

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 08, 2006
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. METROPOLITAN EXPOSITION RECREATION COMMISSION FACILITIES EFFICIENTLY MAINTAINED – MAYBE TOO EFFICIENTLY Dow

4. CONSENT AGENDA

4.1 Consideration of Minutes for the June 1, 2006 Metro Council Regular Meeting.

4.2 **Resolution No. 06-3701**, For the Purpose of Confirming the Appointment of Janet Malloch to the Regional Solid Waste Advisory Committee (SWAC)

5. ORDINANCES – FIRST READING

5.1 **Ordinance No. 06-1123**, For the Purpose of Amending Metro Code Chapter 2.04 to Repeal Metro Code Section 2.04.026 to Modify Other Provisions Relating to Metro Contracting, and to Make Related Changes.

6. RESOLUTIONS

6.1 **Resolution No. 06-3704**, For the Purpose of Determining the Consistency Of the Locally Preferred Alternative For the Interstate 5/Delta Park to Lombard Project with the Adopted Interstate 5/Delta Park to Lombard Project in the Regional Transportation Plan and Recommended Project Approval Burkholder

6.2 **Resolution No. 06-3711**, For the Purpose of Authorizing the Chief Operating Officer to Enter into an Agreement to Purchase Real Property in Downtown Gresham, Oregon Park

6.3 **Resolution No. 06-3703**, For the Purpose of Entering an Order Relating To the Nick Stearns Claim for Compensation Under ORS 197.352 (Measure 37). (*Public Hearing*)

7. **CHIEF OPERATING OFFICER COMMUNICATION**

8. **COUNCILOR COMMUNICATION**

ADJOURN

Television schedule for June 8, 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 8 (live)</p>	<p>Portland Channel 30 (CityNet 30) -- Portland Community Media www.pcmv.org -- (503) 288-1515 8:30 p.m. Sunday, June 11 2 p.m. Monday, June 12</p>
<p>Gresham Channel 30 -- MCTV www.mctv.org -- (503) 491-7636 2 p.m. Monday, June 12</p>	<p>Washington County Channel 30 -- TVC-TV www.tvctv.org -- (503) 629-8534 11 p.m. Saturday, June 10 11 p.m. Sunday, June 11 6 a.m. Tuesday, June 13 4 p.m. Wednesday, June 14</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 CONFIRMING THE) RESOLUTION NO. 06-3701
APPOINTMENT OF JANET MALLOCH TO THE)
REGIONAL SOLID WASTE ADVISORY) Introduced by David Bragdon,
COMMITTEE (SWAC)) Council President

WHEREAS, Metro Code Chapter 2.19.130 established the Regional Solid Waste Advisory Committee (SWAC) to evaluate policy recommendations to the Metro Council regarding regional solid waste management and planning; and

WHEREAS, Metro Code Chapter 2.19.030 states that all members and alternate members of all Metro Advisory Committees shall be appointed by the Council President subject to confirmation by the Council; and

WHEREAS, Metro Code Chapter 2.19.130 authorizes representatives and alternates for the SWAC; and

WHEREAS, vacancies have occurred in the SWAC membership; and

WHEREAS, the Council President has appointed Janet Malloch, as alternate member representing the Industry Representatives in the place and stead of Les Joel; now therefore,

BE IT RESOLVED, that the Metro Council confirms the appointment of Ms. Malloch to Metro's SWAC.

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

David Bragdon, Council President

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 06-3701 FOR THE PURPOSE OF CONFIRMING THE APPOINTMENT OF JANET MALLOCH TO THE REGIONAL SOLID WASTE ADVISORY COMMITTEE (SWAC)

Date: June 8, 2006

Prepared by: Susan Moore

BACKGROUND

The 25-member Regional Solid Waste Advisory Committee (SWAC), representing recyclers, the hauling industry, disposal sites, citizen-ratepayers and local governments, evaluates policy options and presents recommendations to the Metro Council regarding regional solid waste management and planning.

The following individual has been recommended to serve as an alternate member of the SWAC:

1. Janet Malloch has been recommended to serve as an alternate representative for the Industry Representatives. (See Attachment 1).

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition.

2. Legal Antecedents

ORS 192.610 "Governing Public Meetings", Metro Code Chapter 2.19.030, "Membership of the Advisory Committees" and 2.19.130, "Metro Solid Waste Advisory Committee", are the relevant legal documents related to these appointments.

3. Anticipated Effects

This resolution is intended to appoint the following individual for a two-year term of service on the SWAC: Janet Malloch.

4. Budget Impacts

None.

RECOMMENDED ACTION

The Council President has reviewed the qualifications of Ms. Malloch and finds her qualified to advise Metro in the matters of solid waste management and planning. Therefore, Council confirmation of these appointments by adoption of Resolution No. 06-3701 is recommended.

BEFORE THE METRO COUNCIL

AMENDING METRO CODE CHAPTER 2.04 TO)	ORDINANCE NO. 06-1123
REPEAL METRO CODE SECTION 2.04.026, TO)	
MODIFY OTHER PROVISIONS RELATING TO)	Introduced by Chief Operating Officer
METRO CONTRACTING, AND TO MAKE)	Michael J. Jordan, with the concurrence of
RELATED CHANGES)	Council President David Bragdon
)	

WHEREAS, Metro is required from time to time to contract for the provisions of goods and services, for the construction of public improvements and for the acceptance of grants, and

WHEREAS, it is in the public interest to assure that Metro’s public contracts, personal services contracts, public improvement contracts and grants are performed in accordance with Council policies and directions; now therefore,

THE METRO COUNCIL ORDAINS as follows:

Section 1. Metro Code Section 2.04.026 is repealed.

Section 2. Metro Code Section 2.04.028 is amended to read as follows:

2.04.028 Council Information Reports

(a) Prior to adoption of the annual budget, the Chief Operating Officer shall provide the Council with a list of proposed contracts over \$100,000 to be entered into during the next fiscal year. Following the adoption of the annual budget, if the Chief Operating Officer proposes to enter into a contract that will commit Metro to the expenditure of appropriations not provided for in the current fiscal year budget in an amount greater than \$100,000 that the Council has not considered during the annual budget process, the Chief Operating Officer shall inform the Council President in writing of such contract proposal.

(b) The Chief Operating Officer shall provide a monthly report to Council showing all contracts awarded, ~~and~~ amended and completed during the preceding month and all Metro applications for grant funding greater than \$100,000.

(c) The Chief Operating Officer shall make available to the Council on request information showing the status of all contracts whether listed in the adopted budget or not.

Section 3. Metro Code Section 2.04.046 is amended to read as follows:

2.04.046 Personal Services Contract Amendments

(a) Personal services contracts ~~of an initial amount of \$50,000 or less~~ may be amended to increase the amount of the contract to no more than twice the original contract amount. The limit provided in this subsection is cumulative and includes any and all contract amendments or extensions. Any contract amendment(s) in excess of this limit ~~requires~~ shall require approval by the Metro Council. The Metro Council shall determine whether it is appropriate to amend the contract in light of the policies set forth in ORS 279A.015 and ORS 279B.010.

(b) ~~Contracts with an initial amount of greater than \$50,000 may be amended provided that any amendment that increases the total amount payable to an amount more than \$100,000 greater than the initial contract amount shall be subject to approval by the Metro Council. The Metro Council shall determine whether it is appropriate to amend the contract, in light of the policies set forth in ORS 279A.015 and ORS 279B.010.~~ Notwithstanding the provisions of subsection (a) of this section, personal services contracts may be amended to increase the amount of the contract to an amount more than twice the original contract amount if the original personal services contract was let by a formal competitive procurement, the amendment is for the purpose of authorizing additional work for which unit prices were provided that established the cost for the additional work and the original contract governs the terms and conditions of the additional work.

Section 4. Metro Code Section 2.04.053(a) is amended to add the following:

“(20) Contracts with any media outlet for the purchase of classified advertising, display advertising or the placement of public notices to publicize legal notices of public meetings and procurements.”

Section 5. Metro Code Section 2.04.058 is amended to read as follows:

2.04.058 Public Contract Amendments

(a) The Chief Operating Officer may execute amendments to public contracts ~~which were not designated as contracts having a significant impact on Metro~~, provided that any one of the following conditions are met:

- (1) The original contract was let by a formal competitive procurement process, the amendment is for the purpose of authorizing additional work for which unit prices or alternates were provided that established the cost for the additional work and the original contract governs the terms and conditions of the additional work; or
- (2) The amendment is a change order that resolves a bona fide dispute with the contractor regarding the terms and conditions of a contract for a public improvement and the amendment does not materially add to or delete from the original scope of work included in the original contract; or
- (3) ~~The contract amendment to a contract for a public improvement does not increase the contract amount more than \$25,000 if the amount of the aggregate cost resulting from all amendments authorized pursuant to this subsection does not exceed 5 percent of the initial contract. In computing the dollar amount of any amendment for the purpose of this subsection, only the amount of additional work or extra cost shall be considered and may not be offset by the amount of any deletions.~~
- (4) The amount of the aggregate cost increase resulting from all amendments does not exceed 20 percent of the initial contract if the face amount is less than or equal to \$1,000,000 or 10 percent if the face amount is greater than \$1,000,000; amendments made under subsection (1) or (2) are not included in computing the aggregate amount under this subsection;

(5) The amendment is for a change order for additional work if the original contract was let by a formal competitive procurement, the amendment is for the purpose of authorizing additional work for which unit prices or bid alternates were provided that established the cost for the additional work and the original contract governs the terms and conditions of the additional work;

(6) The amendment is for a change order to a public improvement contract in order to meet an emergency; or

~~(4)~~ (7) The Metro Contract Review Board has authorized the extension of the contract amendment.

