Memorandum to Paul Ketcham and Richard Benner from Sonny Conder and Karen Hohndel, "Valuation Report on the Darrin Black Measure 37 Claim," dated April 28, 2006

Attachment 3: Sample Area of 2004-2005 Sales Data for Damascus UGB Expansion Area and One Mile Buffer, Clackamas County, OR

**CLAIM FOR COMPENSATION
UNDER BALLOT MEASURE 37
AND METRO CODE CHAPTER 2.21**

SUPPLEMENTAL REPORT OF THE METRO CHIEF OPERATING OFFICER

**In Consideration of Council Order No. 06-001
For the Purpose of Entering an Order
Relating to the Measure 37 Claim of Darrin Black**

May 18, 2006

METRO CLAIM NUMBER: Council Order No. 06-001

NAME OF CLAIMANT: Darrin Black

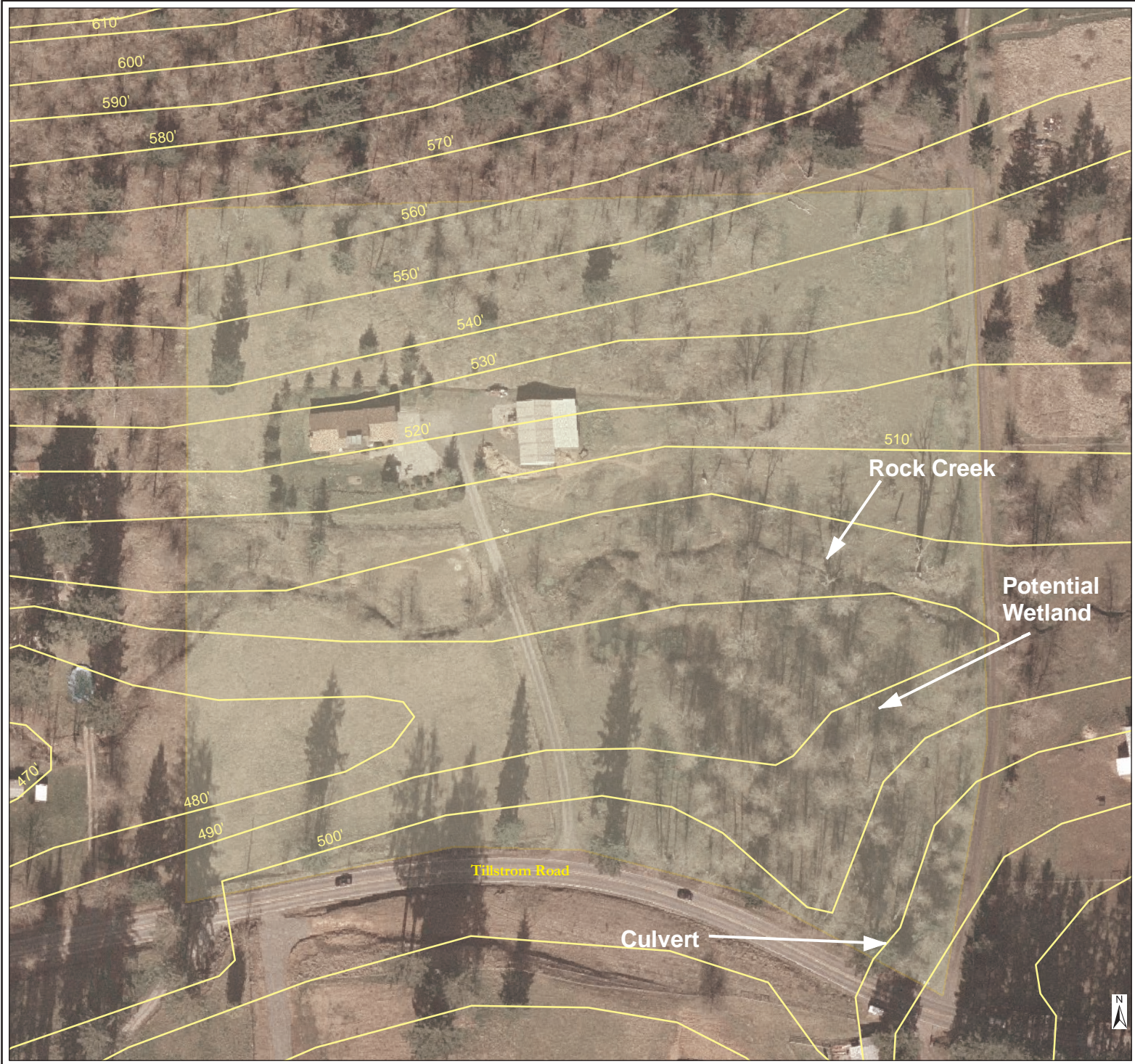
This Supplemental Report adds new information and analysis to section IV, Analysis of Claim, of the May 4, 2006, Report of the Chief Operating Officer (COO). This new information and analysis does not change the COO's conclusion that Metro's regulation did not have the effect of reducing the real market value of claimant's property or his recommendation that the Council reject the claim.

