

# A G E N D A

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**METRO**

## Agenda

MEETING: METRO COUNCIL REGULAR MEETING  
DATE: May 14, 1998  
DAY: Thursday  
TIME: 2:00 PM  
PLACE: Council Chamber

Approx.  
Time\*

Presenter

- |                     |   |  |
|---------------------|---|--|
| 2:00 PM             | <b>CALL TO ORDER AND ROLL CALL</b>  |  |
| (5 min.)            | 1. <b>INTRODUCTIONS</b>   |  |
| (5 min.)            | 2. <b>CITIZEN COMMUNICATIONS</b>  |  |
| (5 min.)            | 3. <b>EXECUTIVE OFFICER COMMUNICATIONS</b>  |  |
| (5 min.)            | 4. <b>AUDITOR COMMUNICATIONS</b>  |  |
| (5 min.)            | 5. <b>MPAC COMMUNICATIONS</b>   |  |
|                     | 6. <b>CONSENT AGENDA</b>  |  |
| 2:25 PM<br>(5 min.) | 6.1 Consideration of Minutes for the May 7, 1998<br>Metro Council Regular Meeting.  |  |
|                     | 7. <b>ORDINANCES - FIRST READING</b>  |  |
| 2:30 PM<br>(5 min.) | 7.1 <b>Ordinance No. 98-749</b> , Amending the FY 1997-98 MERC<br>Operating Fund budget and appropriations schedule for<br>the purpose of transferring appropriations to increase<br>Operating Expenses, Debt Service and Capital Outlay,<br>and declaring an emergency.            |  |
| 2:35 PM<br>(5 min.) | 7.2 <b>Ordinance No. 98-740</b> , Amending the FY 1997-98 Budget<br>and Appropriations Schedule by transferring \$45,469 from<br>Capital Outlay to Debt Service in the General Revenue Bond<br>Fund for the purpose of correcting a technical error, and<br>declaring an emergency. |  |

2:40 PM (5 min.)	7.3	<b>Ordinance No. 98-751</b> , Amending the FY 1997-98 Budget and Appropriations Schedule in the Support Service Fund and in the Building Management Fund for various funding purposes, and declaring an emergency.	
	8.	<b>ORDINANCES - SECOND READING</b>	
2:45 PM (5 min.)	8.1	<b>Ordinance No. 98-742</b> , Amending the FY 1997-98 Budget and Appropriations Schedule by Transferring \$150,000 from Contingency to Capital Outlay in the Solid Waste Revenue Fund to Provide for Initial Expenditures Associated with the Replacement of Compaction Systems at Metro South Station, and declaring an emergency.	McFarland
	9.	<b>RESOLUTIONS</b>	
2:50 PM (5 min.)	9.1	<b>Resolution No. 98-2642</b> , Amending Canemah Refinement Section of the Willamette River Greenway Target Area Refinement Plan.	Naito
2:55 PM (5 min.)	9.2	<b>Resolution No. 98-2631</b> , Accepting a Nominee to the Metro Committee for Citizen Involvement.	McFarland
3:00 PM (5 min.)	9.3	<b>Resolution No. 98-2645</b> , Approving 1998 Bylaws Amendments for the Metro Committee for Citizen Involvement.	Naito
3:05 PM (5 min.)	9.4	<b>Resolution No. 98-2651</b> , Adding the Second Largest Cities of Clackamas and Washington Counties to the Metro Policy Advisory Committee.	McLain
3:10 PM (5 min.)	9.5	<b>Resolution No. 98-2636</b> , Confirming the Selection of First Chairperson and Vice-Chair for the Natural Hazards Technical Advisory Committee, and Appointing a Home Builder Delegate to the Committee.	Morissette
3:15 PM (5 min.)	9.6	<b>Resolution No. 98-2633</b> , Authorizing the Executive Officer to Execute an Intergovernmental Agreement Establishing the South/North Land Use Final Order (LUFO) Steering Committee.	Washington
3:20 PM (5 min.)	9.7	<b>Resolution No. 98-2644</b> , Approving an Intergovernmental Agreement with the City of Cornelius for Management of Property in the Gales Creek Target Area.	McFarland
3:25 PM (5 min.)	9.8	<b>Resolution No. 98-2643</b> , Amending the Tualatin River Access Points Target Area Refinement Plan and Authorizing the Executive Officer to Execute an Intergovernmental Agreement with the City of Tualatin to Manage Property.	McFarland
3:30 PM (5 min.)	9.9	<b>Resolution No. 98-2641</b> , Confirming the Nominations of Sylvia Milne and Brian Scott to the Regional Parks and Greenspaces Advisory Committee.	Naito

	<b>10.</b>	<b>CONTRACT REVIEW BOARD</b>	
3:35 PM (5 min.)	10.1	<b>Resolution No. 98-2624</b> , Extending a Three-Year Contract to a Five-Year Contract for Soft-Drink Dispenser Machines, Maintenance of Same, and Syrups.	Naito
3:40 PM (10 min.)	<b>11.</b>	<b>EXECUTIVE SESSION, Held pursuant to ORS 192.660 (1)(h), to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.</b>	Cooper
3:50 PM (10 min.)	<b>12.</b>	<b>COUNCILOR COMMUNICATIONS</b>	
4:00 PM (60 min.)	<b>13.</b>	<b>SOUTH NORTH LIGHT RAIL WORK SESSION</b> *Council will discuss alignment and policy options regarding the South/North Light Rail Project. No council action will be taken.	Washington

#### **ADJOURN**

**CABLE VIEWERS:** Council Meetings, the second and fourth Thursdays of the month are shown on City Net 30 (Paragon and TCI Cablevision) the first Sunday after the meeting at 8:30 p.m. The entire meeting is also shown again on the second Monday after the meeting at 2:00 p.m. on City Net 30. The meeting is also shown on Channel 11 (Community Access Network) the first Monday after the meeting at 4:00 p.m. The first and third Thursdays of the month are shown on Channel 11 the Friday after the meeting at 2:00 p.m. and the first Sunday and Wednesday after the meeting on Channels 21 & 30 at 7:00 p.m.

**PUBLIC HEARINGS:** Public Hearings are held on all Ordinances second read and on Resolutions upon request of the public. All times listed on the agenda are approximate; items may not be considered in the exact order. For questions about the agenda, call Clerk of the Council, Chris Billington, 797-1542. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

*Agenda Item 6.1*

**CONSENT AGENDA**

**Consideration Of Minutes Of May 7, 1998**

# **MINUTES OF THE METRO COUNCIL MEETING**

May 7, 1998

Council Chamber

Councilors Present: Jon Kvistad (Presiding Officer) Ruth McFarland, Susan McLain, Patricia McCaig, Ed Washington, Lisa Naito, Don Morissette

Councilors Absent: None

Presiding Officer Kvistad convened the Regular Council Meeting at 2:06 p.m.

## **1. INTRODUCTIONS**

None.

## **2. CITIZEN COMMUNICATIONS**

**Art Lewellen, 3205 SE 8th Portland Oregon** introduced himself and continued his commentary in favor of his LOTI alignment for a light rail system instead of the South North alignment that Metro was contemplating.. He gave the Council 2 documents including his reply to the city of Portland's review of a presentation he had given for them last August.

He read... "it is important for citizens regarding public capital investment to receive a response,. Failing to adequately reply inform and/or assist citizens discourages alienates and breeds distrust of planning agencies and dissatisfaction with the process and outcomes....

He read another document, regarding the Oregonian printing 20 responses to the question it asked regarding South North light rail. Four opposing, 7 opposing specific alignment segments, 9 supporting. He stated that the Oregonian had distorted the truth about the submissions containing overwhelming support of South North. He called for independent investigation of submissions to check accuracy. He gave copies of his documents to the Council.(A copies of both of these documents can be found with the permanent record of this meeting.)

**John Junkin, CAPS, 888 SW 5th Avenue, Portland, OR,** appeared on behalf of Citizens for Accountability for Prison Sitings (CAPS) a newly formed organization against the proposed Tualatin-Wilsonville alternative site for the women's prison. He wanted to talk about Metro's role in accountability for the siting. He explained that his organization did not want to foist the prison on any other neighborhood or community but they were very opposed to the siting plan now. He detailed the zoning and said the siting was wrong for a prison. He pointed out that the site was not in first tier Urban Reserve. He pointed out that



no input by citizens was planned into Metro's expansion of Urban Reserve boundaries that were involved with the prison siting and he thought that would bring problems because there was nothing in the record that this exceptional land would be industrial use. Metro specifically found last year that expansion in the manner now being considered would violate Metro's RUGGOs. He asked Metro to review a schedule he had. He also mentioned that Metro had said they would do an environmental plan for area 42.

**Lou Ogden**, Mayor of Tualatin, said he would talk about prison siting philosophy instead of other things he could have talked about. He brought up the concept of NIMBY and said this was not the reasoning here. He said it was a quality of life matter that made him against the prison at the Tualatin site. He said he would be against a prison in Tualatin or anyplace else in any neighborhood site. He suggested letting the state supersite the prisons. He said providing planning for land use for prisons in urban settings went against the concept of urban form he felt the region was looking for. He strongly felt prisons didn't belong in communities.

**Councilor Washington** excused himself from the meeting due to reactions to medication taken for his allergic reaction the previous evening.

**Jeff Burke**, 22765 SW Eno Place, Tualatin, OR 97062 said he moved to Tualatin from Wisconsin because of the city's schools, surroundings, and moral character. He explained that he was within 1 mile of the proposed alternative prison site and was shocked that such a siting was possible. He showed a videotape of a meeting in Tualatin with over 300 concerned residents in attendance. He said the videotape represented very well the large number of people concerned about the alternate prison site being used. He read from and wanted to ask a question of Council about something in the packet he received from Margie Taylor at the Division of Corrections:

"421-628. Effective decision of correction facility siting authority notwithstanding ORS, or any other provision of law, including but not limited to statutes ordinances, regulations, and charter provisions, the decisions of the corrections facilities siting authority, if approved by the governor, shall bind the site and all counties, cities and political subdivisions in this state as to the approval of the sites and the construction and operation of the proposed corrections facilities. Affected state agencies, counties, cities and political subdivisions shall issue the appropriate permits, license and certificates and enter into any intergovernmental agreements as necessary for construction and operation of the facilities subject only to the conditions of the siting decisions."

**Melanie Pennington**, CAPS President and Founder, 10365 SW Day Road, Sherwood, OR 97140 said there was an incredible amount of support for CAPS in the month since it had been formed. She said there was a lot of opposition to the alternative prison site. She said the group was interested in the truth and read from Metro's Resolution 98-2623A which was to encourage the governor to consider the alternate location. She pointed out that the background and analysis section of the staff report stated the proposed Wilsonville industrial site was primarily zoned Rural-Industrial and located inside

Metro's Urban Reserve area. She reminded the Council that several people had already discussed that this was not true and the area was definitely not industrial. She said it was also not entirely within the Urban Reserve because there was a proposed legislative amendment to bring it into the Urban Reserve. She said she did not see anywhere in the siting process where the city affected could pick another piece of property and get DOC and Metro to help bring it in and make it viable. She said the governor clearly stated in his letter that the Dammasch site was a very good site and not inadequate for construction and/or operation of the correctional facility." She said she did not see how this made the alternative site a "special need".

**Alison Browdie**, 9840 SW Lumbee Lane, Tualatin, OR, 97062 commented that the Resolution 96-9623A and paraphrased "if the DOC selected this site Metro would try to take steps to allow its use as a prison site consistent with Oregon land use laws." She said it had been explained to her that Chapter 3.01 of the Metro Code would outline Metro's approach to making decisions about this matter. She pointed out that Chapter 3.01 said first tier Urban Reserve land would be brought into the reserve first. She said that 60 acres of this 103 acre alternative site were not only not in First Tier land but not within the reserves at all. She also felt this was not "special need" because the governor and DOC had already noted that other land already within the boundary was appropriate. She summarized criteria in Chapter 3.01 and said it was clear that the intent of this Chapter did not meet with the alternative site plan. She asked if Metro did not consider themselves bound by the 421-648 and why Metro had decided to involve themselves in the matter. She asked who was funding Metro in this matter and why had it not sought input from affected communities.

**Lori Duffant**, 22640 SW Miami Dr., Tualatin, OR 97062 appeared as a concerned citizen and said she opposed the alternative siting and the way it was being pushed so hard and fast to make it happen. She said she researched her new home when she moved here from Seattle and was told the siting had already been done and approved so she moved where she did. She said the alternative site was being mis-characterized and misrepresented to the public. She reported that the Dammasch property was already owned by DOC and cited the governor's letter regarding the property. She noted costs and problems of the alternative site. She asked why the process was being fast tracked and asked in this was what Metro meant by livability.

**Julie Burke**, 22765 SW Eno Place, Tualatin, OR, 97062 spoke against the alternative prison site. She said she became factually informed about the alternative site since she found out it was being considered a month ago. She said the degree and extent of Metro's involvement in the alternative site matter was not right. She said the land in question was outside Washington County's Urban Growth Boundary. She brought Resolution 97-37, passed in Washington County in 1997, which opposed siting outside the Washington County UGB. Washington County had sent a letter to the governor opposing the plan. She said Metro was accountable to all people concerned and not one group or city. The governor's directive was to consider the alternative site further. Ninety days was given to refine analysis, not to amend UGBs. She asked the Council to review and research the

information they had for accuracy, consistency and equality. She said most important was for Metro to study what, if any, role they should take in the process.