~~(b) No contract which was designated as a contract having a significant impact on Metro may be amended without the express approval of the Council evidenced by a duly adopted resolution or ordinance; except as follows:~~

~~(1) The Chief Operating Officer may approve any amendment that is a change order that resolves a bona fide dispute with the contractor regarding the terms and conditions of a contract for a public improvement if the amendment does not materially add to or delete from the original scope of work included in the original contract. Provided, however, the Chief Operating Officer must obtain Council approval for any such change order that results in a total aggregate increase of more than 5 percent of the original contract amount. If the Council approves a change order pursuant to this subsection it may also in the same action authorize additional change orders to resolve future disputes in an amount not to exceed that established by the Council.~~

~~(2) The Chief Operating Officer may approve any contract amendment to a contract for a public improvement that does not increase the contract amount more than \$25,000 if the amount of the aggregate cost resulting from all amendments authorized pursuant to this subsection does not exceed 5 percent of the initial contract. In computing the dollar amount of any amendment for the purpose of this subsection, only the amount of additional work or extra cost shall be considered and may not be offset by the amount of any deletions.~~

~~(3) The Chief Operating Officer may approve a change order for additional work if the original contract was let by a formal competitive procurement, the amendment is for the purpose of authorizing additional work for which unit prices or bid alternates were provided that established the cost for the additional work and the original contract governs the terms and conditions of the additional work.~~

~~(4) The Chief Operating Officer may approve a change order to a public improvement contract in order to meet an emergency.~~

~~(e)~~(b) No public contract may be amended to include additional work or improvements that are not directly related to the scope of work that was described in the competitive process utilized to award the contract.

~~(d) For the purpose of this section any contract which was subject to specific Council authorization of its execution prior to the effective date of this ordinance shall be considered to be a contract that has a significant impact on Metro.~~

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. 06-1123, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 2.04 to REPEAL METRO CODE SECTION 2.04.026, TO MODIFY OTHER PROVISIONS RELATING TO METRO CONTRACTING, AND TO MAKE RELATED CHANGES

Date: May 12 2006

Prepared by: David Biedermann

BACKGROUND

In early 2005 the Metro Council updated the Metro Code regarding public contracts to reflect the 2003 Oregon Legislature major revisions to public contracting law, Oregon Revised Statutes Chapter 279. Subsequently, the Council engaged staff in discussing further changes to simplify the contracting process at Metro regarding the oversight of contracts and to include a similar Council overview of grant applications in generally the same manner as contracts. The proposed ordinance is the result of those conversations.

The focus of this legislation is fourfold:

- To simplify Council review prior and subsequent to budget adoption of the major contracts proposed in the budget,
- To ensure notification after budget adoption of newly proposed contracts (i.e., not in the adopted budget),
- To ensure the Council has the opportunity to be aware of all contracts at any time,
- To enhance Council awareness of the grant process to/from Metro.

The current system involves a complex set of rules regarding designation of a contract as having “significant impact”, which requires Council action. In some cases mandatory review is topical, in others it is monetary, and in still others it is both. However, unless a contract meets specific criteria, Council interest in a particular proposed contract may or may not be met as a result.

The proposed alternative is a simple one.

- The current designation of “significant impact’ would cease. Instead, the Council would view contracts as a whole at budget time, not just specific ones meeting certain topical criteria.
- The proposed budget would have a list of all contracts over \$100,000 (increased from the current \$50,000 level) proposed for the coming fiscal year. The list would be grouped into: (1) contracts continuing from the current budget year into the new one, and (2) new proposed contracts (which would require standard bid procedures).

- As is the case now, as part of the budget adoption process, Council would accept the list of existing and proposed contracts, and no further review would be required.
- After adoption of the budget, any additional contracts over \$100,000 not in the list in the budget would require notification of the Council through a Chief Operating Officer communication (it could be a Council work session presentation, but in any case the current “10 day letter” process would continue). Council can either agree to proceed by declining to respond or any Councilor can request discussion at a work session.
- On a monthly basis, the Chief Operating Officer will provide the Council a list of all contracts awarded, amended and/or completed (“completed” being a new reporting criteria).
- Current grants over \$100,000 continuing from the current fiscal year and proposed grants the departments wish to pursue would be reported in the same manner. However, presentation of revenue grants during the budget process will not constitute legal appropriation. If the grant application is submitted, accepted and awarded to Metro by the granting agency, the responsible department must submit a budget amendment to recognize the revenue.
- Grants anticipated to be awarded by Metro (e.g., the Solid Waste enhancement and Nature in Neighborhood grants) would operate the same way, except the reporting level would be \$25,000. These would be budgeted as appropriations.

Two areas of contracting would require Council action (these are in the current Code) in any circumstance. These are:

- Any agreement entered into pursuant to ORS Chapter 190 by which Metro acquires or transfers any interest in real property, assumes any function or duty of another governmental body, or transfers any function or duty of Metro to another governmental unit.
- Any contract for the purchase, sale, lease or transfer of real property owned by Metro. The Chief Operating Officer could execute options (which would require Council approval) to purchase real property, however.

ANALYSIS/INFORMATION

1. **Known Opposition:** None.
2. **Legal Antecedents:** Metro Code 2.04, State of Oregon Revised Statutes (ORS) Chapters 279A, 279B and 279C.
3. **Anticipated Effects:** Will provide consistent and clear reporting mechanism to Metro Council for contracts and grants for Metro staff.

4. **Budget Impacts:** Minor cost savings. Eliminating the annual identification of “significant impact” contracts will save some staff time. Developing the list of proposed contracts is for the most part a function of reviewing the existing budget and proposed new work plans for the coming year. When the budgets are submitted to the Council, those resources already exist, thus we should be able to turn in the contract lists in less time and staff work.

RECOMMENDED ACTION

Chief Operating Officer recommends passage of Ordinance 06-1123.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF DETERMINING THE)	RESOLUTION NO. 06-3704
CONSISTENCY OF THE LOCALLY PREFERRED)	
ALTERNATIVE FOR THE INTERSTATE 5/)	
DELTA PARK TO LOMBARD PROJECT WITH)	Introduced by Councilor Rex Burkholder
THE ADOPTED INTERSTATE 5/ DELTA PARK)	
TO LOMBARD PROJECT IN THE REGIONAL)	
TRANSPORTATION PLAN AND)	
RECOMMENDING PROJECT APPROVAL)	

WHEREAS, JPACT and the Metro Council approved the 2000 Regional Transportation Plan (RTP) by Ordinance No. 00-869A, For the Purpose of Adopting the 2000 Regional Transportation Plan; and

WHEREAS, the approved 2000 RTP recounted the transportation conditions in the Interstate 5 north corridor and stated that “To address these problems, the I-5 Trade Corridor Study will evaluate different capacity and transit improvements in this corridor and make recommendations for inclusion in the Regional Transportation Plan”; and

WHEREAS, the I-5 Transportation and Trade Partnership Strategic Plan was endorsed by JPACT and Metro Council by Resolution No. 02-3237A, For the Purpose of Endorsing the I-5 Transportation and Trade Study Recommendations; and

WHEREAS, in Resolution No. 02-3237A, For the Purpose of Endorsing the I-5 Transportation and Trade Study Recommendations, JPACT and the Metro Council concluded that transportation improvements include: “Three through-lanes in each direction on I-5, between I-405 in Portland and I-205 in Clark County including southbound through Delta Park including designation of one of the three through lanes as an High Occupancy Vehicle (HOV) lane as feasible... “ and directing Metro staff to incorporate this and other Strategic Plan recommendations into the next update of the Regional Transportation Plan (RTP); and

WHEREAS, JPACT and the Metro Council approved Ordinance No. 04-1045A, For the Purpose of Amending the 2000 Regional Transportation Plan (“RTP”) for Consistency with the 2004 Interim Federal RTP and Statewide Planning Goals; and

WHEREAS, the approved 2004 RTP Project lists as project number 4005: “I-5 North Improvements, Lombard Street to Expo Center/Delta Park, widen to six lanes,” as one of the financially constrained projects; and

WHEREAS, the approved 2004 RTP states that: “This heavily traveled route is the main connection between Portland and Vancouver. In addition to a number of planned and proposed highway capacity improvements, light rail is proposed along Interstate Avenue to the Expo Center, and may eventually extend to Vancouver. As improvements are implemented in this corridor, the following design considerations should be addressed: - consider HOV lanes and peak period pricing, -transit alternatives from Vancouver to Portland Central City (including light rail transit and express bus)...”; and

WHEREAS, the Oregon Department of Transportation (ODOT) initiated the I-5 Delta Park to Lombard Project, providing a public involvement process and prepared, based on public comment, project alternatives and an Environmental Assessment of alternatives which, if constructed, would widen this segment of I-5 to six lanes, including three lanes southbound; and