4. Effect of Functional Plan Requirement on Fair Market Value

As noted in the May 4 Report, at the time claimant acquired the subject property (1979), Clackamas County zoned the property RA-1, Rural Agriculture – 1 Acre. The claimant asserts that he could have divided his 12.78-acre parcel into 12 lots under RA-1 zoning, and bases the valuation of his property on this assumption. This assumption, however, is incorrect

The statewide planning goals were adopted by the Land Conservation and Development Commission (LCDC) and became effective on January 25, 1975. As of the time claimant acquired the subject property in 1979, LCDC had not yet acknowledged the Clackamas County Comprehensive Plan or zoning ordinances. Thus, the goals applied directly to claimant's property when he bought it. Given the soils on the property, it was subject to Goal 3 (Agricultural Lands) and 4 (Forest Land), among other goals.

In order to bring its plan and zoning ordinances into compliance with the goals, Clackamas County rezoned claimant's property to the county's TT-20, Transitional Timber – 20-Acre zone, on June 19, 1980. LCDC later found this zone to comply with Goal 4. Goal 4, applicable to the property when claimant acquired it, would not have allowed creation of any new lots or parcels. The value of claimant's property at the time of acquisition must reflect these limitations on use and division of the property.



R L I S

REGIONAL LAND INFORMATION SYSTEM

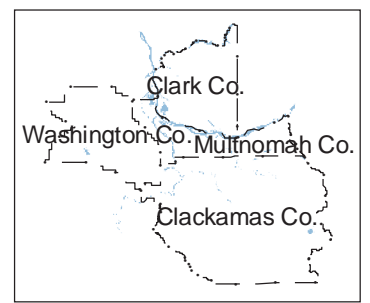
Resolution No. 06-3700
Attachment 1 COO Report

Site Map Black Measure 37 Claim

 Subject Property

The information on this map was derived from digital databases on Metro's GIS. Care was taken in the creation of this map. Metro cannot accept any responsibility for errors, omissions, or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.

1 inch equals 0.02 miles
0 50 100 Feet



Location Map



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

M E M O R A N D U M



April 28, 2006

To: Paul Ketcham, Principal Regional Planner
Richard Benner, Senior Attorney

From: Sonny Conder, Principal Regional Planner
Karen Hohndel, Associate GIS Specialist

Subject: Valuation Report on the Darrin Black Measure 37 Claim

Conclusion:

Per your request we have conducted a valuation analysis of the Darrin Black Measure 37 Claim. We conclude that the Metro action of including the property inside the UGB, designating it “Inner Neighborhood” and imposing a temporary 20 acre minimum lot size for development has not produced a material loss of value for the subject property¹. On the contrary, compared to development in a rural residential setting on 1 acre lots, the action is more likely to have resulted in a material gain in property value.

Conceptual Understanding for Basis of Property Value Analysis:

We understand the present Measure 37 valuation problem to consist of making two property value estimates. These are:

1. Estimate the current market value of the property subject to the regulation which the claimant contends has reduced the value of his property.
2. Estimate the current market value of the property in the absence of that regulation, and with the zoning that applies following the waiver granted by the City of Damascus.

Metro Ordinance No. 02-969B applied a set of new regulations to the claimant’s property. First the ordinance brought claimant’s property into the region’s urban growth boundary, making the property eligible for urban high-density development rather than rural low-density development. Second, the ordinance designated the property “Inner Neighborhood”, the

¹ We use the term “material” in the accounting/auditing sense that given the statistical variability inherent in the data there is no difference between two measurements of land value.

higher density residential designation in Metro's 2040 Growth Concept. Third the ordinance applied a temporary 20-acre minimum lot size to protect the status quo while local governments complete amendments to comprehensive plans to allow urban development. Within this overall framework any particular property may have a substantial range of housing types and lot sizes. Implicit in this design designation is the availability of urban level capital facilities including sanitary sewers, storm water retention and management, water distribution, streets, roads, parks and other infrastructure and services associated with urban living. All development is assumed to occur in compliance with all health and safety regulations.

The default land use is the Clackamas County designation of RA-1. This land use designation is a rural designation allowing one dwelling unit per acre. All development under RA-1 must conform to applicable health and safety regulations. Most significant is that the reference default land use must be outside the present UGB in a rural setting. While seeming to be a subtle distinction, the requirement of a rural setting outside the UGB is conceptually pivotal to the valuation. To use RA-1 or equivalent land inside the UGB as a basis for valuation includes the property value increasing amenity effects of urban services and infrastructure. It is logically contradictory to argue that inclusion inside the UGB and designation of the land for urban purposes has reduced a property's value but to include those very effects in the estimate of the property value without the subject action.