**Darren Pennington**, 10365 SW Day Rd., Sherwood, OR, 97140 said he was absolutely opposed to the alternative site because his "L" shaped property bordered the site on 2 sides. He expressed deep respect for Metro and the land use process. He said there were some problems regarding the alternative prison site. He distributed copies of a 3 page memo from Larry Shaw to Mike Burton dated one month ago regarding the Wilsonville "special needs" UGB Amendment Process. He said the memo spoke to bringing UR 42 legally into the UGB. He said he was disturbed by the references to "strategy-decisions" and how to make the process faster. He felt the tone was inappropriate to a body such as Metro and was an outline to fast-track a prison outside the UGB without minimal process. The memo pointed out the letter of the law but not the intent. He said even his "average sense of smell told him that this was "fishy".

**Rich Gentes**, 24925 SW Garden Acres Rd., Sherwood, OR, 97140 lived in UR 42 and across from the proposed alternative site. He said the city of Wilsonville was trying to pass on to the rural residents of Washington County a dis-service that was implemented on them by the state. He said this was outside their jurisdiction and they had been telling half-truths. He felt Metro Council had been too quick in accepting the unsubstantiated claims and altering their agenda in support of the Wilsonville effort to alter the land use of the area. He recalled that Councilor McLain had spoken to a group in Wilsonville a year ago and stressed the 2040 plan and the need for additional high density housing due to rapid population growth. He said the UGBs were displayed and the need for high density housing was emphasized but at no time was the need for more industrial or commercial land mentioned. He requested the Council to re-evaluate the land use and the 2040 plan for this area and leave the job of prison siting to the DOC and the state. (A copy of this letter can be found with the permanent record of this meeting.)

**Miq Millman**, 22465 SW Grahams Ferry Rd, Tualatin, OR 97062 spoke of his belief that Metro should not be and was not now involved in prison siting. He spoke about the UGBs and the circumventing of the due process to evaluate the prison site land as a whole. He quoted 98-23A statement of the governor "...if picked, then steps will be taken". He pointed out that the site had not yet been picked and steps were already being taken. He said a lot of information about the site was based on future plans. Much of the information released to Metro was based on changes that Wilsonville has planned for when the site was incorporated into the city limits. He asked the Council to think about the amount of their time and money from the taxpayers had been put into the lengthy and involved 2040 planning process. He asked them to check into their facts on the siting decision.

**Cathy Oyster**, 22015 SW 106th Place, Tualatin, OR 97065 thanked Metro Council for taking on their unique responsibility. She asked Metro to explain if they were planning to follow Metro agencies in others area trying to develop viable communities or were viable



prison sites the goal. She said she would look forward to hearing from Metro in the next 45 days on that question.

**Susan Rychlick**, 25190 SW Grahams Ferry Rd., Sherwood, OR 97140 spoke of her family and told how Sherwood took 3 generations of kids went to school from their property when the other areas were not interested. She said it scared her to think Wilsonville could come in and condemn her property to build a prison when they had never been involved with the area with services or any other way. She urged the Council to reconsider before taking any hasty decisions on changing the boundaries.

**Gary Rychlick**, 25190 SW Grahams Ferry Rd., Sherwood, OR 97140 echoed his wife's concerns and said he was scared to have somebody with the opinion that his area was blighted and under used be the representative of his interests for getting it annexed into a city.

**Rick Yarnall**, 22675 SW Miami Dr., Tualatin, OR 97062 said he had recently moved from South Dakota and was very unfamiliar with the Metro government body and where it fit into the big picture. He said he wanted to speak out against the alternative prison site. He said he had not shown his house that was on the market to a single person in 5 weeks and blamed it on the prison being planned there. He said it would cause severe monetary hardship on him as he had already bought another house there expecting to be able to sell his old one quickly. He asked why Metro was involved in the decision and said he hoped they would oppose the site.

**Dan Willis**, ORPS, 10811 SW Hunt Ct, Wilsonville, OR 97070 voiced his appreciation of Council's Resolution to consider the site and willingness to keep an open mind for alternatives. He said while he did not endorse the governor's executive decision to site a prison in the tri-county area, it did fit within the 1 mile buffer that some had so diligently work for with the legislature in the past months. He said Dammasch was immediately next door to school and near other schools and residences. He said he did not agree with the tri-county area for prison siting, but another site within the 1 mile buffers needed to be found.

**Terry Withers**, 33900 NE Wilsonville Rd., Newberg, OR 97132 said the buffer was objective, it was true but the intent was to site prisons within appropriately zoned places. He said the Wilsonville industrial site met the intent of the Oregonians for Responsible Prison Sitings (ORPS) criteria. Because of that Wilsonville passed a resolution of interest to site the intake center. They were the only community to do so. He said the site would be in Tualatin not in Wilsonville but the issue had been made into a Wilsonville problem. He said they were resolving it the best way they could. He said the problem should be solved in a regional cooperative manner.

**Joanne Mills**, 10980 SW Matzenor, Wilsonville, OR 97070, a member of ORPS, said Metro would be deciding some of the UR and UGB issues in June. She felt it was important to state ORPS's position regarding the site because so many people had spoken

today. The prison siting process had been going on for about 2 years. ORPS started out trying to get a 2 mile/3 mile rule passed in the legislature: 2 miles from schools and 3 miles from homes. That was from national standards. The citizens in the area had no general support for such a rule. The legislature overwhelmingly supported the one mile limit. The prison was not going in eastern Oregon or somewhere in the desert. The Wilsonville area had been targeted because of its location and access to I-5. She said it would be an intake center for all of the prisons in the entire state. Wilsonville had passed a resolution of interest. The prison would go in the middle of the housing that the area so desperately needed or it could go in the heart of a present or future industrial area.

**Mayor Charlotte Lehan**, Mayor of Wilsonville, 29786 SW Lehan Ct., Wilsonville, OR 97070 reiterated that Metro was not siting the facility or even considering a change that would allow siting the facility. She said Wilsonville was not siting the facility. The State of Oregon had the authority under super siting to put it anywhere they wanted to and Wilsonville was where they wanted. Our role was to try to come up with a response that makes the best regional land use sense in terms of preserving the ability for existing land use plans to go forth, housing and commercial and industrial land that is in need in the Urban Reserve.

**Stephen Lashbrook**, Planning Director, City of Wilsonville, PO Box 1282, Wilsonville, OR 97070 pointed out that there had been a lot of inaccurate information. In response to people saying the property was in Wilsonville or Sherwood or Tualatin, he pointed out that the UR map showed UR 42 directly adjoined the city of Wilsonville. He said Wilsonville would have to plan for and provide services to it and they were doing the best they could on that account. He said the statement regarding the property not being within areas designated for urban planning by Wilsonville was not accurate. Wilsonville was already doing UR planning for that area. He said the statement that the site and size of the prison would not allow for buffering was not accurate based on the information he had received from the DOC. He said part of Wilsonville was indeed in Washington County.

### **3. EXECUTIVE OFFICER COMMUNICATIONS**

None.

### **4. AUDITOR COMMUNICATIONS**

**Alexis Dow**, Metro Auditor, updated Council that 3 audits were in process and 3 more were being started. She said 2 departments in the administrative services division had been scheduled to participate in the national benchmarking survey and she had selected Deloitte & Touche as the new auditors for Metro's financial statements. She said a review of the controls of the cash collections in outside locations was in process and a survey of each operating department that would make sure plans were working "as planned" was in the works. She reported a continuing effort to report back to Council with the statistical overview of trends that Metro fell into. She also reported work on finalizing an RFP to review the implementation of the InfoLink.

## **5. MPAC COMMUNICATION**

**Councilor McLain** said she and Councilor Naito had attended the Coordinating Committee who was setting up the agenda for the joint meeting on May 28. She said the committee was looking forward to a conversation on regional funding and infrastructure costs that would help with the 2040 growth concept and all of the elements involved in the Functional Plan as well as the Regional Framework Plan.

## **6. CONSENT AGENDA**

**6.1** Consideration meeting minutes of the April 23, 1998 Regular Council Meeting.

**Motion:** Councilor McFarland moved to adopt the meeting minutes of April 23, 1998 Regular Council Meeting.

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

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

## **7. ORDINANCES - FIRST READING**

**7.1** Ordinance No. 98-746, Amending the FY 1997-98 Budget and Appropriations to recognize \$44,000 in new grant revenues, reclassify certain expenditures, transfer funds from the Regional Parks Fund Contingency to various line items within the fund; and declaring an emergency

The clerk read the ordinance for the first time by title only. Presiding Officer Kvistad sent Ordinance No. 98-746 to Finance Committee.

**7.2** Ordinance No. 98-747, Amending the FY 1998-98 Budget and Appropriations Schedule transferring \$4,000,000 from Open Space Fund Contingency to Capital Outlay in the Open Space Fund in Regional Parks and Greenspaces department to provide funding for unanticipated expenditures; and declaring an emergency

The clerk read the ordinance for the first time by title only. Presiding Officer Kvistad sent Ordinance No. 98-747 to Finance Committee.

## **7. ORDINANCES - SECOND READING**

**7.1** Ordinance No. 98-730, For the Purpose of Amending Ordinance Nos. 96-647C and No. 97-715B, to amend Title 3 of the Urban Growth Management Functional Plan, and amend the Regional Framework Plan, Appendix A, and adopt the Title 3 Model Ordinance and Water Quality and Flood Management Maps.

**Councilor Naito** presented the ordinance. She said the stream and floodplain protection plan had taken a number of years to develop. She said her district had lost a lot of streams to development and she hoped this ordinance would prevent future mistakes regarding streams and wetlands. She said this ordinance would create a solution for 2 main issues, water quality improvement and floodplain protection. She referred to the Functional Plan's policy on water quality and floodplains and read the requirements for new development. She said the plan had full review and input from WRPAC, MTAC and MPAC. She reviewed the Growth Management Committee work coming up. She thanked the people who testified on the issue today.

**Councilor Morissette** concern was the impact on property rights. He felt the language of Title 3 would affect 30,000 - 40,000 existing households who deserved to be notified that the new setbacks would affect them and give them a chance to voice their opinions and concerns. He urged prudence in moving forward.

**Councilor McFarland** asked what kind of consideration Council had for notifying the affected households.

**Councilor Naito** answered that the wetlands and notice issues had been set aside to be dealt with at the May 28 Growth Management meeting so there was no real answer to that question yet.

**Councilor Morissette** said his problem with local governments doing the notifying was they had very little room to maneuver. His goal was to make sure a process to bring back concerns was in place after notification. He believed there was a solution and said he was afraid it would not get a proper hearing.

**Presiding Officer Kvistad** asked if the committee had considered the potential federal impacts on the watersheds due to the salmon listing issue.

**Councilor Naito** said more information could be brought on that matter.

**Councilor McLain** clarified that after the public hearing she would be responding to Councilor Morissette's comments.

**Presiding Officer Kvistad** opened a public hearing on Ordinance No. 98-730.

**Amanda Fritz**, Friends of Arnold Creek, 4106 SW Vacuna St. Portland OR 97219 requested deletion of Section 3 Part A Lines 30-32 and Lines 37-40. This would delete the option for jurisdictions to allow incorrect maps to prevail over language specifying the resources to be protected. She said she had not heard a good explanation for why this should be included since she asked for the deletion the last time.

**Councilor McLain** responded she would carry the amendment to WRPAC for debate. She said she was not finished reviewing the request at this time.

**Mike Houck** was not present when called.

**Anne Nickel** of the Columbia Corridor Association, PO Box 55651, Portland, OR 97238 said she spoke for several hundred property owners and over 2,800 businesses in the 28 square mile prime industrial area. She said the area housed 48% of the vacant industrial land. She wanted to make clear that the business community was indeed interested in this process but had to rely on people like her to bring the message while they operated their businesses. She said they understood and supported the need for Metro to coordinate and facilitate the region-wide effort. She said they were not asking that any goal be changed or undermined, but did want to ask where was the balance if you chose to preserve any wetland, even those classified as insignificant by state criteria, at the expense of other goals and allowed insignificant wetlands to be filled and mitigated. She said that would allow maximum use of the land by encouraging development of upgraded water resource areas. To minimize the pressure on the UGB expansion. She felt creative use of the land would be required for job creation and housing density. She said go ahead and set standards and see that they are met, but also grant enough flexibility that jurisdictions and developers could creatively develop a site and meet all the goals of the Functional Plan. She said that Metro staff had said that flexibility was built into Title 3. She said that when it added months to the process and thousands of dollars in legal engineering and environmental consulting fees, flexibility might be created, but at the same time it was a huge disincentive. She said it forced the developer to do the least possible environmentally in order to maintain an economically viable project. She said there were many examples where creatively approaching the development of a site had resulted in all goals being met. She said the Columbia Corridor had thousands of acres protected behind dikes where flood management was mechanically controlled. She pointed out that during the 1966 flood the dike areas were dry because the water was drawn down in preparation.

**Kelly Ross** of the Home Builders Association of metropolitan Portland echoed Ms. Nickel's remarks supporting and recognizing the need to ensure water quality and flooding. He said they did not believe measures to contradict or undermine other goals in the 2040 project should be adopted. He said Title 3 impacted the buildable land supply and a serious impact on transportation access. He said it also did not consider the ripple affect that it would have on future subdivisions. He noted his written testimony regarding the current definition of development. He suggested some changes in the definition. (A copy of the written testimony can be found in the permanent record of this meeting.)