WHEREAS, ODOT assessed the likely outcome of a southbound HOV lane in addition to the existing northbound HOV lane; and

WHEREAS, the Columbia River Crossing Project will address transit, including HOV as well as highway, bicycle, pedestrian access in the I-5 bridge influence area immediately north of the I-5 Delta Park to Lombard segment; and

WHEREAS, ODOT convened a Hearings Panel that heard public testimony on the alternatives and Environmental Assessment in February 2006 and from which Hearings Panel recommendations were formulated for consideration; and

WHEREAS, the Bi-State Coordination Committee, the City of Portland and JPACT have recommended approval of a Preferred Alternative for the I-5 Delta Park to Lombard Project, including the Hearings Panel recommendations; now, therefore

BE IT RESOLVED that the Metro Council:

1. Concludes that the Preferred Alternative for the I-5 Delta Park to Lombard Project, as described in the Hearings Panel recommendations attached as Exhibit "A" to this resolution, is consistent with the I-5 Delta Park to Lombard Project in the 2004 Regional Transportation Plan as demonstrated in Exhibit "A" the I-5 Delta Park (Victory Boulevard to Lombard Section) Land Use Technical Report, December 2005, and the Transportation and Traffic Technical Report, I-5: Delta Park (Victory Boulevard to Lombard Section), Parisi Associates, December 2005.

2. Concludes that the ODOT decision about whether the additional southbound lane on I-5 should be a general purpose lane, an HOV lane, or a managed lane should be made in concert with the Columbia River Crossing Project or prior to the opening of the new lane to traffic, whichever is sooner. Furthermore, ODOT's decision should be made only after consideration of recommendations from the Bi-State Coordination Committee, JPACT and the Metro Council, with the recognition that an amendment to the RTP by the Council may be necessary.

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

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

I-5 Delta Park: Victory to Lombard Section

Recommendations of the I-5 Delta Park Hearings Panel for the Locally Preferred Alternative

April 28, 2006

Purpose:

The purpose of this report is to convey the recommendations of the I-5 Delta Park Hearings Panel regarding the selection of a Preferred Alternative for the I-5 Delta Park Project. The Hearings Panel was composed of: Charlie Sciscione, ODOT Deputy Region 1 Manager, Cathy Nelson, ODOT Technical Services Manager/Chief Engineer, City of Portland Commissioner Sam Adams, Sue Keil, Director of the Portland Office of Transportation, Metro Councilor Rex Burkholder, and Vancouver Mayor Royce Pollard.

The recommendations are based on the findings of the Environmental Assessment, public comments on the Environmental Assessment, recommendations from the project's Citizen Advisory Committee and Environmental Justice Work Group, recommendations from local, regional and state staff, and input from ODOT's local, state and federal environmental regulators.

The Hearings Panel's recommendations will be sent to the Bi-State Coordinating Committee, the Portland City Council, the Joint Policy Advisory Committee on Transportation, and the Collaborative Environmental and Transportation Agreement for Streamlining (CETAS) for review and endorsement in May/June 2006. The Preferred Alternative will be documented in a Revised Environmental Assessment that is expected to be published in July/August 2006.

Background:

The I-5: Delta Park to Lombard project was one of several highway, transit and rail projects recommended by the I-5 Strategic Partnership. It is the first of the recommended projects to be developed for the I-5 Corridor. The Columbia River Crossing Project is the next project that will be developed. The public process for that project has recently been initiated.

Over the past three years, considerable public input has been solicited and considered at all stages of developing the I-5 Delta Park Project. ODOT formed two project advisory committees, a Citizen Advisory Committee and the Environmental Justice Work Group, to guide development of the project. The advisory committees and public input have influenced the development of the purpose and need statement for the project, the evaluation factors for the project, the range of alternatives studied in the Environmental Assessment, and the recommendation of the preferred alternative.

In developing this project ODOT has also worked closely with regional and local jurisdictions, most notably with staff from City of Portland's Transportation, Planning, Parks, and Environmental Services bureaus and staff from the Portland Development Commission.

The Environmental Assessment for this project included a No Build alternative and four Build alternatives. Each of the Build alternatives proposed the same improvements to the I-5 freeway including: widening I-5 to three lanes southbound, widening shoulders and medians northbound, reconstructing the southbound Columbia Blvd. on ramp as a merge lane, and geometric changes at the Columbia Blvd. and Lombard Blvd. interchanges. The four Build alternatives differed from one another in the proposed changes in access between Columbia Blvd. and I-5.

This project is anticipated to be constructed in two phases. Phase I construction would include the proposed I-5 freeway improvements. This phase of construction is anticipated to begin in 2008 and be completed in 2010. Phase II construction would include the proposed changes in access between Columbia Blvd. and I-5. A construction year for Phase II has not yet been established.

Recommendations:

The Hearings Panel's recommendations are presented below and are separated into the following categories:

- ❖ Preferred Alternative Recommendation
- ❖ Recommended Changes to the Preferred Alternative
- ❖ Recommendations for Final Design and Construction Phases
- ❖ Mitigation Measures and Community Enhancements Recommendations
- ❖ High Occupancy Vehicle Lane Recommendations
- ❖ Phasing and Financing Recommendations

Preferred Alternative Recommendation:

The Hearings Panel recommends Alternative 2-Argyle on the Hill as the preferred alternative for the I-5 Delta Park Project for the following reasons:

Transportation:

- ◆ The proposed improvements to I-5, which are common to all four Build alternatives, will improve the operation, efficiency and safety of the freeway in the project area. The greatest operation and efficiency improvements will be experienced during the mid-day, evening, and weekend periods.
- ◆ Alternative 2 reinforces existing access routes, maintains familiar freeway travel patterns, and makes the least change in freeway access.
- ◆ Alternative 2 does not require traffic calming measures to encourage use of the new freeway access route.
- ◆ Alternative 2 reconstructs the Denver Avenue Bridge over Columbia Blvd., which is a long-term capital maintenance/replacement liability concern for the City and ODOT.
- ◆ Alternative 2 has the least negative traffic impact on the operation of Portland International Raceway.

Neighborhood Livability:

- ◆ Alternative 2 results in the greatest reduction in traffic on existing Argyle Way and would provide the greatest improvement to the pedestrian environment along the existing Argyle Way. The volume of auto and truck traffic on Argyle Way has been identified as negatively impacting future development in the Kenton Light Rail Station area. This alternative relocates Argyle Way to the periphery of the Kenton downtown, and away from Kenton Park, downtown Kenton and the light rail station.
- ◆ Alternative 2 results in a noticeable decrease in noise levels for approximately 3 blocks of mixed use/residential properties and Kenton Park.
- ◆ Alternative 2 minimizes impacts on the planned Columbia Slough Trail.

Environmental Impacts:

- ◆ Alternative 2 has the least environmental impacts and is, therefore, consistent with City of Portland's Type II Environmental Review requirements and approval criteria.
- ◆ Alternative 2 affects less environmentally sensitive land by expanding existing development rather than building a new bridge over the Columbia Slough.
- ◆ Alternative 2 maintains the wildlife corridor for North and Northeast Portland by not breaking up existing habitat for birds and animals along the Columbia Slough with new bridges or roads.
- ◆ Alternative 2 minimizes impacts on the existing forested riparian strip located between the N. Denver Avenue bridge and the I-5 bridge. New bridges or roads along the slough would remove vegetation and replace it with new impervious surface. This would result in a potential increase in pollutants and sediment entering the slough.
- ◆ Alternative 2 requires the least amount of new impervious surface (paving). Impervious surfaces have the potential to increase stormwater runoff, raise water temperature, and increase pollutant loading into nearby waterways.

Economic/Redevelopment Impacts:

- ◆ Alternative 2 minimizes business displacements.
- ◆ Alternative 2 has the potential to positively affect the redevelopment prospects of high density sites around Argyle Way and Interstate Avenue, provided funding certainty for the Phase II interchange work.
- ◆ Alternative 2 has the second lowest property acquisitions.

Recommendations for Changes to the Preferred Alternative:

The Hearings Panel recommends that Alternative 2 be amended as follows and that these changes be documented in the project's Revised Environmental Assessment:

- ❖ The reconstruction of the Denver Avenue Bridge over the Columbia Slough should be added to Alternative 2. Reconstructing both of the Denver Avenue Bridges at the same time will minimize community disruption in the long term.

- ❖ The Schmeer Road realignment should be moved further south to minimize impacts to the TMT Development/Container Care property. The opportunity to move the Schmeer Road realignment further south is provided by reconstructing the Denver Avenue Bridge over the Columbia Slough.