Alternative Method of Computing Property Value Loss Resulting From Regulation

Estimating loss of property value using the usual appraisal method of "comparative sales" has been the subject of substantial criticism. Andrew Plantinga and William Jaeger², economists at OSU, have written papers pointing out that using the method of comparative sales does not compute the loss due to regulation. Rather the estimated "value loss" is actually the gain resulting from obtaining an exemption to the general rule. To better understand their arguments, we may think of the comparative sales method of determining an economic loss as equivalent to determining the value of issuing someone a special license or franchise to carry out an economically valuable function that others may not do. For instance, licenses to operate taxi cabs in New York are seldom issued and in great demand. As a result the license itself has acquired substantial economic value. An example closer to home is the value of an Oregon Liquor License prior to more liberal issuing standards in the 80's. In the 1950's through roughly the 70's, an Oregon Liquor License for a restaurant or bar vastly increased the property value of the establishment that had one. Plantinga and Jaeger argue that the

² Andrew Plantinga, *Measuring Compensation Under Measure 37: An Economist's Perspective*, Dec. 2004, 15 pages. (Available at OSU Department of Agricultural and Resource Economics, URL: plantinga@oregonstate.edu).

William K. Jaeger, *The Effects of Land Use Regulations on Land Prices*, Oct. 2005, 38 pages. (Available at OSU Department of Agricultural and Resource Economics, URL: wjaeger@oregonstate.edu).

Also: William K Jaeger, *The Effects of Land-Use Regulations on Property Values*, **Environmental Law**, Vol. 36:105, pp. 105 – 127, Andrew J. Plantinga, et. al., *The effects of potential land development on agricultural land prices*, **Journal of Urban Economics**, 52, (2002), pp. 561 – 581. and Sonny Conder and Karen Hohndel, *Measure 37: Compensating wipeouts or insuring windfalls?*, **Oregon Planners' Journal**, Vol. 23, No 1. Dec. – Jan 2005. pp. 6 – 9.

value of the property hinges on scarcity resulting from regulation. If everyone had a taxi cab or liquor license, they would have no value. From an economic perspective, using a method that really measures value gained from regulation is not the same as determining economic loss resulting from regulation.

Plantinga and Jaeger go on to suggest an economically appropriate measure of loss resulting from subsequent land use regulation. Their method is grounded in the well established and tested Theory of Land Rent. Simplified a bit the Theory of Land Rent holds that the value of land at any particular time is the future net profit from the land used in its most efficient allowable use. The market also adjusts (discount factor) this value to account for time and uncertainty as to future uses. What this means is that the original sales price incorporates future expectations about how the land might be used. If we take the original sales price and bring it up to the current date by using an appropriate price index, we are able to measure in today's prices what the land was worth when it was purchased under the original regulatory requirements.

The above procedure yields an estimate of the original value of the property in today's dollars. We can then compare that estimate to the market worth of the property with the new regulation. If the adjusted original estimate exceeds the present market value, then the owner has experienced a loss. If the adjusted original estimate is equal to or lower than the property value under the new regulation, then the owner has experienced no loss.

This method allows a consistent computation of property loss due to subsequent regulatory changes. At the same time it avoids awarding particular property owners a bonus that was not anticipated in the original purchase price. Owners are compensated for what they lost; but they are not awarded an extra benefit owing to unanticipated growth, infrastructure investment or regulatory changes.

Since the Plantinga-Jaeger approach represents a consistent and fair method of evaluating economic loss to property resulting from regulation, we are also valuing property claims according to their suggested method.

Property Valuation Analysis Procedure:

Our property valuation analysis procedure consists of the following steps.

- Briefly describe the property and make a prudent assessment of development limitations to establish a likely range of residential capacity under both "Inner Neighborhood" and RA-1 designations assuming health and safety regulations are enforced.
- Based on recent sales (2005) of lots and existing properties inside the Damascus expansion area determine the current (2006) value of the property with a reasonable range of "Inner Neighborhood" development configurations including a 10 year discount factor for lag time in service provision.

- Based on recent sales (2005) of property in a buffer zone extending 1 mile outside the present UGB within Clackamas County determine the value of residential property on lots of .5 to 1.5 acres in size. This procedure establishes a reasonable range of values for residential properties of RA-1 configuration in a rural setting.
- Provide an alternative valuation of the Darrin Black property based on an adjustment to original sales value that has been advocated by OSU Economists Andrew Plantinga and William Jaeger.
- Evaluate the lot value and home value comparables submitted as evidence with the Darrin Black Measure – 37 claim. Comment on whether those estimates are logically relevant to establish a Measure –37 property value loss assertion.
- Provide and compare estimates of the value of the subject property as of 2006 with Metro’s “Inner Neighborhood” designation versus Clackamas County’s RA-1 designation.

Darrin Black Property Description:

The subject property consists of 12.8 acres immediately north of Telford Road at approximately the 215th block in the community of Damascus. Clackamas County Assessor data show it as a 12.8 acre parcel with a residential structure. Assessor appraised value as of 2005 is \$577,000 with the land accounting for \$206,000 and the improvements for \$371,000. Assessor data show the home being constructed in 1980. Data submitted with the claim indicate the property was purchased in 1979 for \$34,950. We presume that the current residence was constructed after the land purchase date.