**Tim Warren**, Columbia Corridor Association, NAIOP, 12031 NE Marx, Portland, OR 97220 introduced himself as the president of the Three Oaks Development Company who had been doing responsible development in the area for the last 20 years. He spoke regarding the definition of wetlands and the lack of definition of insignificant wetlands in Title 3. He pointed out a 100 acre industrial park project and explained the insignificant wetlands involved in the project. He explained a project that through mitigation had made

63 acres of significant wetlands out of them. He pointed out that there was a loss of industrial land in doing so. He urged that Title 3 have a designation and process for insignificant wetlands.

**Beverly Booken**, 621 SW Morrison, Suite 200, Portland, OR. spoke on behalf of the Commercial Real Estate Economic Coalition (CREEC) which represented more than 5,000 individuals and businesses and 13 organizations involved in the development, sale and leasing of retail office and industrial properties. She concurred with comments made by previous speakers that the development community was not opposed to water quality but there was a need to balance with job creation and efficient land use. She said the people she represented provided the jobs in the jobs/housing balance. She named 3 specific issues: 1) she urged Council to refine the definition of wetland to distinguish between significant and insignificant wetlands; 2) she raised points previously mentioned by Councilor Morissette regarding the large number of households that would be affected by Title 3; and 3) they felt applicants who were already in the process of obtaining permits but had not exercised them should be exempted. (A copy of her written testimony is included in the permanent record of this meeting.)

**Gregory Robart**, Oregon Department of Fish and Wildlife, 17330 SE Evelyn St. Clackamas OR 97015 offered testimony in support of Title 3. He said they supported the model ordinance as an important public policy that served to help protect the biological integrity of metropolitan waterways. He touched on highlights of written testimony he submitted. (A copy of this testimony can be found in the permanent record of this meeting.) He suggested that a field verified map be adopted by the city or county. He suggested that the table in the model ordinance was confusing and should be altered for ease of understanding. He was concerned about the language that would adjust the removal of debris. He pointed out that while it was important to clean up streams, large woody debris was important to the streams and should be left alone. He was concerned about too much flexibility and said the definition of wetlands be adhered to.

**Mike Houck** was representing the Audubon Society of Portland and the natural resources working group of the Coalition for a Livable Future, 5151 NW Cornell Rd Portland OR 97210 urged Council to read his written testimony in full and said he would focus on 3 specific issues: 1) He outlined his rationale for not going in the direction just commented on or the direction of the legal counsel; 2) He said that the maps/language issue needed to be resolved; and 3) he felt there was plenty of flexibility allowed for in Title 3. He said his groups would be opposed to changing in mid-course what they understood Title 3 to be intended to do, to recognize the importance of wetlands for water quality purposes throughout the metropolitan region. He said at no time in their discussions was the issue of culling insignificant wetlands from significant wetlands ever mentioned. (A copy of his written testimony can be found in the permanent record of this meeting.)

**Bill Briggs**, owner of Fuel Processors, 4150 N Suttle Rd, Portland OR 97217, which disposed of many things people did not know how to get rid of like oil and grease, etc. He said he was an environmentalist but felt it was now an issue of protection of property



rights. He said the result of this would be he could not expand and would have to move his business. He said he would lose approximately \$200,000 in property value and the site would become unusable to him. He said there were ways to work together and those should be explored.

**Doug Neeley**, Oregon City Commissioner, 712 12th St. Oregon City OR 97045 supported Title 3 and referred to page 5 Exhibit A, #3 where he read "lots and parcels which were fully or predominately within the water quality resource area and were demonstrated to be unbuildable by vegetative corridor regulations, cities and counties shall reduce or remove vegetative corridor regulations to assure the lot or parcel will be buildable while still providing the maximum vegetative corridor practicable. Cities and counties should encourage land owners to voluntarily protect these areas through various means such as conversation easements."

He said he was concerned about this working and felt 2F covered most of it. He felt the only difference had to do with mitigation. He said #3 did not define buildable.

**Peter Teneau**, 2715 N. Terry St., Portland, OR 97217 said he represented Friends of Smith and Bybee Lakes for this meeting. He said they supported Title 3 without any amendments. He opposed the additional flexibility language called for in amendments before Council. He urged the definition of the term wetland be that used by the Division of State Lands and the Army Corps of Engineers. He made a personal statement that the intent of Title 3 was clear, but it was also clear to those who worked on wetland issues that every square yard of wetland had value. He said Title 3 was a good ordinance and Council should not allow amendments to gut it.

**Beth Woodward**, 6102 SE 46th Ave, Portland OR 97221, member of the Coalition for a Livable Future expressed support for Mike Houck's testimony and his effort to take the teeth out of Title 3. She said the definition of any wetland should not be tied to a map. She agreed that there were no insignificant wetlands. She asked Council to vote in the public interest rather than developers and individual property owners.

**Doug Bollam**, PO Box 1944, Lake Oswego, OR 97035 passed out copies of his written testimony in support of Title 3. He felt the Council had been very attentive to this matter and the staff had done a good job and complimented some of them. He mentioned a conflict in the model ordinance with the application requirements and the development standards. He asked Mr. Helm to look the language over. (A copy of this testimony can be found with the permanent record of this meeting.)

**Mary Vogel**, Friends of Rock, Bronson and Wilson Creeks, 1844 SW Custer St. Portland OR 97219 had to leave, but her testimony is included as part of the record.

**James Dalton**, Friends of Newell Creek Canyon, PO Box 3, Oregon City, OR 97045 said in the past 15 years he had been involved in a lot of watershed issues. He said one of the reasons to adopt these kinds of ordinances was to eliminate the ambiguity of definitions

of terms. He felt Title 3 addressed a lot of these issues. He said a map was a good tool but should not be relied on instead of words.

**Michael Lilly**, 1 SW Columbia St. Suite 1850 Portland OR 97250 an attorney, spoke as Chair of Housing and Land Use Committee for Tualatin Valley Economic Development Corporation. He had previously mailed his testimony to Council. He suggested the significant wetlands definition crafted by the Division of State Lands since January 1997 be adopted. He urged Council to look that over and use it as a standard. (A copy of his testimony is in the permanent record of this meeting.)

**Gayle Killam**, Oregon Environmental Council Water Program Director, 520 SW 6th, Suite 940 Portland, OR 97204 said Title 3 appeared to her and the OEC to be the way Metro would have to step up to the plate. She said the early adoption and quick implementation of Title 3 was important because water resources had been playing catch up through the whole Functional Plan and Regional Framework process. She said Title 3 took the first steps to address the salmon listing. She mentioned the language vs. maps debate and said the maps would never be perfect so the language should prevail. She said in the wetlands debate she felt the definitions already in place with the state should be used.

**Robin Plotkin** 9397 NW Fox Hollow Ct, Portland, OR 97229 representing Friends of Fox Hollow urged Council to adopt a strong Title 3 that would eliminate exceptions for development of wetland areas. She stated support of Mike Houck's testimony today.

**Robert Baumgardner**, State of Oregon Department of Environmental Quality reiterated their support sent in letter form already. He said this was an important first step but many more actions to protect water quality would be needed. He said the expanding list of endangered only demonstrated the failure to meet obligations to protected water quality and resources. He said state agencies were spending a lot to recover lost areas and it would be more cost effective to protect them than recover them.

**Rebecca Kreag**, Bureau of Environmental Services, 1211 SW 5th Ave #8 Portland, OR spoke in support of Title 3 program and felt the flexibility was sufficient to allow different approaches to the problems. She felt the buffer areas were most critical but not the total solution. She said point source controls would be lost in a stream without an adequate buffer. She felt Title 3 was critical and supported it strongly.

**James Olson**, Councilman, city of Happy Valley, 12378 SE Wagner St. Happy Valley, OR 97235 submitted a written statement in agreement with the intent of the Title 3 model ordinance amendment. He had a concern about Metro LCDC overlapping. He said he did not see any problems in implementing Title 3 in Happy Valley.

**Tom Epler**, 43465 SW Hiatt Rd Forest Grove, OR, a Washington County resident living by Gales Creek on a dike. He wondered how his property would be affected since he was outside the UGB. He felt Title 3 was a good thing. He said a big problem was the

vegetative corridor because his dike did not have enough room to allow for the buffers and he used it for a road.

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

**Discussion:** **Councilor McLain** said she was very interested in the conversation on the language vs. the map and that there were some issues that hadn't been aired at the Growth Management Committee, she would take them to the May 28 meeting. She felt the language vs. the map conversation would be helpful in the definition of wetland. She said the issue of how Title 3 affected land outside the UGB was important and would be looked at. She thanked Council and public who testified for the new issues and added information.

**Councilor Naito** reviewed the schedule of hearings coming up on the item. She said Growth Management Committee had scheduled a special meeting Thursday, May 28 at 2:30 PM to deal with all of the outstanding issues.

**7.2 Ordinance No. 98-735, For the Purpose of Lowering the Minimum for the Group Discount Classification from 25 to 20 persons and Granting Complimentary Admission to the drivers and escorts of Pre-formed Tour Groups at Metro Washington Park Zoo.**

**Motion:** **Councilor Naito** moved to adopt Ordinance No. 98-735.

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

**Councilor Naito** said the title of the ordinance was self-explanatory, and further comment was unnecessary.

**Presiding Officer Kvistad** opened a public hearing. No one appeared to speak with regard to the legislation. **Presiding Officer Kvistad** closed the public hearing.

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

## **8. RESOLUTIONS**

**8.1 Resolution No. 98-2634A, For the Purpose of Approving the Year 9 Annual Waste Reduction Work Plan for Metro and Local Governments.**

**Motion:** **Councilor McLain** moved to adopt Resolution No. 98-2634.

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

**Discussion:** **Councilor McLain** said each year the goal was to reduce the waste even more than the year before. She noted in the staff report that the work plan was the

same as last year's and would be pass through money to help local jurisdictions for projects that Metro approved of as far as helping carry out the Waste Reduction Plan. She said the committee had agreed to review the goals and effectiveness of the plan to see how the money was working or if it would need to be reconstructed for next year.

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

**Presiding Officer Kvistad** recessed the Metro Council Meeting and convened the Contract Review Board.

## **9. CONTRACT REVIEW BOARD**

**9.1 Resolution No. 98-2628**, For the Purpose of Authorizing an Exemption to Metro Code Chapter 2.040.044, Personal Services Contracts Selection Process, and Authorizing a Sole-Source Contract with Stop Oregon Litter and Vandalism (SOLV) for the Sponsorship of the Annual SOLV-IT Clean Up Event.

**Motion:** Councilor Morissette moved to adopt Resolution No. 98-2628.

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

**Discussion:** Councilor Morissette introduced Jack McGowan to speak.

**Jack McGowan**, Executive Director of SOLV, recapped what happened on Earth Day this year. He said it was the 9th annual SOLV-IT. He said 94 sites in 6 counties were targeted and they had in excess of 2300 volunteers. He estimated over 1.5 million pounds of illegally dumped materials and woody debris had been collected along with 2400 tires and other recyclable stuff. 709 tons of debris was collected and wetlands were cleaned up and replanted with native plant species. He invited everyone to participate in Paint the Town Clean to eradicate graffiti before Rose Festival.

**Councilor Morissette** closed by saying it was a great program.

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

**Presiding Officer Kvistad** adjourned the Contract Review Board and reconvened the Metro Council Meeting.

## **9. RESOLUTIONS**

**9.2 Resolution No. 98-2635**, For the Purpose of Authorizing the Release of Request for Proposal #98-25-PKS for Design and Engineering Services for Improvements to Howell Territorial Park and Oxbow Regional Park.

**Councilor McCaig** moved to adopt Resolution No. 98-2635.

**Councilor McFarland** seconded the motion.

**Discussion:** Councilor McCaig said this resolution authorized the release of RFP to do design and engineering services at Howell and Oxbow Parks. She said the total was \$356,000 eligible only for the design piece, phase 1 for both parks. She urged approval of the RFP for the design piece.

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

#### 10. COUNCILOR COMMUNICATION

**Councilor Morissette** said he had handed out some information and asked Council to read it. He highlighted the fish restoration part and said there was still a requirement of 20 years for jobs/housing and school sites. He said he brought it up because he felt it was even more inadequate given some of the requirements. He said he was still looking at notification issues.

**Councilor Washington** spoke of his South North tour and wanted to know if any Councilors were interested in taking the tour before the work session.

**Presiding Officer Kvistad** said he would be bringing to Growth Management after the next 2 weeks an Urban ESA Watershed Plan that was a little beyond Title 3. He felt the governor's comments about salmon above Willamette Falls made it necessary.

#### 11. ADJOURN

There being no further business to come before the Metro Council, Presiding Officer Kvistad adjourned the meeting at 5:01 p.m.