Recommendations for Final Design and Construction Phases:

As Phase I and Phase II of the I-5 Delta Park Project go through the final design and construction work, the Hearings Panel recommends that:

- ❖ During Phase I, ODOT further investigate ramp meters and lane treatments on the Columbia Blvd. southbound on-ramp with the objective of balancing the desire for most efficient entry to I-5 for trucks with the operational needs of the ramp.
- ❖ ODOT develop Phase II improvements in cooperation with the Portland Office of Transportation to ensure that the local circulation elements (new Argyle Way, Denver Avenue Bridges and Schmeer Road) are developed with appropriate City input and review.
- ❖ ODOT ensure that development of Phase II improvements includes opportunities for public input on roadway and structures designs for local circulation elements including: the new Argyle Way, the Denver Avenue Bridges, and Schmeer Road.
- ❖ During development of Phase II improvements, ODOT continue to investigate design modifications for the new Argyle Way alignment balancing the objectives of minimizing property impacts, maximizing re-development opportunities, and optimizing transportation safety and operations.
- ❖ During development of Phase II improvements, ODOT continue to investigate design options for bicycle and pedestrian facilities on the Denver Avenue Bridges balancing the objectives of providing good bicycle and pedestrian access, accommodating freight movement, minimizing property impacts, and optimizing traffic safety and operations.
- ❖ During Phase I and Phase II, ODOT coordinate with the Portland Office of Transportation to provide for City review of the construction management plan, which will ensure the least possible business and community disruption during the construction of these improvements.
- ❖ ODOT work with the Portland Office of Transportation to vacate portions of the existing Argyle Way during Phase II construction to help the area around Argyle Way to reach its full redevelopment potential.
- ❖ ODOT and the Portland Office of Transportation develop an Intergovernmental Agreement(s) regarding the ownership and maintenance of local circulation elements of the project, the development of an access management plan for the interchange area, and the implementation of local system community enhancements.

Mitigation Measures and Community Enhancements Recommendations:

With regard to mitigation measures and community enhancements, the Hearings Panel recommends:

- ❖ Implementing the full mitigation and conservation measures outlined in the Environmental Assessment including: erosion and sediment control measures, air and water pollution control measures, wetlands mitigation measures, landscaping and riparian re-vegetation measures, fish conservation measures, fencing for the Columbian Cemetery, and meaningful workforce diversity and DBE goals.
- ❖ Adding an additional mitigation measure to the Environmental Assessment for ODOT to provide technical assistance during Phase II of construction to help local businesses prepare for the construction impacts of both of the Denver Avenue Bridge replacements.
- ❖ Setting the Community Enhancement Fund for the I-5 Delta Park Project at \$1 million.

High Occupancy Vehicle Lane Recommendations:

With regard to an HOV lane or other managed lane, the Hearings Panel recommends that:

- ❖ The I-5 Delta Park Revised Environmental Assessment identify that one of the I-5 southbound lanes may be operated as an HOV or managed lane in the future between, approximately, the Marine Drive and Alberta interchanges.
- ❖ ODOT make a decision about whether or not to operate a southbound HOV or managed lane in Oregon by the time the I-5 Delta Park Project is opened to traffic, in approximately 2010. In making this decision ODOT should seek recommendations from the Bi-State Coordination Committee, JPACT and Metro Council and seek an amendment to the RTP as necessary.
- ❖ ODOT conduct additional investigation of a southbound HOV or managed lane using traffic data and traffic models constructed for the Columbia River Crossing (CRC) Project in order to explore:
 - ◆ Transit service assumptions for a HOV or managed lane;
 - ◆ The length and duration of congestion on I-5, SR 14 and SR 500 with and without an HOV or managed lane;
 - ◆ The feasibility of operating the lane as a managed lane;
 - ◆ Enforcement levels needed for an HOV or managed lane;
 - ◆ How CRC Project decisions regarding future high-capacity transit, freeway, and transportation demand management would support operation of an HOV or managed lane in Oregon.
- ❖ ODOT coordinate its analysis and decision making regarding a southbound HOV or managed lane with the Bi-State Coordination Committee and appropriate Bi-State staff.
- ❖ The CRC Project continue to investigate HOV and managed lane concepts for the Portland/Vancouver I-5 corridor through the EIS.

The Hearings Panel makes these recommendations for the following reasons:

- ❖ Local, regional, state and federal policies are supportive of providing transportation options other than the single-occupancy vehicle in the I-5 corridor.
- ❖ More investigation of transit service levels, congestion impacts, feasibility, and enforcement is warranted prior to making a final decision about southbound HOV or managed lane implementation.
- ❖ Additional information about the long-range southbound HOV and managed lane system is likely to result from the Columbia River Crossing Project. The decision about implementation of a southbound HOV or managed lane in Oregon should be coordinated, to the greatest extent practicable, with the CRC Project direction for HOV and managed lanes.

Phasing and Financing Recommendations:

The Hearings Panel recommends that funding for design, property acquisition and construction of Phase II be prioritized by ODOT and the City, and a project implementation schedule for Phase II construction be established.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 06-3704, FOR THE PURPOSE OF DETERMINING THE CONSISTENCY OF THE LOCALLY PREFERRED ALTERNATIVE WITH THE ADOPTED INTERSTATE 5/ DELTA PARK TO LOMBARD PROJECT IN THE REGIONAL TRANSPORTATION PLAN AND RECOMMENDING PROJECT APPROVAL

Date: May 30, 2006

Prepared by: Mark Turpel

BACKGROUND

The Interstate 5 (I-5) freeway is the major West Coast road system serving people and good movement north and south via auto, bus and truck both in the Metro area and as far as the Canadian and Mexican borders.

The 2000 Regional Transportation Plan recognized the transportation challenges of the corridor along I-5 from the Marquam Bridge to the Interstate Bridge and referenced the I-5 Trade and Transportation Partnership project as a process that would identify needed transportation actions on both sides of the Columbia River in the vicinity of I-5. Governors Gary Locke and John Kitzhaber appointed a bi-state I-5 Transportation and Trade Task Force of community, business, and elected representatives in January 2001 to develop the plan. The Task Force adopted al *Strategic Plan* on June 2002. The recommendations included:

- Three through-lanes in each direction on I-5, including southbound through Delta Park.
- A phased light rail loop in Clark County in the vicinity of the I-5, SR500/4th Plain and I-205 corridors.
- An additional span or a replacement bridge for the I-5 crossing of the Columbia River, with up to 2 additional lanes for merging and 2 light rail tracks.
- Interchange improvements and additional merging lanes where needed between SR500 in Vancouver and Columbia Boulevard in Portland. These include a full interchange at Columbia Boulevard.
- Capacity improvements for freight rail.
- Bi-state coordination of land use and management of our transportation system to reduce demand on the freeway and to protect the corridor investments.
- Involving communities along the corridor to ensure that the final project outcomes are equitable.

In November 2002, the Metro Council endorsed the *Strategic Plan* by adopting Resolution No. 02-3237A, For the Purpose of Endorsing the I-5 Transportation and Trade Study Recommendations and directed staff to incorporate the *Strategic Plan* recommendations in the next update of the RTP.

In July 2004, the Metro Council approved the update of the RTP through adopting Ordinance 04-1045A For the Purpose of Amending the 2000 Regional Transportation Plan ("RTP") for Consistency with the 2004 Interim Federal RTP and Statewide Planning Goals. Accordingly, the 2004 Regional

Transportation Plan (RTP) includes project number 4005, widening to six lanes the segment of I-5 from Lombard Street at the southern end to Expo Center/Delta Park at the northern end. This project would provide a consistent freeway width and eliminate a current condition where there is a portion of the freeway segment with two southbound lanes, while the balance of the freeway segment has three lanes each direction.

However, the 2004 RTP also states: "...despite a range of different improvements to the I-5 interstate bridges and transit service, latent demand exists in the corridor that cannot be address with highway capacity improvements alone." The 2004 RTP further states: "Light Rail transit and expanded bus service along parallel arterial streets are effective alternatives to I-5 for access to the Portland central city." The 2004 RTP also states that design considerations should be considered including:

- "HOV lanes and peak period pricing
- transit alternatives from Vancouver to the Portland Central City (including light rail transit and express bus)..."

The I-5 Delta Park to Lombard Project was initiated to look at alternatives along I-5 between Lombard and Delta Park, and, in addition to the direct freeway improvements (primarily changing this segment of I-5 to three lanes each direction by adding one additional lane southbound), four interchange/access alternatives (Full Columbia Ramps, Argyle on the Hill, New Road by the Slough, and Columbia Connector) were identified and assessed. Further, the feasibility of operating the new southbound lane as an HOV lane was assessed.

Most recently, the Columbia River Crossing (CRC) Project has taken up where the I-5 Transportation and Trade Partnership left off with regard to highway, transit, bicycle and pedestrian movement across the Columbia River in the immediate vicinity of I-5, just north of the I-5 Delta Park Project. A wide range of transit alternatives will be reviewed and analyzed during this effort and should address the transit questions along I-5 north corridor in Oregon (as well as into Clark County). However, the CRC project could benefit from consideration of whether HOV lanes will be included in the Delta Park to Lombard segment. Accordingly, it has been recommended that ODOT not make a decision about the status of the I-5 Delta Park Project additional southbound lane (whether it should be a general purpose lane, HOV or managed lane) until the CRC Project is further along. This can be achieved because final engineering and even most of the construction can proceed without making a decision about the lane status.

A draft resolution was brought to the Transportation Policy Advisory Committee (TPAC) on May 26, where it was unanimously recommended for approval. Subsequent to this action, Metro staff concluded that the resolution would be more precise if the resolution title directly stated that the project was already part of the RTP and that the resolves reference the titles of the supporting technical reports and these changes are reflected in the proposed resolution for JPACT and Metro Council consideration.