Visual inspection from Tillstrom Road and air photo inspection as well as relevant GIS data indicate that the property poses substantial limitations to development; the full extent of which would require sanitation, geotechnical and civil engineering professionals to fully delimit and elucidate. The salient limiting feature for development on the property is the stream and possible associated wetland that flows through the middle of the property. Two streams; one flowing directly from the east and the other from the south emerging from a road culvert converge on the southeast quadrant of the property and flow westward. Congruent with the stream is a slope that extends downward from Tillstrom Road to the stream and then upward in a northerly direction toward the top of the Butte. The north west portion immediately behind the house appears fairly steep and may limit development particularly road building of any type without substantial engineering mitigation. The northeast and southwest quadrants of the property appear more easily developed though the presence of the stream, possible wetlands and slope may substantially restrict the use of drain fields for septic tank dependent development.

Again, it is not in our professional capacity to assert with authority any definitive estimate of what the site limitations are; but rather to reflect what any prudent property investor must consider when pricing raw land. This holds true for both Metro’s “Inner Neighborhood” and the default use of RA-1.

Dwelling Unit Capacity Estimates:

To simplify our capacity estimates we assume that the existing residential structure is retained on the property. Accordingly, we reduce the property available for development from 12.8 to 11 acres. Should the property be developed in a configuration consistent with Metro’s Inner Neighborhood designation we estimate that anywhere from 5 acres (46%) to 7 acres (64%) of the 11 acres would be useable. Under RA-1 zoning it may be conceivable (septic tank and road restrictions notwithstanding) to use 6 – 8 acres for development. In all cases we assume the stream area, the possible associated wetland in the southeast quadrant and the steepest slopes in the northwest corner would not be available.

Based on similar terrain and developments in the UGB expansion area within the City of Happy Valley we calculate that with “Inner Neighborhood” given a range of lot sizes of 5,000 – 12,000 sq. ft., 5 lots per acre could be constructed on the buildable acreage. This assumes urban level infrastructure and design flexibility in lot shape and structure placement on the lot.

For the RA-1 designation we assume by definition 1 unit per buildable acre. In sum we expect the property with Metro’s Inner Neighborhood designation to yield 25 (5 times 5 acres) to 35 (7 times 5 acres) residential lots ranging from 5,000 to 12,000 sq. ft. in size. The RA-1 designation yields 6 – 8 buildable rural lots of 1 acre in size.

Current Value Estimate of “Inner Neighborhood” Buildable Lots in Damascus Expansion Area:

In order to establish a reasonable range of lot values for developing urban areas with infrastructure and nearby urban services, we evaluated all recent sales (year 2005) of land and lots within the Damascus UGB expansion area. As detailed in relevant data file and confirmed by the Clackamas County Assessor’s office, one area is under development. It consists of 38 acres that was included in the expansion area and annexed to Happy Valley. Data indicate that 152 lots of 7000 – 10000 sq. ft. have been sold for \$22.6 million for an average of \$149,000 per lot. The lot price range was from \$127,000 to \$175,000. The lots in question are ready to build lots with complete urban services inside the City of Happy Valley. They were also designated “Inner Neighborhood” when included within the UGB and subsequently zoned to R10 by the City of Happy Valley.

Since these lots were located in the urbanized, extreme western portion of the expansion area, we also examined 97 SFR year 2005 sales of properties designated Inner Neighborhood within the entire expansion area. Many of these sales occurred on properties that remain substantially rural in character without full urban services. Relevant summary results are in Table 1 below.

Table 1: Summary Property Value Data – Damascus Area Residential Sales

| | |
|---------------------|------------|
| Average Lot Size: | 1.02 acres |
| Median Lot Size: | 0.95 acres |
| Average Lot Value: | \$119,000 |
| Median Lot Value: | \$124,000 |
| Average Total Prop. | \$300,000 |

Median Total Prop. \$288,000
Average House Size: 2,450 Sq. Ft.
Median House Size: 2,350 Sq. Ft.

In addition we analyzed how lot values changes as a function of their size. Those data are depicted in Figure A attached in the Appendix.

When we adjust for lot size and the availability of full urban services, the data support a lot value range of \$100,000 to \$130,000 per buildable lot in 2005 dollars for “Inner Neighborhood” type development on the subject property. This value range encompasses a range of housing types and neighborhood conditions.

Current Value Estimate of “RA-1 Buildable Lots” in the 1 Mile Buffer Area Outside the UGB:

To establish the value range for “RA-1” size lots within the Clackamas rural area we selected all residential properties that sold in 2004 and 2005 within the 1 mile buffer zone with a lot size of .5 to 1.5 acres. These comprised 165 properties and their summary statistics are included below in Table 2.

Table 2: Summary Property Value Data – Clackamas Rural Residential (“RA-1”)

Average Lot Size: 0.93 acres
Median Lot Size: 0.96 acres
Average Lot Value: \$145,000
Median Lot Value: \$120,000
Average Total Prop. \$347,000
Median Total Prop. \$285,000
Average House Size: 2,550 Sq. Ft.
Median House Size: 2,400 Sq. Ft

For purposes of valuation we are assuming a range of \$120,000 to \$145,000 per buildable 1 acre lot for RA-1 rural locations.

Alternative Valuation of Darrin Black Property Using Method Suggested by Plantinga and Jaeger.