Prepared by



Lindsey Ray  
Acting Clerk of the Council

Doc. No.	Doc. Date	Document Title	TO/FROM	RES/ORD
1	5/7/98	Testimony on alternate	Richard Gentes	N/A

		prison siting Wilsonville/Tualatin	24925 SW Garden Acres	
2	5/7/98	Oregonian article "Fish Listing Shakes Up City Leaders"	To: Councilors From: Councilor Don Morissette	98-730
3	5/7/98	Title 3 amendment request	Amanda Fritz 4106 SW Vacuna St. Portland, OR 97219	98-730
4	5/7/98	Title 3 and Model Ordinance letter	To: Kvistad From: Kelly Ross Home Builders Assoc. of Metropolitan Portland 15555 SW Bangy Rd, #301 Lake Oswego, OR 97035	98-730
5	5/7/98	Title 3 letter	To: Council From: Anne Nickel Columbia Corridor Association PO Box 55651 Portland, OR 97238	98-730
6	5/7/98	Title 3 letter	To: Council From: Mike Tharp Commercial Real Estate Economic Coalition NO ADDRESS GIVEN	98-730
7	5/7/98	Title 3 letter and aerial map	To: Council From: J. Timothy Warren Three Oaks Development Co. 12031 NE Marx St. Portland, OR 97294-3999	98-730
8	5/7/98	Water Quality and Flood Management Area Model Ordinance general comments	From: Gregory Robart Oregon Dept. of Fish and Wildlife	98-730
9	5/7/98	Title 3 testimony/letter	To: Council From: Mike Houck Audubon Society of Portland	98-730
10	4/6/98	Title three testimony/letter	From: W. L. Briggs Fuel Processors, Inc. 4150 N Suttle Rd Portland, OR 97217	98-730
11	5/7/98	Title 3 letter	To: Council, Burton	98-730



12        5/6/98    May 7 Public hearing on  
                 Title 3 amendments letter

From: Mary Vogel  
Friends of Rock, Bronson,  
& Willow Creeks  
220 SW Salix Terrace  
Beaverton, OR 97006  
To: Council                      98-730  
From: Daniel Kearns  
Preston Gates & Ellis  
111 SW 5th Ave, #3200  
Portland, OR 97204

13        5/4/98    Title 3 letter

To: Council                      98-730  
From: Michael J. Lilly  
1 SW Columbia St., #680  
Portland, OR 97258

14        5/7/98    Title 3 letter

From: James M. Olsen        98-730  
Happy Valley City  
Councilor  
NO ADDRESS

15        4/18/98    SOLV-IT Campaign press  
                 8            release

From: Jack McGowan        98-2628  
SOLV  
PO Box 1235  
Hillsboro, OR 97123

***Agenda Item 7.1***

***ORDINANCES -- FIRST READING***

**Ordinance No. 98-749, Amending the FY 1997-98 MERC Operating Fund Budget and Appropriations Schedule for the Purpose of Transferring Appropriations to Increase Operating Expenses, Debt Service and Capital Outlay, and Declaring an Emergency.**

BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING THE FY	)	ORDINANCE NO. 98-749
1997-98 MERC OPERATING FUND BUDGET	)	
AND APPROPRIATIONS SCHEDULE FOR	)	
THE PURPOSE OF TRANSFERRING	)	Introduced by Councilor
APPROPRIATIONS TO INCREASE	)	Ruth McFarland
OPERATING EXPENSES, DEBT SERVICE,	)	
AND CAPITAL OUTLAY, AND DECLARING	)	
AN EMERGENCY.	)	

WHEREAS, The Metro Council has reviewed and considered the need to transfer appropriations with the FY 197-98 Budget; and

WHEREAS, The need for a transfer of appropriation has been justified, and

WHEREAS, Adequate funds exist for other identified needs; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. That the FY 1997-98 Budget and Schedule of Appropriations are hereby amended as shown in the column entitled "Revision" of Exhibits A and B to this Ordinance for the purpose of transferring \$56,845 of MERC Operating Fund Contingency to Operating Expenses in the amount of \$2,488 to purchase smallwares at the Expo Center; \$14,352 to increase Debt Services and \$40,000 to Capital Outlay to update Expo Center's sound system and make necessary repairs to Expo Center's parking lot.

2. That the FY 1997-98 Capital Improvement Plan be amended to include the Expo Center Parking Lot project as shown in Exhibit C.

3. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:

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

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

ORD.DOC98-739

**Exhibit A**  
**Ordinance No. 98-749**  
**FY 1997-1998 Amendment**

**MERC Operating Fund**

ACCT	DESCRIPTION	FY 1997-98 Current		FY 1997-98 Revision		FY 1997-98 Revised	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>Resources</b>							
<b>TOTAL RESOURCES</b>			<b>\$35,083,593</b>		<b>\$0</b>		<b>\$35,083,593</b>
<b>Expenditures</b>							
<b>Total Personal Services</b>		<b>155.75</b>	<b>\$10,231,631</b>	<b>0.00</b>	<b>\$0</b>	<b>155.75</b>	<b>\$10,231,631</b>
<u>Materials &amp; Services</u>							
<b>GOODS</b>	<i>Goods</i>						
5201	Office Supplies		153,317		0		153,317
5205	Operating Supplies		472,614		2,488		475,102
5210	Subscriptions and Dues		20,719		0		20,719
5214	Fuels and Lubricants		6,191		0		6,191
5215	Maintenance & Repairs Supplies		309,173		0		309,173
5225	Retail		25,700		0		25,700
<b>SVCS</b>	<i>Services</i>						
5240	Contracted Professional Svcs		3,199,969		0		3,199,969
5251	Utility Services		1,392,020		0		1,392,020
5255	Cleaning Services		81,650		0		81,650
5260	Maintenance & Repair Services		492,209		0		492,209
5265	Rentals		196,819		0		196,819
5270	Insurance		285,044		0		285,044
5280	Other Purchased Services		633,254		0		633,254
5290	Operations Contracts		6,219,953		0		6,219,953
<b>IGEXP</b>	<i>Intergov't Expenditures</i>						
5300	Payments to Other Agencies		71,900		0		71,900
5305	Election Expenses		230,000		0		230,000
<b>INCGEX</b>	<i>Internal Charges for Services</i>						
5400	Charges for Services		0		0		0
<b>OTHEXP</b>	<i>Other Expenditures</i>						
5450	Travel		64,030		0		64,030
5455	Training and Conference Fees		68,970		0		68,970
5490	Miscellaneous Expenditures		37,720		0		37,720
<b>GAAP</b>	<i>GAAP Account</i>						
5520	Bad Debt Expense		7,500		0		7,500
<b>Total Materials &amp; Services</b>			<b>\$13,968,752</b>		<b>\$2,488</b>		<b>\$13,971,240</b>
<u>Debt Service</u>							
<b>CAPLSE</b>	<i>Capital Lease Payments</i>						
5600	Capital Lease Pmts-Principal		184,058		14,357		198,415
5605	Capital Lease Pmts-Interest		0		0		0
<b>REVBND</b>	<i>Revenue Bond Payments</i>						
5630	Revenue Bond Pmts-Principal		395,000		0		395,000
5635	Revenue Bond Payments-Interest		140,000		0		140,000
<b>Total Debt Service</b>			<b>\$719,058</b>		<b>\$14,357</b>		<b>\$733,415</b>
<u>Capital Outlay</u>							
<b>CAPNON</b>	<i>Capital Outlay (Non-CIP Projects)</i>						
5710	Improve-Oth thn Bldg (non-CIP)		0		0		0
5720	Buildings & Related (non-CIP)		620,250		0		620,250
5730	Exhibits and Related (non-CIP)		125,000		(50,000)		75,000
5740	Equipment & Vehicles (non-CIP)		197,821		15,000		212,821
5750	Office Furn & Equip (non-CIP)		39,525		0		39,525
<b>CAPCIP</b>	<i>Capital Outlay (CIP Projects)</i>						
5715	Improve-Oth thn Bldg (CIP)		100,000		75,000		175,000
5725	Buildings & Related (CIP)		1,125,000		0		1,125,000

**Exhibit A**  
**Ordinance No. 98-749**  
**FY 1997-1998 Amendment**

**MERC Operating Fund**

ACCT	DESCRIPTION	FY 1997-98 Current		FY 1997-98 Revision		FY 1997-98 Revised	
		FTE	Amount	FTE	Amount	FTE	Amount
5735	Exhibits and Related (CIP)		0		0		0
5745	Equipment & Vehicles (CIP)		0		0		0
5755	Office Furniture & Equip (CIP)		0		0		0
5775	Leaschold Improvements (CIP)		0		0		0
<b>Total Capital Outlay</b>			<b>\$2,207,596</b>		<b>\$40,000</b>		<b>\$2,247,596</b>
<b><u>Interfund Transfers</u></b>							
<b>Total Interfund Transfers</b>			<b>\$0</b>		<b>\$0</b>		<b>\$0</b>
<b><u>Contingency and Ending Balance</u></b>							
CONT	Contingency						
5999	Contingency		1,121,263		(56,845)		1,064,418
UNAPP	Unappropriated Fund Balance						
5990	Unappropriated Fund Balance		6,835,293		0		6,835,293
<b>Total Contingency and Ending Balance</b>			<b>\$7,956,556</b>		<b>(\$56,845)</b>		<b>7,899,711</b>
<b>TOTAL REQUIREMENTS</b>		<b>155.75</b>	<b>\$35,083,593</b>	<b>0.00</b>	<b>\$0</b>	<b>155.75</b>	<b>\$35,083,593</b>
			<b>\$0</b>		<b>\$0</b>		<b>\$0</b>

**Exhibit A**  
**Ordinance No. 98-749**  
**FY 1997-1998 Amendment**

**MERC Operating Fund**  
**Information Only**

ACCT	DESCRIPTION	FY 1997-98 Current		FY 1997-98 Revision		FY 1997-98 Revised	
		FTE	Amount	FTE	Amount	FTE	Amount
	<b>Civic Stadium</b>						
	<b><u>Resources</u></b>						
<b>TOTAL RESOURCES</b>			<b>\$3,674,944</b>		<b>\$0</b>		<b>\$3,674,944</b>
	<b><u>Expenditures</u></b>						
<b>Total Personal Services</b>		<b>9.80</b>	<b>\$763,695</b>	<b>0.00</b>	<b>\$0</b>	<b>9.80</b>	<b>\$763,695</b>
	<b><u>Materials &amp; Services</u></b>						
<b>Total Materials &amp; Services</b>			<b>\$1,566,653</b>		<b>\$0</b>		<b>\$1,566,653</b>
	<b><u>Debt Service</u></b>						
<b>CAPLSE</b>	<b>Capital Lease Payments</b>						
5600	Capital Lease Pmts-Principal		18,200		3,512		21,712
5605	Capital Lease Pmts-Interest		0		0		0
<b>REVBND</b>	<b>Revenue Bond Payments</b>						
5630	Revenue Bond Pmts-Principal		0		0		0
5635	Revenue Bond Payments-Interest		0		0		0
<b>Total Debt Service</b>			<b>\$18,200</b>		<b>\$3,512</b>		<b>\$21,712</b>
	<b><u>Capital Outlay</u></b>						
<b>Total Capital Outlay</b>			<b>\$429,125</b>		<b>\$0</b>		<b>\$429,125</b>
	<b><u>Interfund Transfers</u></b>						
<b>Total Interfund Transfers</b>			<b>\$0</b>		<b>\$0</b>		<b>\$0</b>
<b>Total Contingency and Ending Balance</b>			<b>\$813,783</b>		<b>\$0</b>		<b>\$813,783</b>
<b>TOTAL REQUIREMENTS</b>		<b>9.80</b>	<b>\$3,591,456</b>	<b>0.00</b>	<b>\$3,512</b>	<b>9.80</b>	<b>\$3,594,968</b>



**Exhibit A**  
**Ordinance No. 98-749**  
**FY 1997-1998 Amendment**

**MERC Operating Fund**  
**Information Only**

		FY 1997-98 Current		FY 1997-98 Revision		FY 1997-98 Revised	
ACCT	DESCRIPTION	FTE	Amount	FTE	Amount	FTE	Amount
<b>Expo Center</b>							
<b><u>Resources</u></b>							
<b>TOTAL RESOURCES</b>			<b>\$4,432,755</b>		<b>\$0</b>		<b>\$4,432,755</b>
<b><u>Expenditures</u></b>							
<b>Total Personal Services</b>		<b>12.65</b>	<b>\$752,367</b>	<b>0.00</b>	<b>\$0</b>	<b>12.65</b>	<b>\$752,367</b>
<b><u>Materials &amp; Services</u></b>							
<b>GOODS Goods</b>							
5201	Office Supplies		2,750		0		2,750
5205	Operating Supplies		38,640		2,488		41,128
5210	Subscriptions and Dues		1,525		0		1,525
5214	Fuels and Lubricants		2,700		0		2,700
5215	Maintenance & Repairs Supplies		26,750		0		26,750
5225	Retail		0		0		0
<b>SVCS Services</b>							
5240	Contracted Professional Svcs		114,428		0		114,428
5251	Utility Services		277,380		0		277,380
5255	Cleaning Services		81,500		0		81,500
5260	Maintenance & Repair Services		40,500		0		40,500
5265	Rentals		13,638		0		13,638
5270	Insurance		22,763		0		22,763
5280	Other Purchased Services		39,250		0		39,250
5290	Operations Contracts		1,110,496		0		1,110,496
<b>IGEXP Intergov't Expenditures</b>							
5300	Payments to Other Agencies		7,125		0		7,125
5305	Election Expenses		0		0		0
<b>INCGEX Internal Charges for Services</b>							
5400	Charges for Services		0		0		0
<b>OTHEXP Other Expenditures</b>							
5450	Travel		3,000		0		3,000
5455	Training and Conference Fees		1,200		0		1,200
5490	Miscellaneous Expenditures		400		0		400
<b>GAAP GAAP Account</b>							
5520	Bad Debt Expense		0		0		0
<b>Total Materials &amp; Services</b>			<b>\$1,784,045</b>		<b>\$2,488</b>		<b>\$1,786,533</b>
<b><u>Debt Service</u></b>							
<b>CAPLSE Capital Lease Payments</b>							
5600	Capital Lease Pmts-Principal		82,529		10,845		93,374
5605	Capital Lease Pmts-Interest		0		0		0
<b>REVBND Revenue Bond Payments</b>							
5630	Revenue Bond Pmts-Principal		395,000		0		395,000
5635	Revenue Bond Payments-Interest		140,000		0		140,000
<b>Total Debt Service</b>			<b>\$617,529</b>		<b>\$10,845</b>		<b>\$628,374</b>
<b><u>Capital Outlay</u></b>							
<b>CAPNON Capital Outlay (Non-CIP Projects)</b>							
5710	Improve-Oth thn Bldg (non-CIP)		0		0		0
5720	Buildings & Related (non-CIP)		2,500		0		2,500
5730	Exhibits and Related (non-CIP)		100,000		(50,000)		50,000
5740	Equipment & Vehicles (non-CIP)		41,500		15,000		56,500