ANALYSIS/INFORMATION

1. Known Opposition

There have been concerns expressed by residents of the area along I-5 concerning additional air pollution, noise, dust and traffic congestion. These issues are described in the Environmental Assessment and Hearings Panel recommendations (Exhibit "A"). There have been concerns expressed about the operation of a new southbound lane as an HOV or managed lane, including representatives of trucking and Clark County commuters to the Metro area. Further, there have been concerns expressed about whether the proposed project helps implement the region's plans.

2. Legal Antecedents

Resolution No. 98-2625, For the Purpose of Amending the Metropolitan Transportation Improvement Program to Approve a Six-Month High Occupancy Vehicle (HOV) Lane Demonstration on I-5 Northbound and Associated Financing.

Ordinance No. 00-869A, For the Purpose of Adopting the 2000 Regional Transportation Plan.

Resolution No. 02-3237A, For the Purpose of Endorsing the I-5 Transportation and Trade Study Recommendations.

Ordinance No. 04-1045A, For the Purpose of Amending the 2000 Regional Transportation Plan ("RTP") for Consistency with the 2004 Interim Federal RTP and Statewide Planning Goals.

3. Anticipated Effects

Construction of the I-5 Delta Park to Lombard Project as recommended by Exhibit "A".

4. Budget Impacts

No direct impacts to the Metro budget. The project is included in the list of Financially Constrained System Projects (number 4005) of the Regional Transportation Plan.

RECOMMENDED ACTION

Approve Resolution No. 06-3704, For the Purpose of Determining the Consistency of the Interstate 5/ Delta Park to Lombard Project with the Regional Transportation Plan and Recommending Project Approval.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF) RESOLUTION NO. 06-3711
OPERATING OFFICER TO ENTER INTO AN)
AGREEMENT TO PURCHASE REAL PROPERTY) Introduced by Michael J Jordan, Chief
IN DOWNTOWN GRESHAM, OREGON) Operating Officer, with the concurrence of
) David Bragdon, Metro Council President

WHEREAS, on April 9, 1998, the Metro Council adopted Resolution No. 98-2619 (For the Purpose of Authorizing Start-Up Activities for the Transit-Oriented Development (TOD) Implementation Program at Metro), which authorized start-up activities for the Metro Transit-Oriented Development Implementation Program (the "TOD Program") and set forth the operating parameters of the TOD Program in a Work Plan providing for the acquisition and joint development of real property satisfying certain criteria; and

WHEREAS, the TOD Work Plan was amended to expand the TOD Program area to include Interstate MAX, South Corridor, Airport MAX, Streetcar, Frequent Bus Routes and initiate an Urban Centers Program by Resolution No. 04-3479 (For the Purpose of Amending the Transit-Oriented Development (TOD) Program to Expand the TOD Program Area and Initiate an Urban Centers Program), adopted July 15, 2004; and

WHEREAS, the TOD Work Plan authorizes the Chief Operating Officer to enter into agreements to fund TOD Projects on Frequent Bus Routes that have been evaluated by the TOD Steering Committee for compliance with the TOD Program's site selection criteria (the "TOD Selection Implementation Criteria") and approved by the TOD Steering Committee for funding by Metro; and

WHEREAS, the TOD Work Plan requires that the Chief Operating Officer provide seven days' written notice to the Metro Council (the "Seven-Day Letter") prior to funding TOD Steering Committee approved projects, affording the Metro Council the opportunity to request review of the proposed project in executive session, and if no review is requested the proposed project may proceed; and

WHEREAS, on May 10, 2006, the TOD Steering Committee approved the TOD Program's entry into an agreement to purchase real property in downtown Gresham, Oregon, (hereafter, the "Property"), as further set forth in the Seven-Day Letter issued by the Chief Operating Officer on May 11, 2006, notifying the Metro Council of said pending actions to acquire the Property; and

WHEREAS, the Metro Council responded to the Chief Operating Officer's Seven-Day Letter, requesting review of the proposed acquisition of the Property in executive session, which review was held on May 30, 2006 and on June 6, 2006; and

WHEREAS, upon review of the proposed acquisition of the Property in executive session, the Metro Council elected to provide further direction to the Chief Operating Officer regarding the acquisition of the Property by resolution; now, therefore

BE IT RESOLVED, that the Metro Council hereby authorizes the Chief Operating Officer to enter into an agreement to purchase the Property, subject to the conditions set forth by the TOD Steering Committee.

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

David Bragdon, Metro Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 06-3711 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ENTER INTO AGREEMENTS TO PURCHASE REAL PROPERTY IN DOWNTOWN GRESHAM

Date: June 1, 2006

Prepared by: Andy Cotugno
Phil Whitmore

BACKGROUND

Transit Oriented Development and Centers Implementation Program

In July 2004, the Metro Council approved Resolution Number 04-3479 (For the Purpose of Amending the Transit-Oriented Development (TOD) Program to Expand the TOD Program Area and Initiate an Urban Centers Program). The TOD Implementation Program is a joint development program focusing on site-specific project implementation. Joint Development refers to a collection of public and private sector partnership techniques, strategies, and development "tools" that can be used to link development to transit stations to increase the efficiency of a mass transit system. The increase can take the form of new ridership (caused by the construction of TOD Projects), new revenue to a transit agency, or a combination of both. The TOD Program seeks to increase transit ridership and lessen the risk and costs associated with the construction of TOD projects. Projects considered for the Program will exhibit a mix of moderate- to high-intensity land uses, a physical or functional connection to the transit system, and design features that reinforce pedestrian relationships and scale. The TOD Program utilizes joint development tools such as land acquisition and development agreements to implement projects located in close proximity to rail transit stations and "Frequent Bus" stops throughout the region. The primary focus of the original TOD Program was to buy land, write down its value and help cause higher density and mixed-use projects that supported added transit ridership. By purchasing sites, Metro could get the parcel into the hands of a capable developer more supportive of our development goals or hold the site for a more opportune time.

Real Property Acquisition

In September 2000, the TOD Steering Committee approved the TOD Program's proposed entry into an agreement to acquire real property in downtown Gresham (the "Property"). At a "Lively Centers" tour of Gresham that summer, TOD staff had remarked to business people from the Gresham Downtown Development Association (GDDA) that the Property was, in their opinion, the most important site in historic downtown Gresham and that the TOD Program would be interested in helping to create a signature project on the Property. TOD staff have long believed the site was important because it provides the pedestrian transition between Roberts, which connects to the light rail transit station, and Main Street, which is the center of historic downtown. Thereafter, a representative of the GDDA notified Metro that the Property was for sale and urged the TOD Program to work with the GDDA to help find a suitable developer for a signature project on the Property. The Property initially listed at a sale price significantly higher than the price the TOD Program was authorized to pay by the TOD Steering Committee, and was subsequently bid up well over the initial asking price. The TOD Program did not compete during the bidding frenzy. Three prospective developers optioned the property and turned it back because of the financial challenges inherent to mixed-use development and the lack of comparables for dense housing. Developers remain very interested in the Property.

Recently, representatives of the GDDA have again asked the TOD Program to purchase the Property to assist the development of a signature housing-retail mixed-use development there. The GDDA is

concerned that a one-story office building with surface parking will be developed on it, underutilizing the site and not serving as a site for a signature building. There is some sensitivity to the extensive effort made by the TOD Program to date in Gresham Civic neighborhood and the appearance that historic downtown (where the Property is located) has been slighted.

On May 10, 2006, the TOD Steering Committee voted 5-1 to reauthorize acquisition of the Property at an increased purchase price, subject to an appraisal. The Chief Operating Officer issued a Seven Day Letter on May 11, 2006, notifying the Metro Council of the pending project as stipulated in the TOD workplan.

On June 2, 2006, the TOD Staff learned that an offer has now been made on the Property. However, the offerors have indicated that they would like the TOD Program to participate in the deal through a TOD Easement, to enable housing to be incorporated into the project along with the other commercial uses they are contemplating. Historic downtown Gresham appears to be nearing “lift-off” on establishing a market for higher-density condominiums. While establishing a condo market is important, a higher density/mixed-use product alone will not complete a Center or TOD with all of the uses necessary for a vital center. Rental housing, including moderate income housing, and other uses are important contributions to creating a viable center. These uses may require public investment long after a higher density condo market is established.

TOD PROGRAM PROCESS

In accord with the TOD Program Work Plan adopted by Council Resolution 98-2619 (For the Purpose of Authorizing Start-Up Activities for the Transit-Oriented Development (TOD) Implementation Program at Metro), “as soon as practical upon approval by the Steering Committee, the Executive Officer will provide written notification to the Metro Council of potential TOD projects and the Council will have seven (7) days to notify the Executive of a request to review a potential project in executive session...” The Chief Operating Officer issued a Seven Day Letter notifying the Metro Council of the pending project as required, and the Metro Council elected to review the proposed project in executive session. The Metro Council may provide further direction to the Chief Operating Officer on the acquisition of the Property via Resolution.

ANALYSIS/INFORMATION

1. Known Opposition

The TOD Steering Committee approved this project at their May 10, 2006 meeting, with one committee member voting no. There is no known opposition to providing funding for this project although there are groups and individuals who oppose TOD projects and public private partnerships.