OSU economists Andrew Plantinga and William Jaeger have challenged the “comparable sales” approach of traditional appraisal methods. They have pointed out that it really measures the value obtained by an exception to the current rule; rather than a measure of economic loss suffered as a result of government land use regulation. As an alternative test they propose indexing the price that the property was purchased for to the present time using an appropriate index of property value, investment or consumer price change. Explicit to this suggestion is the Theory of Land Rent which holds that the price paid for land capitalizes reasonable expectations about its future use. If the initial purchase price anticipated a more intense future use, the indexed price should exceed the current market price under the revised

land use regulations. If the revised land use regulations are consistent with or exceed the expectations contained in the original purchase price, then the current market price will equal or exceed the indexed price.

Accordingly, we have computed from published sources four value change indices for the period 1979 through 2005. We have also converted the 1979 Black property purchase price of \$34,950 to value per acre. This allows us to look at the value of the raw land alone and not add in the complication of the existing residential structure. In 1979 the value of the 12.8 acres of raw land amounted to \$2,730 per acre. Table 3 below converts that value per acre to current 2005 dollars using 4 different value change indices.

Table 3: Darrin Black Property Value per Acre Given Market Expectations of Purchase Price (Plantinga-Jaeger Method)

| Index ³ | 79 Value | 2005 Value | Ratio | Value Per Acre 2005 \$ |
|--------------------|----------|------------|-------|------------------------|
| Port/Van CPI | 77.0 | 197.7 | 2.57 | \$7,016 |
| House Value Index | 59.9 | 241.5 | 4.03 | \$11,002 |
| Lot Value Index | 17.3 | 120.0 | 6.94 | \$18,946 |
| S&P500 Stock Idx | 99.7 | 1181.4 | 11.85 | \$32,349 |

All indices except the S & P 500 stock price index are for the Portland Vancouver area. The lot price index uses East Portland values for 1979 and Damascus/Happy Valley values for year 2005. The S & P index is the raw price index; not the real price index which is adjusted for inflation.

Depending on one's philosophy of an appropriate rate of investment return the Black Property raw land value per acre should vary between \$7,000 and \$32,000.

Evaluation of Darrin Black Claim of Comparable Properties

The basis for the Black property value loss claim rests on a market value estimate of \$235,000 per developed, ready to build lot assuming 11 buildable lots are available on the property. To support the estimate of \$235,000 per buildable lot, 12 properties are submitted as comparable. Of the 12, 11 of these properties are located inside of the Urban Growth Boundary. 10 are located within either Happy Valley or Gresham and all occupy prestige neighborhood locations with hilltop views or sweeping vistas. Examination of the Black property reveals the view is limited and the surrounding neighborhood can hardly be regarded as prestige either as measured in home value or design features. Whether the area evolves into a prestige urban neighborhood with full amenities remains problematic. As the data in Table 1 underscore, lot values are presently well below the \$235,000 per lot level. Indeed when we

³ The Portland – Vancouver Consumer Price Index is for all urban consumers from the Metro Regional Data Book, p. 73. The House Value Index is from the Metro Regional Data Book, p. 95. The Lot Value Index is taken from The Real Estate Report of Metropolitan Portland, Vol. 69, (Autumn 1989) and from Metro RLIS data on taxlots. The S&P 500 Stock Index is from Microsoft Internet Explorer, Wikipedia, the free encyclopedia, S&P500 URL: <http://en.wikipedia.org>

consider both the assessor appraised value of the lot and the improvement, total property values average about \$300,000.

The comparable sales data also include 7 built properties (lots with homes on them). Their sales value averages \$597,000 with a maximum listed price of \$805,000. The recommended completed home sales price for the Black property is then given at \$935,000. We did not evaluate those “comparables” further since the recommended sales price of \$935,000 exceeded the average and the sales price of any one of the “comparable” homes. We do note that industry standards usually maintain a ratio of 4:1 to 3:1 between home sales price and lot price. In this instance the ratio is 3.98.

Significant in the valuation of the Black property is the assumption that one may count the increase in value associated with being included within the UGB to assert a loss resulting from being included within the UGB.

Darrin Black Property Values Compared

Given the data developed in the previous Tables we may now summarize our estimates of the value per acre in 2006 for the Black property in its present location. To do so we have followed the procedure below.

1. Simplify the calculation by subtracting out the existing dwelling unit and 1.8 acres it occupies so we have 11 acres of raw land without services.
2. Assume a cost of providing water, sanitary sewer, drainage, streets and other on site utilities plus SDC's of \$50,000 per buildable lot for both Inner Neighborhood and RA-1.
3. Account for the value of time until the property could actually be developed. In the case of Inner Neighborhood we assume 10 years before development; so we discounted the value at 6.5% per year for 10 years. For RA-1 we assume development within 2 years; so we discounted the value at 6.5% per year for 2 years.
4. Convert the resultant values into the estimate of what a prudent investor would pay in 2006 per acre for the raw land.

Table 4 below depicts the results for low and high range assumptions for both Inner Neighborhood and RA-1.