**Exhibit A**  
**Ordinance No. 98-749**  
**FY 1997-1998 Amendment**

**MERC Operating Fund**  
**Information Only**

		FY 1997-98		FY 1997-98		FY 1997-98	
		Current		Revision		Revised	
ACCT	DESCRIPTION	FTE	Amount	FTE	Amount	FTE	Amount
<b>Expo Center</b>							
5750	Office Furn & Equip (non-CIP)		0		0		0
CAPCIP	Capital Outlay (CIP Projects)						
5715	Improve-Oth thn Bldg (CIP)		0		75,000		75,000
5725	Buildings & Related (CIP)		0		0		0
5735	Exhibits and Related (CIP)		0		0		0
5745	Equipment & Vehicles (CIP)		0		0		0
5755	Office Furniture & Equip (CIP)		0		0		0
5775	Leasehold Improvements (CIP)		0		0		0
Total Capital Outlay			\$144,000		\$40,000		\$184,000
<b>Interfund Transfers</b>							
Total Interfund Transfers			\$0		\$0		\$0
<b>Contingency and Ending Balance</b>							
CONT	Contingency						
5999	Contingency		105,408		(56,845)		48,563
UNAPP	Unappropriated Fund Balance						
5990	Unappropriated Fund Balance		955,194		0		955,194
Total Contingency and Ending Balance			\$1,060,602		(\$56,845)		\$1,003,757
TOTAL REQUIREMENTS		12.65	\$4,358,543	0.00	(\$3,512)	12.65	\$4,355,031

**Exhibit B**  
**Ordinance No. 98-749**  
**Schedule of Appropriations**

	<b>FY 1997-1998 Current Appropriations</b>	<b>Revision</b>	<b>FY 1997-1998 Revised Appropriations</b>
<b>MERC OPERATING FUND</b>			
Operating Expenses	24,200,383	2,488	24,202,871
Capital Outlay	2,207,596	40,000	2,247,596
Debt Service	719,058	14,357	733,415
<b>Subtotal</b>	<b>27,127,037</b>	<b>56,845</b>	<b>27,183,882</b>
Interfund Transfers	0	0	0
Contingency	1,121,263	(56,845)	1,064,418
<b>Subtotal</b>	<b>1,121,263</b>	<b>(56,845)</b>	<b>1,064,418</b>
Unappropriated Ending Fund Balance	6,835,293	0	6,835,293
<b>Total Fund Requirements</b>	<b>\$35,083,593</b>	<b>\$0</b>	<b>\$35,083,593</b>

**All Other Appropriations Remain As Previously Adopted**

# EXHIBIT C

## PROJECT DETAIL

### PROJECT TITLE: PARKING LOT

<b>TYPE OF PROJECT:</b> <input type="checkbox"/> NEW <input type="checkbox"/> EXPANSION <input type="checkbox"/> REPLACEMENT		<b>DEPARTMENT/DIVISION:</b> MERC Expo				<b>TYPE OF REQUEST:</b> <input checked="" type="checkbox"/> INITIAL <input type="checkbox"/> CONTINUATION		<b>DATE</b> <input type="checkbox"/> REVISION APRIL 16, 1998	
<b>SOURCE OF ESTIMATE:</b> <input type="checkbox"/> BASED ON DESIGN <input type="checkbox"/> PRELIMINARY* <input type="checkbox"/> ACTUAL BID DOCUMENTS		<b>PROJECT START DATE</b> SPRING 1998		<b>PROJECT COMPLETION DATE</b> FALL 1998		<b>DEPARTMENT PRIORITY</b> 2		<b>PREPARED BY</b> BROWN/BAILEY	
<b>PROJECT ESTIMATES</b>		<b>PRIOR YEARS</b>	<b>1997-98</b>	<b>1998-99</b>	<b>1999-2000</b>	<b>2000-01</b>	<b>2001-02</b>	<b>BEYOND 2002</b>	<b>TOTAL</b>
<b>CAPITAL COST:</b>									
PLANS & STUDIES LAND & RIGHT-OF-WAY DESIGN & ENGINEERING CONSTRUCTION EQUIPMENT/FURNISHINGS PROJECT CONTINGENCY 1% FOR ART OTHER			\$70,000	\$70,000					\$140,000
<b>TOTAL</b>			\$70,000	\$70,000					\$140,000
<b>FUNDING SOURCE:</b>									
FUND BALANCE GRANTS G. O. BONDS REVENUE BONDS OTHER			\$70,000	\$70,000					\$140,000
<b>TOTAL</b>			\$70,000	\$70,000					\$140,000

<b>PROJECT DESCRIPTION/JUSTIFICATION:</b> Repair and replacement of asphalt parking surfaces, including removal and replacement of slurry seal crack filling and re-striping.	<b>ANNUAL OPERATING BUDGET IMPACT:</b>	
	PERSONAL SERVICES COSTS MATERIALS & SVCS. COSTS CAPITAL OUTLAY COSTS OTHER COSTS (REVENUES)	\$140,000
	<b>NET ANNUAL OPERATING COSTS</b>	\$140,000
	<b>RENEWAL &amp; REPLACEMENT CONTRIBUTION</b>	N/A
	<b>FIRST FULL FISCAL YEAR OF OPERATION:</b>	1997-1998
<b>FUND(s): MERC OPERATING (EXPO)</b>		

## STAFF REPORT

**AN ORDINANCE NO. 98-749 AMENDING THE FY 1997-98 MERC OPERATING FUND BUDGET AND APPROPRIATIONS SCHEDULE FOR THE PURPOSE OF TRANSFERRING APPROPRIATIONS TO INCREASE OPERATING EXPENSES, DEBT SERVICE, AND CAPITAL OUTLAY, AND DECLARING AN EMERGENCY.**

**Date: April 17, 1998**

**Presented by: Mark Williams  
Norman Kraft**

### FACTUAL BACKGROUND AND ANALYSIS

A budget amendment is necessary due to a combination of additional FlexLease interest, catering smallware needs and unforeseen capital outlay needs. This Council action would amend the operating budget for FY 1997-98. Ordinance No. 98-749 revises the FY 97-98 budget and appropriations schedule to recognize changes in the adopted appropriations. Specific changes to the budget under this proposal are explained below.

#### *Increases in Debt Service*

In FY 1997-98, the Council created the MERC Operating Fund to account for all revenues and expenditures of the facilities under MERC Management. Debt Service is spread throughout four divisions of MERC for the provision of payment on the Intel loan, capital equipment leases and a FlexLease loan. Due to the timing of the Debt Services interest payments the appropriation category has to be increased to reflect an additional interest payment in FY 1997-98. Civic Stadium and the Expo Center will require additional appropriations of \$3,512 and \$10,845 respectively to avoid a Budget Law violation.

#### *Need for Catering Smallwares*

The Expo Center has had limited supplies on hand to perform catering services to its clients. In the past, Fine Host has borrowed the necessary smallware supplies such as flatware, china, box warmers etc. from the Oregon Convention Center, however, increased business and conflicting event dates have made this option inadvisable. The Expo Center finds that it needs an increase in Operating Expense appropriation in the amount of \$2,488 to purchase smallwares to accommodate their present level of business.

### *Increases in Capital Outlay*

- **Sound System - Expo Center**

Due to differences in technology, there has been an ongoing problem in utilizing the combined sound systems in the old buildings and the new building. In the past equipment patches have been performed by an outside sound service for each event but the quality of sound has not been satisfactory. A permanent solution will cost approximately \$15,000 for new equipment to improve the compatibility between the various systems and the quality of sound.

- **Parking Lot - Expo Center**

It has been determined that the costs for patching and re-surfacing part of the parking lot is \$25,000 higher than what was included in the budget. What had been anticipated as an operating capital project (below \$50,000) in this fiscal year now will become a capital improvement project (above \$50,000) due to the revised estimated cost. This change in the adopted CIP is included in Ordinance 98-749. The CIP Project Description Sheet is provided in Exhibit C to the Ordinance.

### **SUMMARY OF BUDGET IMPACT**

Specific line item changes and appropriation modifications are provided in Exhibits A and B to the Ordinance. The above needs can be accomplished with budgeted transfers from Contingency. The following is a summary of the changes requested in the Amended Budget for FY 1997-98:

#### ***MERC Operating Fund***

##### **Requirements:**

• Operating Expenses	\$ 2,488
• Debt Service	14,357
• Capital Outlay	40,000
• Contingency	\$ ( 56,845)

<b>TOTAL REQUIREMENTS</b>	<b>\$ - 0 -</b>
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***Agenda Item 7.2***

***ORDINANCES -- FIRST READING***

**Ordinance No. 98-740, Amending the FY 1997-98 Budget and Appropriations Schedule by Transferring \$45,469 from Capital Outlay to Debt Service in the General Revenue Bond Fund for the Purpose of Correcting a Technical Error, and Declaring an Emergency.**

BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING THE FY 1997-98 )  
BUDGET AND APPROPRIATIONS )  
SCHEDULE BY TRANSFERRING \$45,469 )  
FROM CAPITAL OUTLAY TO DEBT SERVICE )  
IN THE GENERAL REVENUE BOND FUND )  
FOR THE PURPOSE OF CORRECTING A )  
TECHNICAL ERROR, AND DECLARING AN )  
EMERGENCY )

ORDINANCE NO. 98-740

Introduced by Mike Burton,  
Executive Officer

WHEREAS, The Metro Council has reviewed and considered the need to transfer appropriations with the FY 1997-98 Budget; and

WHEREAS, The need for a transfer of appropriation has been justified; and

WHEREAS, Adequate funds exist for other identified needs; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. That the FY 1997-98 Budget and Schedule of Appropriations are hereby amended as shown in the column entitled "Revision" of Exhibits A and B to this Ordinance for the purpose of transferring \$45,469 from capital outlay to debt service in the General Revenue Bond Fund for the purpose of correcting a technical error.

2. This Ordinance being necessary for the immediate preservation of the public health, safety or welfare of the Metro area in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:

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

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

**Exhibit A**  
**Ordinance Number 98-740**  
**General Revenue Bond Fund**

FISCAL YEAR 1997-98		Current Budget		Revision		Proposed Budget	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
<u>Capital Outlay</u>							
METRO REGIONAL CENTER							
571500	Purchases-Office Furniture & Equipment		23,200		0		23,200
574520	Const. Work/Materials-Bldgs, Exhibits & Rel.		0		0		0
	Total Capital Outlay		23,200		0		23,200
	TOTAL CONSTRUCTION ACCOUNT		23,200		0		23,200
<u>Materials &amp; Services</u>							
WASHINGTON PARK PARKING LOT							
528100	Payments to Other Agencies		0		0		0
	Total Materials & Services		0		0		0
<u>Capital Outlay</u>							
WASHINGTON PARK PARKING LOT							
574510	Construction Work - Improvement other than Bldgs.		500,000		(45,469)		454,531
	Total Capital Outlay		500,000		(45,469)		454,531
	TOTAL PROJECT ACCOUNT		500,000		(45,469)		454,531
<u>Debt Service</u>							
METRO REGIONAL CENTER							
533210	Revenue Bond-Principal						
	* Office Bldng		303,413		0		303,413
	* Parking Structure		71,587		0		71,587
533220	Revenue Bond-Interest						
	* Office Bldng		1,023,137		0		1,023,137
	* Parking Structure		241,400		0		241,400
WASHINGTON PARK PARKING LOT							
532120	Interest payment		130,685		45,469		176,154
	Total Debt Service		1,770,222		45,469		1,815,691
	TOTAL DEBT SERVICE ACCOUNT		1,770,222		45,469		1,815,691
<u>Interfund Transfers</u>							
METRO REGIONAL CENTER							
583513	Trans. Direct Costs to Building Management Fund		20,000		0		20,000
	Total Interfund Transfers		20,000		0		20,000

**Exhibit A**  
**Ordinance Number 98-740**  
**General Revenue Bond Fund**

FISCAL YEAR 1997-98		Current Budget		Revision		Proposed Budget	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
<u>Contingency and Unappropriated Balance</u>							
599999	Contingency						
	* Renewal & Replacement Account (Metro Reg. Center)		460,593		0		460,593
599990	Unappropriated Balance						
	* Construction Account (Metro Reg. Center)		0		0		0
	* Renewal & Replacement Account (Metro Reg. Center)		0		0		0
	* Debt Service Account (Metro Reg. Center)		0		0		0
	* Debt Reserve (Metro Regional Center)		1,884,020		0		1,884,020
	Total Contingency and Unapp. Balance		2,344,613		0		2,344,613
	TOTAL FUND REQUIREMENTS		4,658,035		0		4,658,035

**Exhibit B**  
**Ordinance No. 98-740**  
**FY 1997-98 SCHEDULE OF APPROPRIATIONS**

	<b>Current Budget</b>	<b>Revision</b>	<b>Proposed Budget</b>
<b>GENERAL REVENUE BOND FUND</b>			
Construction Account			
Capital Outlay	\$23,200	\$0	\$23,200
Subtotal	23,200	0	23,200
Project Account			
Capital Outlay	500,000	(45,469)	454,531
Subtotal	500,000	(45,469)	454,531
Debt Service Account			
Debt Service	1,770,222	45,469	1,815,691
Subtotal	1,770,222	45,469	1,815,691
General Expenses			
Interfund Transfers	20,000	0	20,000
Contingency	460,593	0	460,593
Subtotal	480,593	0	480,593
Unappropriated Balance	1,884,020	0	1,884,020
<b>Total Fund Requirements</b>	<b>\$4,658,035</b>	<b>\$0</b>	<b>\$4,658,035</b>

**ALL OTHER APPROPRIATIONS REMAIN AS ADOPTED**

## STAFF REPORT

CONSIDERATION OF ORDINANCE 98-740 AMENDING THE FY 1997-98 BUDGET AND APPROPRIATIONS SCHEDULE BY TRANSFERRING \$45,469 FROM CAPITAL OUTLAY TO DEBT SERVICE IN THE GENERAL REVENUE BOND FUND FOR THE PURPOSE OF CORRECTING A TECHNICAL ERROR, AND DECLARING AN EMERGENCY.