2. Legal Antecedents

The Federal Transit Administration (FTA) approved a grant for Metro to initiate the TOD Program in 1997. Authority to use FTA funds for joint development is included in the Intermodal Surface Transportation Act of 1991 (ISTEA) and codified under 49 USC 5309, 49 USC 5307, 23 USC 133 (STP) and 23 USC 149 (CMAQ). According to these laws, TOD Program activities are defined as transportation projects provided there is (1) a physical or functional relationship to the transit project; and (2) an enhanced effectiveness of the existing transit system.

The TOD program was originally transferred from TriMet to Metro by Intergovernmental Agreement (IGA) executed by Resolution No. 96-2279 (For the Purpose of Authorizing an Intergovernmental Agreement With Tri-Met to Assist in Establishing a Transit-Oriented Development and Implementation Program at Metro) on May 16, 1996. The Metro Council authorized start-up activities on April 9, 1998, by Resolution No. 98-2619 (For the Purpose of Authorizing Start-Up Activities For the Transit-Oriented

Development (TOD) Implementation Program at Metro). The Work Plan was amended to include provisions for initiation of additional light rail corridors, streetcar, Frequent Bus Routes and initiation of an Urban Centers Program on July 15, 2004 by Resolution No.04-3479 (For the Purpose of Amending the Transit-Oriented Development (TOD) Program to Expand the TOD Program Area and Initiate an Urban Centers Program).

3. Anticipated Effects

Public Benefit

The property is a key transition site to guide pedestrian traffic from the MAX Station down Roberts Avenue towards the core of downtown Gresham and westward onto Main Street. Business leaders have indicated a preference for the TOD Program to acquire the site so that the highest quality project could occur, preferably higher density loft condos.

4. Budget Impacts

There are no budget impacts to the Metro General Fund as a result of the project since funds that are part of the IGA with TriMet are used for the program.

RECOMMENDED ACTION

The Council may:

- 1) affirm the TOD Steering Committee's May 10, 2006 approval of the acquisition of the Property, and authorize the Chief Operating Officer to enter into agreements to purchase the Property; or
- 2) affirm the TOD Steering Committee's approval to purchase the Property, but authorize the Chief Operating Officer to enter into agreements to fund the project subject to conditions directing the Chief Operating officer to modify Metro's participation; or
- 3) elect not to affirm the TOD Steering Committee's approval to acquire the Property, and withhold authorization for the Chief Operating Officer to enter into agreements to purchase the property.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ENTERING AN) Resolution No. 06-3703
ORDER RELATING TO THE NICK STEARNS)
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, Nick Stearns 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 south of Oregon City; 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 8, 2006, and considered information presented at the hearing; now, therefore

BE IT RESOLVED that the Metro Council

1. Enters Order 06-003, 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. 06-003, with Exhibit A attached, to the claimant, persons who participated in the public hearing on the claim, Clackamas County 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 ___ day of June, 2006

David Bragdon, Council President

Approved as to form:

Daniel B. Cooper, Metro Attorney

Exhibit A to Resolution No. 06-3703

Order No. 06-003

RELATING TO THE NICK STEARNS CLAIM
FOR COMPENSATION UNDER ORS 197.352 (MEASURE 37)

Claimant: Nick Stearns

Property: 19992 S. South End Road, Oregon City, Oregon;
T3S, R1E, Section 11, Tax Lots 1191 and 1101 (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 8, 2006.

IT IS ORDERED THAT:

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

ENTERED this 8th 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. 06-003
For the Purpose of Entering an Order
Relating to the Measure 37 Claim of Nick Stearns**

May 12, 2006

METRO CLAIM NUMBER: Claim No. 06-003

NAME OF CLAIMANT: Nick Stearns

MAILING ADDRESS: Stearns Marnella Communities
Attn: Nick Stearns
18318 SE Abernethy Lane
Milwaukie, OR 97267

PROPERTY LOCATION: 19992 S. South End Road
Oregon City, OR 97045

LEGAL DESCRIPTION: T3S R1E Section 11 Tax Lot 1191 & T3S
R1E Section 11 Tax Lot 1101

DATE OF CLAIM: July 12, 2005

180-DAY PROCESSING DEADLINE: January 9, 2006

I. CLAIM

Claimant Nick Stearns seeks compensation in the amount of \$500,000 for a claimed 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 Clackamas County to divide the 21.4-acre subject property into a maximum of 4 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 12, 2006. The notice indicated that a copy of this report is available upon request and that the report is posted on Metro's website at www.metro-region.org.

II. SUMMARY OF COO RECOMMENDATION

The COO recommends that 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 Urban Growth Boundary (UGB), designate it Outer 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 July 12, 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 July 15, 1998, 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, topography and high voltage utility line easement and two sets of utility lines that run east-west through the upper 1/3 of the property (ATTACHMENT 1).

Conclusions of Law

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

2. Zoning History

The property was zoned Rural Residential/Farm-Forest-5 (RRFF-5), five-acre minimum lot size in 1979 by Clackamas County. The RRFF-5 zone was amended on January 30, 2003 to include a prohibition on lot divisions within the Metro Urban Growth Boundary (UGB) resulting in the creation of one or more lots of less than 20 acres in size (Zoning and Development Ordinance 309.07D).

3. Applicability of a Metro Functional Plan Requirement

Findings of Fact

In 2002, Metro Council expanded the UGB by adopting Ordinance No. 02-969B, including the claimant's property in the UGB 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.

Clackamas County adopted Order No. 2005-220 on August 3rd, 2005, waiving certain of the County's land use regulations, allowing the claimant to apply to divide his property into 5-acre lots, consistent with RRFF-5 zoning. The County's Order No. 2005-220 does not waive or otherwise affect lot size or other regulations to the property adopted by Metro. The Order indicates that Metro will have to evaluate the claim due to Metro's interim 20-acre minimum lot size requirement in Metro Code Section 3.07.1110C.

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 21.4-acre property. The claimant would have been able to apply to Clackamas County to create up to four 5-acre parcels and develop a single family dwelling on each lot (that did not already contain a dwelling) when he acquired the property in 1998.

4. Effect of Functional Plan Requirements 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 the attached memorandum to Paul Ketcham and Richard Benner from Sonny Conder and Karen Hohndel dated May 11, 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 \$500,000. Claimant asserts that the property's current fair market value (FMV), with the temporary 20-acre minimum size in place,

is \$400,000-450,000. Claimant further asserts that a five-acre parcel for a homesite has a current FMV of \$250,000. Because county zoning at the time claimant purchased the land allowed creation of five-acre homesites, claimant then multiplies \$250,000 times the number of homesites he could have created (three homesites, with one lot remaining under the existing dwelling), giving a value of \$750,000. To this value claimant adds \$300,000 for the value of a five-acre property with the current house, yielding a total FMV of \$1,050,000. From this amount the claimant subtracts \$100,000 for development costs of the lot divisions. These adjustments yield a net FMV of \$950,000. Finally, claimant subtracts the \$400,000-450,000 FMV of the *regulated* property from the \$950,000 net FMV of the *unregulated* property to derive the asserted net reduction in FMV of at least \$500,000.

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.

A. “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 “Outer 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 Oregon City 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 Clackamas County in Order No. 2005-220– would be outside the UGB under Clackamas County zoning of RRFF-5 (Rural Residential/Farm-Forest, five-acre minimum lot size) (zoning on date of claimant's purchase of property, 1998).

The estimates of FMV claimant provides, for reasons explained in the Conder Memo, do not accurately reflect values with or without Metro's regulatory action. Data generated by Metro's Data Resource Center and analyzed in the Conder Memo provide an accurate assessment of values.

Table 4 of the Conder Memo compares today's FMVs 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 Outer Neighborhood designation inside the UGB exceed the highest value under RRFF-5 zoning outside the UGB. With less conservative assumptions, the value under the Outer Neighborhood designation greatly exceeds the value under RRFF-5 zoning.

B. The Plantinga/Jaeger Method

This method assumes that claimant's purchase price in 1998 accurately reflected the development opportunities allowed by the RRFF-5 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 \$300,000 (data submitted with the claim indicate the property was conveyed as a Deed of Trust in 1998 for \$10.00. Value of the property at the time was estimated at \$300,000). 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.