Table 4: Comparison of Estimated Market Value of Raw Land for Inner Neighborhood and RA-1 Land Uses

| | |
|--|-------------|
| Inner Neighborhood | |
| Low Yield: | 25 DU |
| Low Range Lot Value: | \$100,000 |
| Development Cost per Lot: | \$50,000 |
| Net Raw Land per Lot: | \$50,000 |
| Total Raw Land Value (25x50,000): | \$1,250,000 |
| Current Market Value per acre for 11 acres | |

Resolution No. 06-3700
Attachment 2 Report of the Chief Operating Officer

| | |
|--|-------------|
| Discounted 10 years: | \$60,500 |
| High Yield: | 35 DU |
| High Range Lot Value: | \$125,000 |
| Development Cost per Lot: | \$50,000 |
| Net Raw Land per Lot: | \$75,000 |
| Total Raw Land Value (35x75,000): | \$2,625,000 |
| Current Market Value per acre for 11 acres | |
| Discounted 10 years: | \$127,100 |
| RA-1 | |
| Low Yield: | 6 DU |
| Low Range Lot Value: | \$120,000 |
| Development Cost per Lot: | \$50,000 |
| Net Raw Land per Lot: | \$70,000 |
| Total Raw Land Value (6x70,000): | \$420,000 |
| Current Market Value per acre for 11 acres | |
| Discounted 2 years: | \$33,700 |
| High Yield: | 8 DU |
| High Range Lot Value: | \$145,000 |
| Development Cost per Lot: | \$50,000 |
| Net Raw Land per Lot: | \$95,000 |
| Total Raw Land Value (8x95,000): | \$760,000 |
| Current Market Value per acre for 11 acres | |
| Discounted 2 years: | \$60,900 |

Figure B attached depicts the calculations in Table 4. We estimate the current raw land value of the Black property with Inner Neighborhood designation to range from \$60,500 per acre to \$127,100 per acre. The same property used as RA-1 in a rural setting would yield \$33,700 to \$60,900 per acre. In other words the most optimistic RA-1 valuation just equals the most pessimistic Inner Neighborhood valuation. Given these results we would conclude that the Inner Neighborhood designation has not reduced the value of the property; quite the contrary it has most likely increased the value.

Moreover, in terms of establishing economic loss the land values per acre established using the Plantinga-Jaeger method range from \$7,000 to \$32,300 per acre. The highest Plantinga – Jaeger estimate is below the lowest “comparative sales” estimate of RA-1 per acre. Clearly, under no circumstances has any regulatory change to the Black property reduced its value. Again, the contrary is the case. Growth, infrastructure investment and regulation necessary to orderly growth have produced increases in property values well in excess of any alternative investment for the Black property.