---

Date: March 23, 1998

Presented by: Craig Prosser

## FACTUAL BACKGROUND AND ANALYSIS

Ordinance 98-740 amends the FY 1997-98 budget to correct a technical error in the General Revenue Bond Fund.

The General Revenue Bond Fund includes debt service payments due to the Oregon Economic Development Department (OEDD) for the loan Metro received to pay for its contribution to the Westside Light Rail project and reconfiguration of the Washington Park parking lot. Debt service payments due are established by the loan agreement between OEDD and Metro.

The FY 1997-98 budget inadvertently understated the amount of debt service due by \$45,469 and overstated the amount available for capital outlay by the same amount. This amendment corrects that error and allows Metro to make the full debt service payment due without overspending the adopted budget.

## BUDGET IMPACT

This ordinance transfers appropriation from capital outlay to debt service. The capital outlay category is projected to be underspent by \$50,000. In FY 1997-98 debt service payments are made from capitalized interest included within the loan amount. (In future years, these payments will be made from parking revenues.) Due to the error in the debt service schedule, the capital outlay category was inadvertently over budgeted by \$45,469. This amendment corrects that error.

## EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Ordinance No. 98-740.

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*Agenda Item 7.3*

**ORDINANCES -- FIRST READING**

**Ordinance No. 98-751, Amending the FY 1997-98 Budget and Appropriations Schedule in the Support Service Fund and in the Building Management Fund for Various Funding Purposes, and Declaring an Emergency.**



BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING THE FY 1997-98 )  
BUDGET AND APPROPRIATIONS )  
SCHEDULE IN THE SUPPORT SERVICES )  
FUND AND IN THE BUILDING MANAGEMENT )  
FUND FOR VARIOUS FUNDING PURPOSES, )  
AND DECLARING AN EMERGENCY )  
)

ORDINANCE NO. 98-751

Introduced by Executive Officer  
Mike Burton

WHEREAS, certain conditions exist within the Support Services Fund and the Building Management Fund that could not have been reasonably anticipated at the time the budget was developed; and

WHEREAS, these conditions require that transfers of appropriations of \$1,200 from Contingency to Debt Service, and of \$38,000 from Contingency to Transfers in the Support Services Fund; and

WHEREAS, these conditions further require a transfer of appropriations of \$25,000 from Contingency to Materials and Services in the Building Management Fund; and

WHEREAS, the Metro Council has reviewed and considered the need to transfer appropriations with the FY 1997-98 Budget; and

WHEREAS, The need for a transfer of appropriation has been justified; and

WHEREAS, Adequate funds exist for other identified needs; now, therefore,

**THE METRO COUNCIL ORDAINS AS FOLLOWS:**

1. That the FY 1997-98 Budget and Schedule of Appropriations are hereby amended as shown in the column entitled "Revision" of Exhibits A and B to this Ordinance for various funding purposes.

2. This Ordinance being necessary for the immediate preservation of the public health, safety or welfare of the Metro area in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:

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

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

Exhibit A  
Ordinance No. 98-751

## Support Services Fund

ACCT	DESCRIPTION	Current Budget		REVISION		Proposed Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
Total Personal Services		89.43	\$5,655,135	0.00	\$0	89.43	\$5,655,135
Total Materials & Services			\$1,443,380		\$0		\$1,443,380
<u>Debt Service</u>							
CAPLSE	Capital Lease Payments						
5600	Capital Lease Pmts-Principal		27,232		1,200		28,432
5605	Capital Lease Pmts-Interest		0		0		0
Total Debt Service			\$27,232		\$1,200		\$28,432
Total Capital Outlay			\$1,123,980		\$0		\$1,123,980
<u>Interfund Transfers</u>							
INTCHG	Internal Service Transfers						
5800	Transfer for Indirect Costs						
	* to Building Mgmt Fund		741,176		38,000		779,176
	* to Risk Mgmt-Liability		29,145		0		29,145
	* to Risk Mgmt-Worker Comp		18,441		0		18,441
Total Interfund Transfers			\$788,762		\$38,000		\$826,762
<u>Contingency and Ending Balance</u>							
CONT	Contingency						
5999	Contingency		348,834		(39,200)		309,634
UNAPP	Unappropriated Fund Balance						
5990	Unappropriated Fund Balance		306,414		0		306,414
Total Contingency and Ending Balance			\$655,248		(\$39,200)		\$616,048
TOTAL REQUIREMENTS		89.43	\$9,693,737	0.00	\$0	89.43	\$9,693,737

Exhibit A  
Ordinance No. 98-751

## Building Management Fund

ACCT	DESCRIPTION	Current	REVISION		Proposed		
		Budget			Budget		
		FTE	Amount	FTE	Amount	FTE	Amount
<b>Resources</b>							
<b><u>Metro Regional Center</u></b>							
BEGBAL	Beginning Fund Balance						
	* Operations		20,000		0		20,000
	* Debt Reserves		128,404		0		128,404
	* Depreciation Reserves		308,000		0		308,000
CHGSVC	Charges for Service						
4610	Contract Revenue		50,430		0		50,430
4620	Parking Fees		79,702		0		79,702
INTRST	Interest Earnings						
4700	Interest on Investments		29,940		0		29,940
MISCRV	Miscellaneous Revenue						
4890	Miscellaneous Revenue		0		0		0
INTSRV	Internal Service Transfers						
4975	Transfer for Indirect Costs		2,067,062		0		2,067,062
4980	Transfer for Direct Costs		100,000		0		100,000
<b><u>Parking Facility</u></b>							
BEGBAL	Beginning Fund Balance		\$271,580		\$0		\$271,580
CHGSVC	Charges for Service						
4620	Parking Fees		411,773		(38,000)		373,773
INTRST	Interest Earnings						
4700	Interest on Investments		14,937		0		14,937
EQTREV	Fund Equity Transfers						
4970	Transfer of Resources		0		38,000		38,000
<b>TOTAL RESOURCES</b>			<b>\$3,481,828</b>		<b>\$0</b>		<b>\$3,481,828</b>

Exhibit A  
Ordinance No. 98-751

## Building Management Fund

ACCT	DESCRIPTION	Current Budget		REVISION		Proposed Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>Expenditures</b>							
<b>Total Personal Services</b>		<b>5.20</b>	<b>\$234,165</b>	<b>0.00</b>	<b>\$0</b>	<b>5.20</b>	<b>\$234,165</b>
<i><b>Materials &amp; Services</b></i>							
<i><b>GOODS Goods</b></i>							
5201	Office Supplies		6,100		0		6,100
5205	Operating Supplies		16,700		0		16,700
5210	Subscriptions and Dues		800		0		800
5214	Fuels and Lubricants		100		0		100
5215	Maintenance & Repairs Supplies		16,000		0		16,000
<i><b>SVCS Services</b></i>							
5240	Contracted Professional Svcs		123,932		0		123,932
5251	Utility Services		167,100		0		167,100
5255	Cleaning Services		135,000		0		135,000
5260	Maintenance & Repair Services		59,700		25,000		84,700
5265	Rentals		0		0		0
5280	Other Purchased Services		27,260		0		27,260
<i><b>IGEXP Intergov't Expenditures</b></i>							
5300	Payments to Other Agencies		1,500		0		1,500
5310	Taxes (Non-Payroll)		4,770		0		4,770
<i><b>OTHEXP Other Expenditures</b></i>							
5450	Travel		1,600		0		1,600
5455	Training and Conference Fees		2,000		0		2,000
5490	Miscellaneous Expenditures		0		0		0
<b>Total Materials &amp; Services</b>			<b>\$562,562</b>		<b>\$25,000</b>		<b>\$587,562</b>
<b>Total Capital Outlay</b>			<b>\$140,933</b>		<b>\$0</b>		<b>\$140,933</b>
<b>Total Interfund Transfers</b>			<b>\$1,549,537</b>		<b>\$0</b>		<b>\$1,549,537</b>
<i><b>Contingency and Ending Balance</b></i>							
<i><b>CONT Contingency</b></i>							
5999	Contingency		0		0		0
	* Regional Center Operations		27,430		(25,000)		2,430
	* Parking Structure Operations		11,237		0		11,237
<i><b>UNAPP Unappropriated Fund Balance</b></i>							
5990	Unappropriated Fund Balance		0		0		0
	* Metro Center Operations		0		0		0
	* Regional Center Debt Reserves		132,655		0		132,655
	* Depreciation Reserve		567,940		0		567,940
	* Parking Structure Debt Reserves		255,369		0		255,369
<b>Total Contingency and Ending Balance</b>			<b>\$994,631</b>		<b>(\$25,000)</b>		<b>\$969,631</b>
<b>TOTAL REQUIREMENTS</b>		<b>5.20</b>	<b>\$3,481,828</b>	<b>0.00</b>	<b>\$0</b>	<b>5.20</b>	<b>\$3,481,828</b>

**Exhibit B**  
**Ordinance No. 98-751**

## Schedule of Appropriations

	Current Budget	Revision	Proposed Budget
<b>SUPPORT SERVICES FUND</b>			
Administrative Services			
Personal Services	4,367,424	0	4,367,424
Materials and Services	1,126,419	0	1,126,419
Capital Outlay	1,088,547	0	1,088,547
Debt Service	27,232	1,200	28,432
Subtotal	6,609,622	1,200	6,610,822
Office of General Counsel			
Personal Services	655,656	0	655,656
Materials and Services	41,856	0	41,856
Capital Outlay	21,644	0	21,644
Subtotal	719,156	0	719,156
Office of Public and Government Relations			
Personal Services	75,758	0	75,758
Materials and Services	60,427	0	60,427
Capital Outlay	1,750	0	1,750
Subtotal	137,935	0	137,935
Council Office of Public Outreach			
Personal Services	100,049	0	100,049
Materials and Services	31,185	0	31,185
Capital Outlay	8,033	0	8,033
Subtotal	139,267	0	139,267
Office of Citizen Involvement			
Personal Services	61,631	0	61,631
Materials and Services	22,480	0	22,480
Capital Outlay	0	0	0
Subtotal	84,111	0	84,111
Auditor's Office			
Personal Services	394,617	0	394,617
Materials and Services	161,013	0	161,013
Capital Outlay	4,006	0	4,006
Subtotal	559,636	0	559,636
General Expenses			
Interfund Transfers	788,762	38,000	826,762
Contingency	348,834	(39,200)	309,634
Subtotal	1,137,596	(1,200)	1,136,396
Unappropriated Ending Fund Balance	306,414	0	306,414
<b>Total Fund Requirements</b>	<b>\$9,693,737</b>	<b>\$0</b>	<b>\$9,693,737</b>

**Exhibit B**  
**Ordinance No. 98-751**

**Schedule of Appropriations**

	<b>Current Budget</b>	<b>Revision</b>	<b>Proposed Budget</b>
<b>BUILDING MANAGEMENT FUND</b>			
Personal Services	234,165	0	234,165
Materials and Services	562,562	25,000	587,562
Capital Outlay	140,933	0	140,933
Interfund Transfers	1,549,537	0	1,549,537
Contingency	38,667	(25,000)	13,667
Unappropriated Ending Fund Balance	955,964	0	955,964
<b>Total Fund Requirements</b>	<b>\$3,481,828</b>	<b>\$0</b>	<b>\$3,481,828</b>

All other appropriations remain as previously adopted

## STAFF REPORT

**CONSIDERATION OF ORDINANCE 98-751 AMENDING THE FY 1997-98 BUDGET AND APPROPRIATIONS SCHEDULE IN THE SUPPORT SERVICES FUND AND IN THE BUILDING MANAGEMENT FUND FOR VARIOUS FUNDING PURPOSES, AND DECLARING AN EMERGENCY.**

---

Date: April 28, 1998

Presented by: Jennifer Sims

### FACTUAL BACKGROUND AND ANALYSIS

This Ordinance contains actions on three separate items. Each of the actions are described below.

#### **Support Services Fund - Debt Service**

A transfer from contingency to debt service is required to prevent this fund from exceeding appropriations in this classification. At the end of FY 1996-97 a capital lease payment was processed. Due to a misunderstanding of the due date of the payment, it was charged against FY 1997-98 rather than FY 1996-97. The error was not discovered until after the audit was complete and the payment for FY 1997-98 was being processed. There are not sufficient appropriations available to cover both year's payments in FY 1997-98. Because a delay in making the payments results in additional fees and charges, a transfer of \$1,200 from contingency to debt service is required.