Conclusion

The facts and analysis indicate that Metro's action to bring claimant's land into the UGB, designate it Outer Neighborhood (allowing high-density residential development), and applying a 20-acre minimum lot size temporarily while planning is completed did not reduce the FMV 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 Clackamas County to divide the subject property into four 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 Oregon City and of the UGB. It will 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 Nick Stearns Property

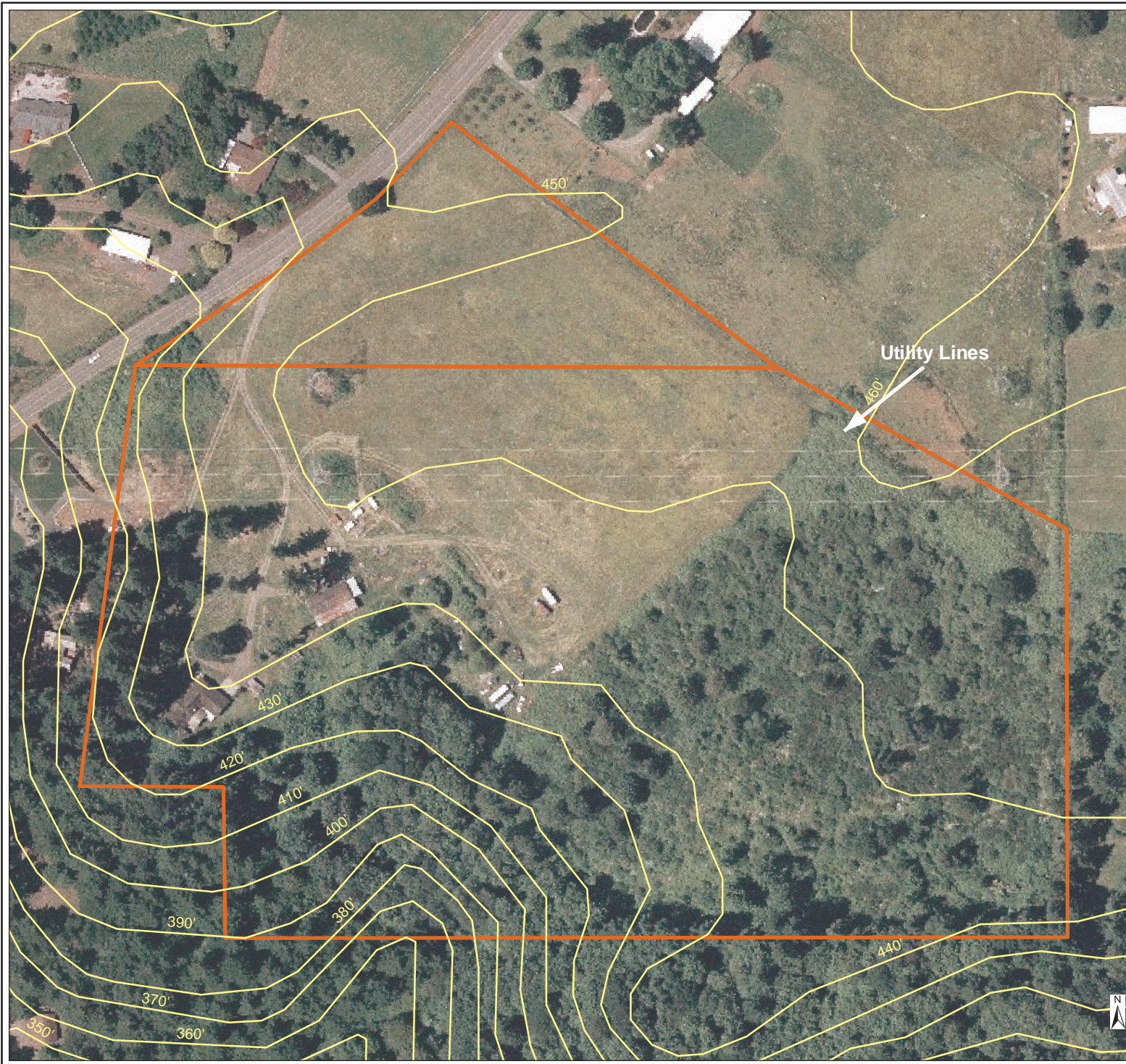
Attachment 2: Metro Memorandum to Paul Ketcham and Richard Benner from Sonny Conder and Karen Hohndel, "Valuation Report on the Nick Stearns Measure 37 Claim," dated May 11, 2006

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

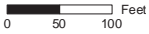
Council Order #06-003
Attachment 1

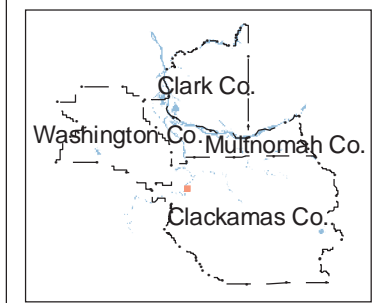
Site Map Stearns Measure 37 Claim

 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 0.04 miles




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

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



May 11, 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 Nick Stearns Measure 37 Claim

Conclusion:

Per your request we have conducted a valuation analysis of the Nick Stearns Measure 37 Claim. We conclude that the Metro action of including the property inside the UGB, designating it “Outer 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 5 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 Clackamas County.

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

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.

property eligible for urban high-density development rather than rural low-density development. Second, the ordinance designated the property “Outer Neighborhood”, the lower 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 RRFF-5. This land use designation is a rural designation allowing one dwelling unit per 5 acres. All development under RRFF-5 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 RRFF-5 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

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.

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 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 "Outer Neighborhood" and RRF-5 designations assuming health and safety regulations are enforced.
- Based on recent sales (2005) of lots and existing properties inside the Oregon City expansion area determine the current (2006) value of the property with a reasonable range of "Outer Neighborhood" development configurations including a 5 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 2.5 to 7.5 acres in size. This procedure establishes a reasonable range of values for residential properties of RRFF-5 configuration in a rural setting. Include a 2 year discount factor for lag time in development.
- Provide an alternative valuation of the Nick Stearns 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 Nick Stearns Measure – 37 claim.
- Provide and compare estimates of the value of the subject property as of 2006 with Metro’s “Outer Neighborhood” designation versus Clackamas County’s RRFF-5 designation.

Nick Stearns Property Description:

The subject property consists of 21.4 acres immediately east of S. South End Road at approximately the 199th block south of Oregon City. Clackamas County Assessor data show the property as two tax lots; one of 18.6 acres and a second of 2.8 acres for a total of 21.4 acres in all. A residential structure and outbuildings are located on the western portion of the property. Assessor appraised value as of 2005 for both lots amounts to \$422,988 with the improvement accounting for \$133,290 and the land - \$289,698. Assessor data show the home being constructed in 1965. Data submitted with the claim indicate the property was conveyed as a Deed of Trust in 1998 for \$10. Value of the property at the time was estimated at \$300,000.

Visual inspection from S. South End Road and air photo inspection as well as relevant GIS data indicate that portions of the property pose 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 263 foot wide high voltage utility line easement and 2 sets of utility lines that run east-west through the upper 1/3 of the property. These are high voltage lines that allow no building underneath. Snapping, crackling and humming of the lines was audible from the road. Besides limiting the land available for development, the lines constitute substantial disamenities to high value residential development.

The south-western ¼ of the property also has a fairly steep slope that will also limit development to some extent. The remainder of the property is fairly flat farm and forestry land. Surrounding development, particularly that in Oregon City within ½ mile does not appear limited by drainage or topographic features.

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 “Outer Neighborhood” and the default use of RRFF-5.

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 by 1.4 acres to 20³. Should the property be developed in a configuration consistent with Metro's Outer Neighborhood designation we estimate that anywhere from 10 acres (47%) to 12.5 acres (58%) of the 21.4 acres would be useable. Under RRFF-5 zoning it may be conceivable (septic tank and road restrictions not withstanding) to use 20 acres for development by including the easement as part of the 5 acre lot and siting the dwelling unit outside the easement. In this case we expect the property to yield 3 – 4 buildable 5 acre lots. Since all land within the easement is highly restricted in use, 5 acre lots in this configuration are necessarily worth much less than lots that are subject to owner discretion.

Based on similar terrain and developments in the UGB within Oregon City we calculate that with Outer Neighborhood given a range of lot sizes of 4,000 – 10,000 sq. ft., 5 to 6.5 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 RRFF-5 designation we assume by definition 1 unit per 5 acres.

In sum we expect the property with Metro's Outer Neighborhood designation to yield 50 (5 times 10 acres) to 81 (6.5 times 12.5 acres) residential lots ranging from 4,000 to 10,000 sq. ft. in size. The RRFF-5 designation yields 3 – 4 buildable rural lots of 5 acres in size.

Current Value Estimate of “Outer Neighborhood” Buildable Lots in Oregon City 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 Oregon City UGB expansion area. We examined 154 SFR properties within the entire expansion area. Many of these are properties that remain substantially rural in character without full urban services. Relevant summary results are in Table 1 below.

³ We point out that for RRFF-5 this is not presently feasible since it would require establishing a 1.6 acre tax lot for the existing residential structure. Most realistically, the RRFF-5 designation would yield a 6.6 acre lot with the existing house and 3 5 acre lots.

Table 1: Summary Property Value Data – Oregon City Area Residential Sales

Average Lot Size:	.73 acres
Median Lot Size:	0.46 acres
Average Lot Value:	\$99,000
Median Lot Value:	\$92,300
Average Total Prop.	\$237,000
Median Total Prop.	\$220,000
Average House Size:	1,745 Sq. Ft.
Median House Size:	1,536 Sq. Ft.

When we adjust for lot size, availability of full urban services, and the presence of the utility lines on the property, the data support a lot value range of \$75,000 to \$90,000 per buildable lot in 2005 dollars for “Outer Neighborhood” type development on the subject property. This value range encompasses a range of housing types and neighborhood conditions.

Current Value Estimate of “RRFF-5 Buildable Lots” in the 1 Mile Buffer Area Outside the UGB:

To establish the value range for “RRFF-5” 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 2.5 to 7.5 acres. These comprised 177 properties and their summary statistics are included below in Table 2.