**Figure A: Price per Sq. Ft. and Size in Acres Inner Neighborhood - Damascus Sales Prices
2005**

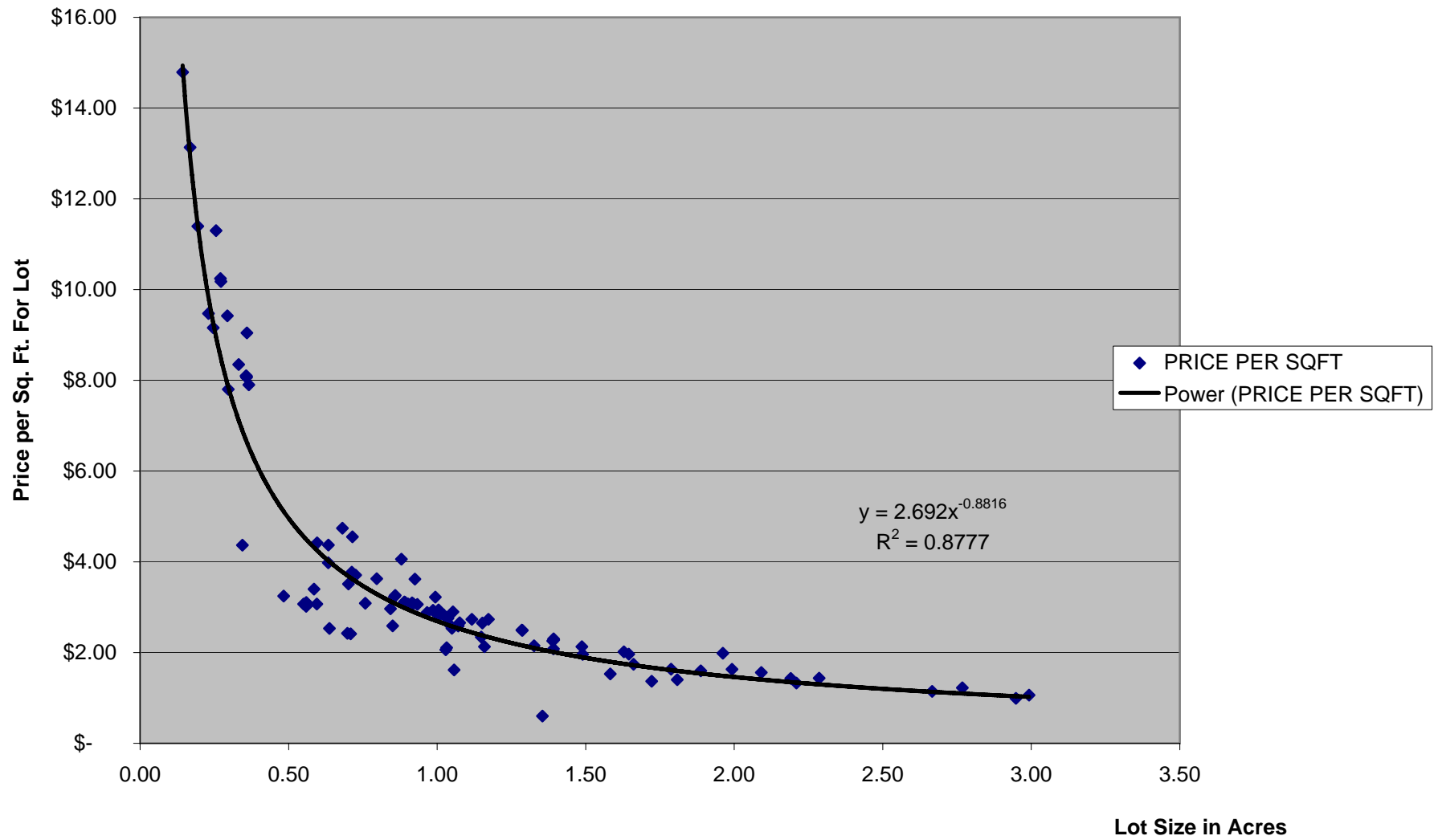
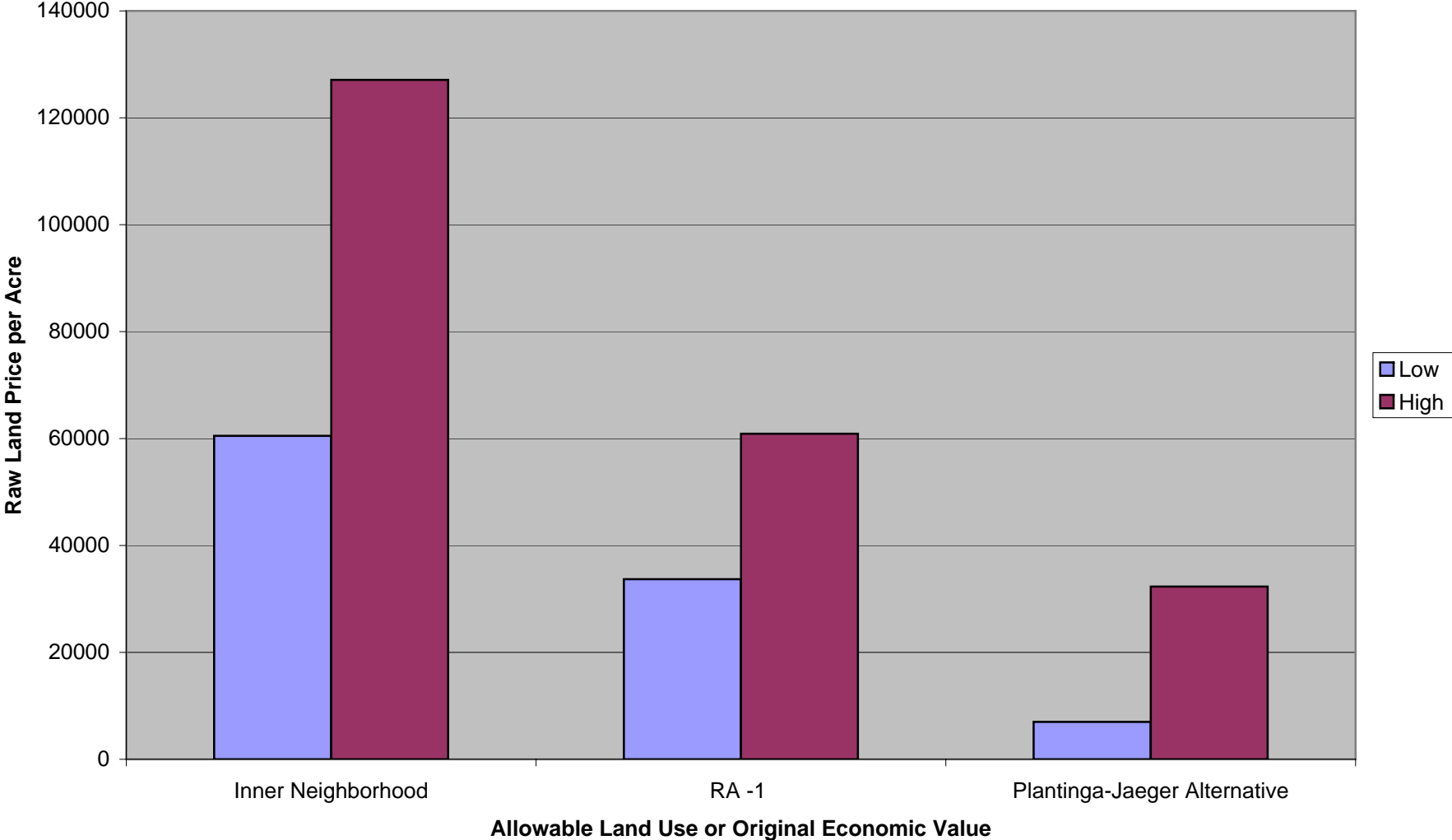
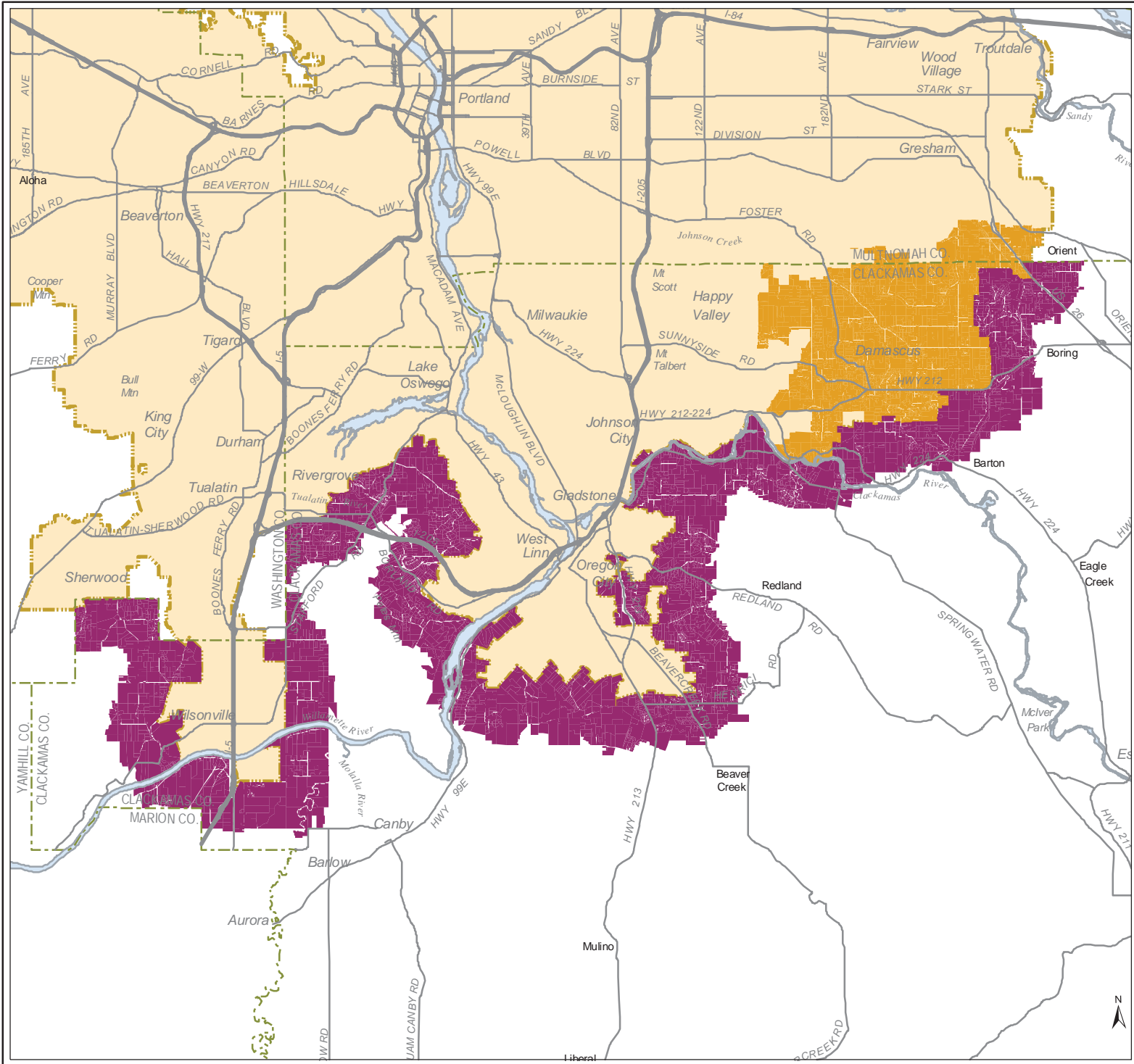


Figure B: Value of Property Raw Land per Acre in Inner Neighborhood, RA-1 and Original Economic Value Method



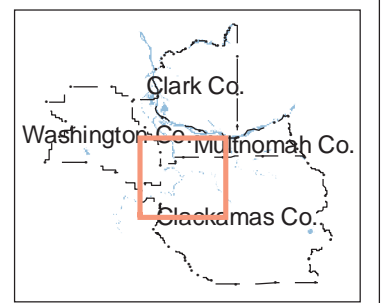


Sample Area of 2004-2005 Sales Data for Damascus UGB Expansion Area and One Mile Buffer, Clackamas County, OR

- Damascus UGB Expansion Area
- One Mile Buffer
- County Line
- Inside Metro UGB

The information on this map was derived from digital databases on Metro's GIS. Care was taken in the creation of this map. Metro cannot accept any responsibility for errors, omissions, or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.

1 inch equals 3.31 miles
 0 1 2 Miles



Location Map



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