#### **Support Services Fund and Building Management Fund - Transfers**

The revenues received from the parking structure have been less than anticipated in FY 1997-98. When the budget was prepared it was believed that when parking meters were installed in the Lloyd District, there would be additional vehicles utilizing the Metro parking structure. As this prediction did not hold true, the actual revenues received in the Building Management Fund are not sufficient to support the required expenditures in that fund (i.e. debt service, depreciation, required contracts, etc.). Therefore, additional revenues must be found.

The Support Services Fund has \$38,000 of discretionary revenue in its beginning fund balance for FY 1997-98. These discretionary revenues are from the fees charged for contractor's business licenses and from charges for services provided to Tri-Met by Administrative Services Department staff. The proposed action before the Council today moves



\$38,000 from Contingency to Transfers Out to allow for a transfer of these resources to the Building Management Fund. This causes a corresponding increase in Transfers In the Building Management Fund but no changes in expenditure appropriations.

**Building Management Fund - Materials and Services**

The expenses in the Building Management Fund for the Metro Regional Center are higher than anticipated this fiscal year. This is due to some unanticipated expenditures for work related to the sewer problems, and leaks in the building that needed to be repaired. These expenditures will exceed the appropriations within the Materials and Services portion of the budget in this fund. Therefore, a transfer of \$25,000 from Contingency is required.

**BUDGET IMPACT**

Sufficient appropriations exist within the contingencies in both of these funds to provide for the changes outlined above.

**EXECUTIVE OFFICER RECOMMENDATION**

The Executive Officer recommends approval of Ordinance No. 98-751.

***Agenda Item 8.1***

**ORDINANCES -- SECOND READING**

**Ordinance No. 98-742, Amending the FY 1997-98 Budget and Appropriations Schedule by Transferring \$150,000 from Contingency to Capital Outlay in the Solid Waste Revenue Fund to Provide for Initial Expenditures Associated with the Replacement of Compaction Systems at Metro South Station, and Declaring an Emergency.**

BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING THE FY 1997-98 )  
BUDGET AND APPROPRIATIONS )  
SCHEDULE BY TRANSFERRING \$150,000 )  
FROM CONTINGENCY TO CAPITAL OUTLAY )  
IN THE SOLID WASTE REVENUE FUND TO )  
PROVIDE FOR INITIAL EXPENDITURES )  
ASSOCIATED WITH REPLACEMENT OF )  
COMPACTION SYSTEMS AT METRO SOUTH )  
STATION, AND DECLARING AN )  
EMERGENCY )

ORDINANCE NO. 98-742

Introduced by Executive Officer  
Mike Burton

WHEREAS, the Metro Council approved Resolution No. 98-2611 for the purpose of authorizing the release of RFP #98R-5-REM for the replacement of the compaction systems at Metro South Station; and

WHEREAS, there is a recognized need to accelerate the replacement of the compactors due to poor condition of the existing units;

WHEREAS, this project is included in the adopted Capital Improvement Plan (CIP) for FY 1998-99 through 2002-03; and

WHEREAS, the Metro Council has reviewed and considered the need to transfer appropriations with the FY 1997-98 Budget; and

WHEREAS, The need for a transfer of appropriation has been justified; and

WHEREAS, Adequate funds exist for other identified needs; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. That the FY 1997-98 Budget and Schedule of Appropriations are hereby amended as shown in the column entitled "Revision" of Exhibits A and B to this

Ordinance for the purpose of transferring \$150,000 from contingency to capital outlay in the Solid Waste Revenue fund to provide for initial expenditures associated with the replacement of compaction systems at Metro South Station.

2. This Ordinance being necessary for the immediate preservation of the public health, safety or welfare of the Metro area in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:

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

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

**Exhibit A**  
**Ordinance No. 98-742**  
**Solid Waste Revenue Fund**

FISCAL YEAR 1997-98		Current Budget		Revision		Proposed Budget	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
<b>Operating Account</b>							
	TOTAL PERSONAL SERVICES	104.10	6,157,814	0.00	0	0.00	6,157,814
	TOTAL MATERIALS & SERVICES		42,270,348		0		42,270,348
	TOTAL OPERATING ACCOUNT	104.10	48,428,162	0.00	0	104.10	48,428,162
<b>Debt Service Account</b>							
	Total Debt Service		2,673,426		0		2,673,426
<b>Landfill Closure Account</b>							
	Total Landfill Closure Account		1,527,900		0		1,527,900
<b>Renewal &amp; Replacement Account</b>							
	<u>Capital Outlay</u>						
574130	Engineering Services		18,000		0		18,000
574520	Const. Work/Materials-Bldg., Exhibits & Rel.		490,900		150,000		640,900
	Total Renewal & Replacement Account		508,900		150,000		658,900
<b>General Account</b>							
	Total General Account		3,262,332		0		3,262,332
<b>Master Project Account</b>							
	Total Master Project Account		350,000		0		350,000
<b>General Expenses</b>							
	Total Interfund Transfers		3,742,909		0		3,742,909
	<u>Contingency and Unappropriated Balance</u>						
599999	Contingency						
	* Operating Account (Operating Contingency)		2,682,495		0		2,682,495
	* Landfill Closure Account		5,096,353		0		5,096,353
	* Renewal & Replacement Account		4,243,053		(150,000)		4,093,053
	* General Account (Capital Contingency)		0		0		0
599999	Contingency		12,021,907		(150,000)		11,871,907
	Unappropriated Fund Balance		21,972,005		0		21,972,005
	Total Contingency and Unappropriated Balance		33,993,912		(150,000)		33,843,912
	TOTAL FUND REQUIREMENTS	104.10	94,487,541	0	0	104.10	94,487,541

**Exhibit B**  
**Ordinance No. 98-742**  
**FY 1997-98 SCHEDULE OF APPROPRIATIONS**

	Current Budget	Revision	Proposed Budget
<b>SOLID WASTE REVENUE FUND</b>			
Operating Account			
Personal Services	\$6,157,814	\$0	\$6,157,814
Materials & Services	42,270,348	0	42,270,348
Subtotal	48,428,162	0	48,428,162
Debt Service Account			
Debt Service	2,673,426	0	2,673,426
Subtotal	2,673,426	0	2,673,426
Landfill Closure Account			
Materials & Services	314,400	0	314,400
Capital Outlay	1,213,500	0	1,213,500
Subtotal	1,527,900	0	1,527,900
Renewal and Replacement Account			
Capital Outlay	508,900	150,000	658,900
Subtotal	508,900	150,000	658,900
General Account			
Capital Outlay	3,262,332	0	3,262,332
Subtotal	3,262,332	0	3,262,332
Master Project Account			
Debt Service	350,000	0	350,000
Subtotal	350,000	0	350,000
General Expenses			
Interfund Transfers	3,742,909	0	3,742,909
Contingency	12,021,901	(150,000)	11,871,901
Subtotal	15,764,810	(150,000)	15,614,810
Unappropriated Balance	21,972,005	0	21,972,005
<b>Total Fund Requirements</b>	<b>\$94,487,535</b>	<b>\$0</b>	<b>\$94,487,535</b>

**ALL OTHER APPROPRIATIONS REMAIN AS ADOPTED**

## STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 98-742 AMENDING THE FY 1997-98 BUDGET AND APPROPRIATIONS SCHEDULE BY TRANSFERRING \$150,000 FROM CONTINGENCY TO CAPITAL OUTLAY IN THE SOLID WASTE REVENUE FUND TO PROVIDE FOR INITIAL EXPENDITURES ASSOCIATED WITH THE REPLACEMENT OF COMPACTION SYSTEMS AT METRO SOUTH STATION, AND DECLARING AN EMERGENCY.

Date: March 27, 1998

Presented by: Dennis Strachota

## FACTUAL BACKGROUND AND ANALYSIS

This action requests adjustments to the Solid Waste Revenue Fund for the following purpose:

### **SOLID WASTE REVENUE FUND:**

Transfer \$150,000 from the Renewal & Replacement Account, Contingency Category, to the Renewal & Replacement Account, Capital Category, to fund initial costs associated with the replacement of two compactors at Metro South Station.

On February 26, 1998, the Metro Council approved Resolution No. 98-2611 (See Attachment 1) for the purpose of authorizing the release of RFP #98R-5-REM for the replacement of compaction systems at Metro South Station.

The replacement of the compactors at Metro South has been included in the adopted Capital Improvement Plan for FY 1998-99, and the estimated cost of \$1.5 million is included in the Proposed FY 1998-99 Budget. However, the Regional Environmental Management Department (REM) has accelerated the replacement of the compactors due to poor condition of the existing compaction units. This action does not have any fiscal impact on the total project cost as reflected in the Adopted Capital Improvement Plan for FY 1998-99. Negotiated initial payments of \$375,000 are estimated for the current fiscal year. The current available balance in the Renewal & Replacement Account is \$359,000, additional funds are needed to proceed with the replacement while still maintaining sufficient funds to deal with other potential equipment failure.

## EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 98-742.

Attachment

MR:gbc

S:\SHARE\ROBE\97-98ba\0318STRP.MR.rtf

Rebecca V. Shoemaker, Archivist  
Clerk of the Metro Council

## BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION	)	RESOLUTION NO. 98-2611
FROM THE COMPETITIVE BID PROCESS AND	)	
AUTHORIZING ISSUANCE OF RFP #98R-5-REM FOR	)	INTRODUCED BY:
THE REPLACEMENT OF COMPACTION SYSTEMS AT	)	MIKE BURTON,
METRO SOUTH STATION	)	EXECUTIVE OFFICER

WHEREAS, The compaction systems at Metro South Station are in need of replacement as described in the accompanying staff report; and

WHEREAS, Staff has prepared the request for proposals is attached as EXHIBIT "A"; and

WHEREAS, The use of this procurement process requires an exemption from the competitive bid process; and

WHEREAS, Metro Code Section 2.04.054 (c) authorizes the Metro Contract Review Board, where appropriate, to exempt a public contract from competitive bidding, subject to the requirements that the exemption will not encourage favoritism or substantially diminish competition for public contracts, and that such an exemption will result in substantial cost savings; and

WHEREAS, EXHIBIT "B" to this resolution contains findings which satisfy the requirements for such an exemption; and

WHEREAS, The resolution was submitted to the Executive Officer for consideration and was forwarded to the Contract Review Board for approval; now therefore,

## BE IT RESOLVED,

1. That the Metro Contract Review Board adopts as findings the information and reasoning contained in EXHIBIT "B," made part of this resolution by reference, and concludes that:
  - a) It is unlikely that exempting the replacement of compaction systems at Metro South Station from the competitive bid process

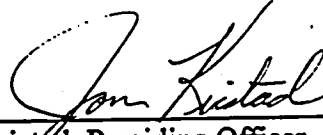


will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and

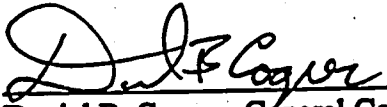
b) The exemption will result in substantial cost savings to Metro; and  
Therefore, exempts the contract to be solicited through RFP #98R-5-REM from competitive bidding requirements.

2. That the Metro Council authorizes issuance of RFP #98-5-REM, attached as EXHIBIT "A".
3. That the Metro Council, pursuant to Section 2.04.026(b) of the Metro Code, authorizes the Executive Officer to execute a contract with the most qualified proposer.

ADOPTED this 26<sup>th</sup> day of February, 1998.

  
\_\_\_\_\_  
Jon Kvistad, Presiding Officer

Approved as to Form: ..

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

***Agenda Item 9.1***

***RESOLUTIONS***

**Resolution No. 98-2642, Amending the Canemah refinement  
Section of the Willamette River greenway Target Area  
Refinement Plan.**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING )  
THE CANEMAH BLUFF SECTION )  
OF THE WILLAMETTE RIVER GREENWAY )  
TARGET AREA REFINEMENT PLAN )

RESOLUTION NO. 98-2642

Introduced by Mike Burton  
Executive Officer

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

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

WHEREAS, the Canemah Bluff Section of the Willamette River Greenway target area was designated as a greenspace of regional significance in the Greenspaces Master Plan and identified as a regional target area in the Open Space, Parks and Streams Bond Measure; and

WHEREAS, on April 11, 1996, the Metro Council adopted a refinement plan for the Canemah Bluff Section of the Willamette River Greenway target area ("Refinement Plan") which authorized the purchases of sites in the target area, illustrated in a confidential tax-lot-specific map identifying priority properties for acquisition; and

WHEREAS, a Tier I objective of the Refinement Plan calls for preservation of the steep cliffs, rock outcrops and seeps for their biological, scenic and cultural values, and purchase of the 10,000-square-foot parcel identified in Exhibit A ("the Property") meets that objective; and

WHEREAS, it is in the best interest of the public to include the Property in the Refinement Plan to provide continuous public ownership between Oregon City Park land and Metro property; now therefore,

BE IT RESOLVED,

That the Metro Council amends the Canemah Bluff Section of the Willamette River Greenway target area refinement plan to include the Property, as identified in Exhibit A.