Table 2: Summary Property Value Data – Clackamas Rural Residential (“RRFF-5”)

Average Lot Size:	4.45 acres
Median Lot Size:	4.56 acres
Average Lot Value:	\$233,200
Median Lot Value:	\$204,000
Average Total Prop.	\$510,200
Median Total Prop.	\$421,800
Average House Size:	3,500 Sq. Ft.
Median House Size:	3,350 Sq. Ft.

For purposes of valuation we also need adjust for the presence of the utility lines. According we are assuming a range of \$175,000 to \$225,000 per buildable 5 acre lot for RRFF-5 on the subject property.

Alternative Valuation of Nick Stearns 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 1998 through 2005. We have also converted the 1998 Stearns’ property transfer of \$300,000 to value per acre. Since we are retaining the residential structure we have reduced the value by 36.0% (improvement plus 1.4 acre land share in 2005) and divided the result by 20 acres (The amount of available to the market). 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 1998 the value of the 20.0 acres of raw land amounted to \$9,600 per acre. Table 3 below converts that value per acre to current 2005 dollars using 4 different value change indices.

Table 3: Nick Stearns’ Property Value per Acre Given Market Expectations of Purchase Price (Plantinga-Jaeger Method)

Index ⁴	98 Value	2005 Value	Ratio	Value Per Acre 2005 \$
Port/Van CPI	167.1	197.7	1.18	\$11,320
House Value Index	156.9	241.5	1.54	\$14,784
Lot Value Index	40.0	95.0	2.38	\$22,848
S&P500 Stock Idx	1035	1181.4	1.14	\$10,944

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 1998 and Oregon City values for year 2005. The S & P index is the raw price index; not the real price index which is adjusted for inflation.

⁴ 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>

Depending on one's philosophy of an appropriate rate of investment return the Stearns property raw land value per acre should vary between \$11,000 and \$23,000.

Evaluation of Nick Stearns' Claim of Comparable Properties

The basis for the Stearns' property value loss claim rests on a market value estimate of \$250,000 per developed, ready to build lot assuming 3 buildable lots plus the existing residence are available on the property. To support the estimate of \$250,000 per buildable lot no comparables are submitted.

Nick Stearns' 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 Stearns' 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 1.4 acres it occupies so we have 20 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 Outer Neighborhood and RRFF-5.
3. Account for the value of time until the property could actually be developed. In the case of Outer Neighborhood we assume 5 years before development; so we discounted the value at 6.5% per year for 5 years. For RRFF-5 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 Outer Neighborhood and RRFF-5.

Table 4: Comparison of Estimated Market Value of Raw Land for Outer Neighborhood and RRFF-5 Land Uses

Outer Neighborhood

Low Yield:	50 DU
Low Range Lot Value:	\$75,000
Development Cost per Lot:	\$50,000
Net Raw Land per Lot:	\$25,000
Total Raw Land Value (50x25,000):	\$1,250,000
Current Market Value per acre for 20 acres	
Discounted 5 years:	\$45,600

High Yield:	81 DU
High Range Lot Value:	\$90,000
Development Cost per Lot:	\$50,000
Net Raw Land per Lot:	\$40,000
Total Raw Land Value (81x40,000):	\$3,240,000
Current Market Value per acre for 20 acres	
Discounted 5 years:	\$118,200

RRFF-5

Low Yield:	3 DU
Low Range Lot Value:	\$175,000
Development Cost per Lot:	\$50,000
Net Raw Land per Lot:	\$125,000
Total Raw Land Value (3x125,000):	\$375,000
Current Market Value per acre for 20 acres	
Discounted 2 years:	\$16,500

High Yield:	4 DU
High Range Lot Value:	\$225,000
Development Cost per Lot:	\$50,000
Net Raw Land per Lot:	\$175,000
Total Raw Land Value (4x175,000):	\$700,000
Current Market Value per acre for 20 acres	
Discounted 2 years:	\$30,900

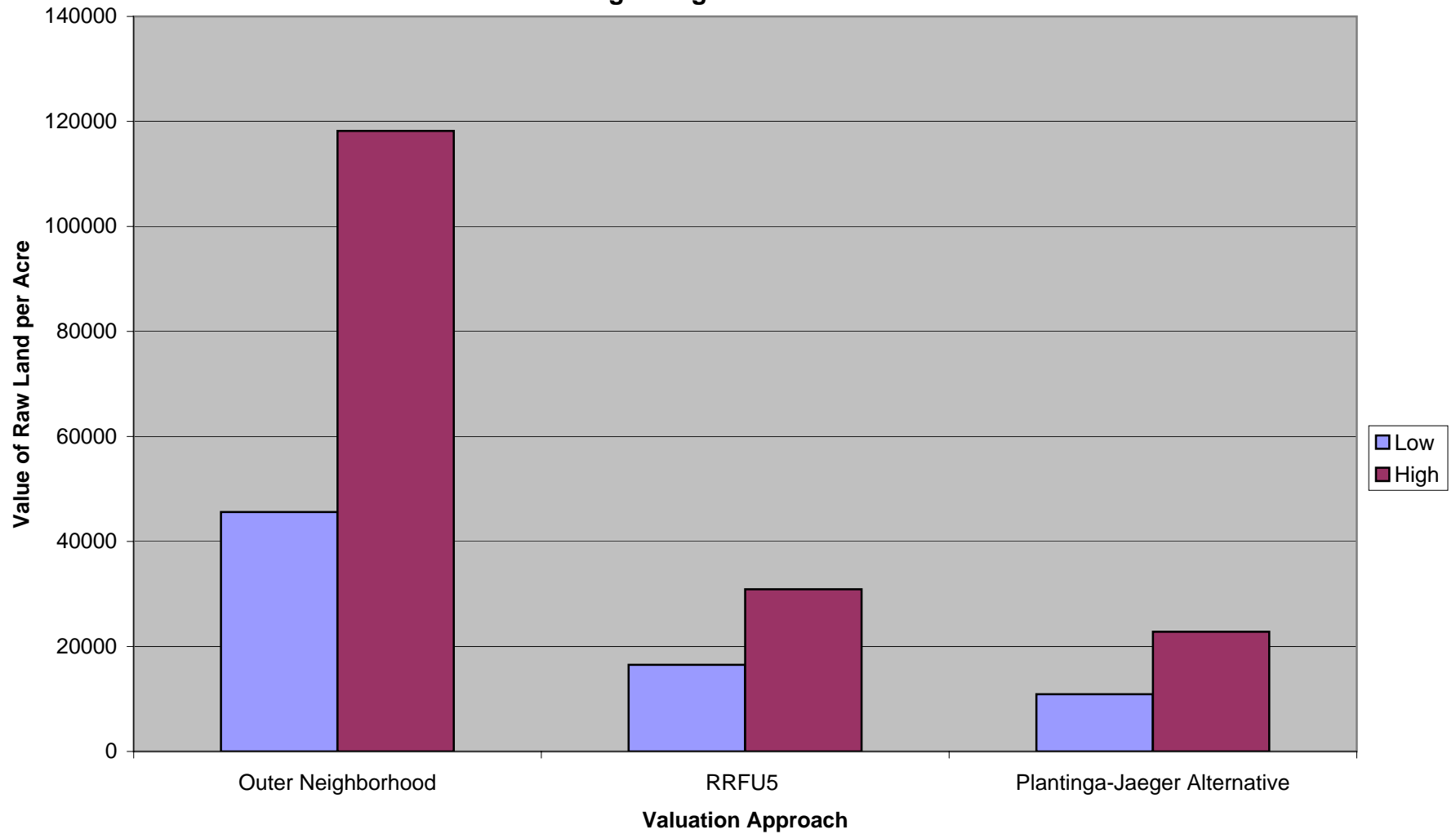
Figure A attached depicts the calculations in Table 4. We estimate the current raw land value of the Stearns' property with Outer Neighborhood designation to range from \$45,600 per acre to \$118,200 per acre. The same property used as RRFF-5 in a rural setting would yield \$16,500 to \$30,900 per acre. In other words the most optimistic RRFF-5 valuation does not equal the most pessimistic Outer Neighborhood valuation. Given these results we would conclude that the

Council Order 06-003
Attachment 2

Outer 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 \$11,000 to \$23,000 per acre. The highest Plantinga – Jaeger estimate falls midway between the lowest and highest “comparative sales” estimate of RRFF-5 per acre. Clearly, under no circumstances has any regulatory change to the Stearns’ 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 Stearns’ property.

Figure A: Current Market Value per Acre: Low and High with Outer Neighborhood, RRF5 and Plantinga-Jaeger Value Method



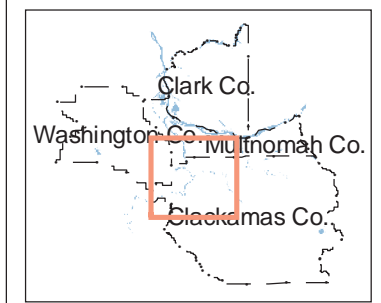
Council Order #06-003
Attachment 3

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
drc@metro.dst.or.us | www.metro-region.org