ADOPTED by Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
Jon Kvistad, Presiding Officer

Approved as to Form:

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

**Exhibit A**  
**Resolution No. 98-2642**

**Order No: 180584**

**DESCRIPTION**

**Lots 1 and 8, Block H, FIRST ADDITION OT THE TOWN OF CANEMAH, in the City of Oregon  
City, County of Clackamas and State of Oregon.**

## Staff Report

### **CONSIDERATION OF RESOLUTION NO. 98-2642 FOR THE PURPOSE OF AMENDING THE CANEMAH BLUFF SECTION OF THE WILLAMETTE RIVER GREENWAY TARGET AREA REFINEMENT PLAN**

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**Date: April 13, 1998**

**Presented by: Charles Ciecko  
Jim Desmond**

## PROPOSED ACTION

**Resolution No. 98-2642, requests amendment of the Canemah Bluff Section of the Willamette River Greenway target area refinement plan.**

## BACKGROUND AND ANALYSIS

In May of 1995, voters in the region passed a bond measure enabling Metro to purchase open space properties with \$135.6 million worth of bond funds. The bond measure identified fourteen regional target areas and six regional trails and greenways for property acquisition, including the Canemah Bluff Section of the Willamette River Greenway. On April 11, 1996 the Metro Council approved a refinement plan for the Canemah Bluff section of the Willamette River Greenway, including a tax-lot specific acquisition map.

The Tier I objectives of that refinement include aggregation of large parcels of contiguous forest on the terrace above the cliffs, preservation of the steep cliffs, rock outcrops and seeps for their biological, scenic and cultural values, and protection of cultural and historic sites and old wagon roads for educational purposes.

The site in question, a 10,000-square-foot parcel located immediately west of city park lands and immediately east of land Metro purchased in 1997, was not included on the adopted site specific acquisition map. Under the guidelines set out in the Open Spaces Implementation Work Plan, Metro Council approval is needed to amend that map. Acquisition of this site would complement acquisition efforts in the area and provide a link between Metro holdings and Oregon City park land. A purchase and sale agreement has been negotiated with the owner of the property, subject to the Metro Council's approval. In order to acquire the property, Metro Council would have to amend the Canemah Bluff Section of the Willamette River Greenway Target Area refinement map to include the property.

## FINDINGS

Amendment of the Canemah Bluff Section of the Willamette River Greenway target area refinement plan is recommended based upon these findings:

- The Tier I objectives of Refinement Plan for the Canemah Bluff Section of the Willamette River Greenway target area include the preservation of the steep cliffs, rock outcrops and seeps for their biological, scenic and cultural values.

Amendment of the Canemah Bluff Section of the Willamette River Greenway target area refinement plan to include the property within Tier I would allow Metro to purchase a site to meet the above stated objective. The 10,000-square-foot block of land is located adjacent to lands owned by Oregon City Parks and, in accordance with the existing refinement plan, will be a part of a larger contiguous Metro holding in the future.

- This parcel should have been included in the original tax-lot specific refinement map. If it were developed with a residence as allowed by zoning, that residence would be immediately in between the city park and the Metro natural area park, thus serving as an inholding within the publicly owned open space.
- The City of Oregon City, the landowner to the east of this property, is supportive of this acquisition.
- The owner of the site is a willing seller at fair market value.

#### **BUDGET IMPACT**

Bond funds will supply acquisition money. Land banking costs are expected to be minimal.

#### **Executive Officer's Recommendation**

The Executive Officer recommends passage of Resolution No. 98-2642.

***Agenda Item 9.2***

***RESOLUTIONS***

**Resolution No. 98-2631, Accepting a Nominee to the  
Metro Committee for Citizen Involvement**

## BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ACCEPTING  
A NOMINEE TO THE METRO COMM-  
ITTEE FOR CITIZEN INVOLVEMENT

)  
)  
)

RESOLUTION NO. 98-2631

Introduced by Councilor Susan McLain,  
Council Liaison to the Metro Committee for  
Citizen Involvement

WHEREAS, the Metro Council adopted the Regional Urban Growth Goals & Objectives (RUGGO's) on September 26, 1991 by Ordinance 91-41B; and

WHEREAS, citizen participation is included in RUGGOS as the first objective under Goal 1, the Regional Planning Process; and

WHEREAS, Objective 1.1 states that Metro shall establish a Regional Citizen Involvement Coordinating Committee (RCICC) to assist with the development, implementation and evaluation of its citizen involvement program; and

WHEREAS, bylaws identify RCICC as the Metro Committee for Citizen Involvement (MCCI); and

WHEREAS, the bylaws have been adopted by the Metro Council (Resolution No. 92-1580A, May 28, 1992) and subsequently revised three times, most recently by Resolution No. 94-1986, November 22, 1994; and

WHEREAS, the Metro Charter called for the creation of an Office of Citizen Involvement and the establishment of a citizens committee therein; and

WHEREAS, the Metro Council created said Office and established MCCI as the citizen committee within that Office, by adopted Ordinance No. 93-479A; and

WHEREAS, the Metro Council accepted the initial membership of the MCCI by Resolution No. 92-1666 on August 27, 1992 with subsequent rounds of applicants approved by Resolution No. 92-1702 on October 20, 1992; Resolution No. 92-1763 on February 25, 1993; Resolution No. 93-1849 on October 15, 1993; Resolution No. 93-1882 on December 23, 1993; Resolution No. 94-1899 on February 24, 1994; Resolution No. 94-1945 on April 28, 1994; Resolution No. 94-2048 on November 10, 1994; Resolution No. 95-2071A on January 12, 1995; Resolution No. 2080A on January 26, 1995; Resolution No. 95-2181 on July 27, 1995; Resolution No. 96-2264 on January 18, 1996; Resolution No. 96-2363 on July 25, 1996; Resolution No. 96-2432 on January 23, 1997; Resolution No. 97-2489 on May 2, 1997; Resolution No. 97-2502 on July 17, 1997; Resolution No. 97-2581A on December 11, 1997; Resolution No. 98-2597 on January 22, 1998; and Resolution No. 98-2616 on March 12, 1998.

WHEREAS, MCCI currently has three vacant positions in District 4 for which they are continuously recruiting and for which a nomination has now occurred as follows: Dale Chambers, 2528 21st Avenue, Forest Grove, OR 97116-1768

BE IT RESOLVED, that the Metro Council accepts the above citizens for membership on the Metro Committee for Citizen Involvement (MCCI).

Adopted by the Metro Council on this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
Jon Kvistad, Presiding Officer



Application for Citizen Involvement

Name DALE C CHAMBERS Council district 1 County WASHINGTON  
Address 2529 21st Avenue #4 State/ZIP OREGON - 97116-1718  
Phone: Home 359-5718 Work 359-5718 FAX \_\_\_\_\_ e-mail \_\_\_\_\_  
Occupation/place of employment Unemployed

Education, work or volunteer experience 1) 14 years - American Government  
National Community College U.S. History, Economics,  
Democratic politics since

- List and describe any involvement you have had with groups, boards, organizations, etc.
- 1) P.C.C. OSPIRG Board - member, Vice Chair, Chair, State Board
  - 2) Oregon Association of Realtors member
  - 3) Hillsboro Chamber of Commerce - Transportation Committee
  - 4) Washington County Democratic Party 1979 - Current - Precinct person 117, 116
  - 5) Washington County Land Use Advisory Commission - Commissioner, Vice Chair, Chair 1991 - 1994.
  - 6) 21st Avenue Neighborhood Chl Group - Precinct / Block Captain 1997 - Current

Name the committee(s) you are interested in and explain why you think the committee issues are important \_\_\_\_\_



ETRO

**GOVERNMENTAL AFFAIRS COMMITTEE REPORT**  
**CONSIDERATION OF RESOLUTION 98-2631, FOR THE PURPOSE OF**  
**ACCEPTING A NOMINEE TO THE METRO COMMITTEE FOR CITIZEN**  
**INVOLVEMENT.**

---

**Date:** May 7, 1998

**Presented by:** Councilor McFarland

**Committee Action:**

At its May 4, 1998, meeting, the Governmental Affairs Committee voted to recommend to the full council adoption of Resolution 98-2631, which adds Dale Chambers to the Metro Committee for Citizen Involvement. Councilors McLain and McFarland voted in favor. Councilor Naito was not present for the vote.

**Committee Discussion:**

There was no substantive discussion on the resolution.

STAFF REPORT

**CONSIDERATION OF RESOLUTION NO. 98-2631 FOR THE PURPOSE OF ACCEPTING A NOMINEE TO THE METRO COMMITTEE FOR CITIZEN INVOLVEMENT**

---

APRIL 23, 1998

KAREN WITHROW (x1539)

BACKGROUND

MCCI currently has three vacancies, all of which are in District 4 (northern Washington County). Councilor Susan McLain and MCCI members have been continuously making the community aware of these openings in hopes of filling them quickly. This has mostly been done through informal means such as discussion with interested persons, handing out information or by staff responses to phone or mail inquiries. MCCI does not want to continue having an underrepresented area on the committee.

Dale Chambers recently requested information concerning Metro and MCCI and quickly returned his application to be a part of MCCI. The MCCI Nominating Committee met on March 18, 1998 following their regular meeting (Kay Durtschi, Aleta Woodruff, Bob Bothman present) to review his application. They have chosen to accept it and request appointment by the Metro Council, so we hope that action can be taken rapidly to gain Government Affairs Committee recommendations and pass this along to the Council for formal and official appointment. Mr. Chambers will be invited to attend meetings in the mean time as a candidate.

***Agenda Item 9.3***

***RESOLUTIONS***

**Resolution No. 98-2645, Approving 1998 Bylaws Amendments for the Metro Committee for Citizen Involvement.**

**BEFORE THE METRO COUNCIL**

**FOR THE PURPOSE OF APPROVING 1998 )  
BYLAWS AMENDMENTS FOR THE METRO )  
COMMITTEE FOR CITIZEN INVOLVEMENT )**

**RESOLUTION NO. 98-2645**

Introduced by Councilor Susan McLain,  
Council Liaison to the Metro Committee for  
Citizen Involvement

WHEREAS, Resolution No. 92-1580, adopted on May 28, 1992 and amended twice thereafter, approved the bylaws of the Metro Committee for Citizen Involvement (MCCI); and

WHEREAS, MCCI desired to clarify bylaws language and keep procedural items out of the bylaws document as much as possible; and

WHEREAS, MCCI agreed it would be beneficial to all persons and projects to make changes necessary to establish MCCI operations on a fiscal year that will coordinate with all other Metro operations; and

WHEREAS, the Metro Code Section 2.12.030 requires amendments to be approved by the Metro Council; and

WHEREAS, MCCI recommended approval for bylaw amendments at its meeting on April 15, 1998.

BE IT RESOLVED, that the Metro Council approved the amended bylaws for the Metro Committee for Citizen Involvement (MCCI), attached as Exhibit A.

Adopted by the Metro Council on this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
Jon Kvistad, Presiding Officer

## METRO COMMITTEE FOR CITIZEN INVOLVEMENT (METRO CCI) BYLAWS

~~November 4, 1994~~ March 18, 1998 draft

## ARTICLE I: NAME

This committee shall be known as the METRO COMMITTEE FOR CITIZEN INVOLVEMENT (METRO CCI).

## ARTICLE II: GEOGRAPHICAL AREA

The area served by this committee shall be the entire area within the boundaries of Clackamas, Multnomah and Washington Counties.

## ARTICLE III: MISSION &amp; PURPOSE

Section 1: It is the mission of the Metro CCI to develop and maintain programs and procedures to aid communication between citizens, and the Metro Council, the and Executive Officer and the Auditor. In order to fulfill its mission, the Metro CCI will:

- Review and make recommendations on the citizen involvement activities of Metro's various departments and operations to ensure their efficiency and consistency.
- Evaluate and promote expansion of the citizen involvement processes and ~~promote the expansion of citizen involvement at Metro;~~ and coordinate with existing citizen involvement organizations.
- Assist Metro to establish and maintain citizen involvement processes for Metro's activities, in order to facilitate effective citizen involvement in the fulfillment of Metro's responsibilities, including involving citizens of all cities and counties in the tri-county area.
- Assist Metro in complying with applicable referral and state mandates regarding citizen involvement.
- Prepare and adopt an annual fiscal year work plan and ~~present it to the Metro Council and Executive Officer not later than March of each year.~~ budget for the Office of Citizen Involvement to be presented to the Executive Officer for submission to the Metro Council with the budget for the Executive Office during the Council's consideration of budget matters.
- ~~Submit to the Executive Officer an annual budget request for the Office of Citizen Involvement, and present the Office's budget to the Council during the Council's considerations of the budget.~~
- ~~Review and evaluate Metro's citizen involvement program annually and report to the Metro Council and Executive Officer on its evaluation.~~ Submit an annual report to the Metro Council regarding citizen involvement at Metro.

Section 2: The mission and purpose specified are not exclusive; any specification of purpose or mission is not intended to limit the scope of Metro CCI activities nor limit the yearly work plan ~~that may be adopted by~~ the Metro CCI; the mission and purpose of the Metro CCI shall be construed liberally.

## ARTICLE IV: MEMBERSHIP

Section 1: Composition of the Metro CCI

- a. The Metro CCI shall have twenty-seven (27) members. Membership shall consist of:

1) Three (3) representatives from each of the seven (7) Metro Council Districts (for a total of 21);

2) One (1) representative from each of the areas outside of the Metro boundaries of Clackamas, Multnomah, and Washington Counties (for a total of 3).

3) One (1) representative from each of Clackamas County's Committee for Citizen Involvement (CCI), Multnomah County Citizen Involvement Advisory Committee (CIAC), and Washington County Committee for Citizen Involvement (CCI) (for a total of 3).

b. Members shall not hold government elected office nor be Metro employees; however, special district elected officials are eligible.

c. Members shall represent the interested of their constituency at all meetings of the Metro CCI.

d. Members will be required to declare any conflict of interest in advance of any discussion or votes, and will not vote on those issues for which a conflict exists.

## Section 2: Membership Selection Process

Metro CCI members will be appointed using the following process:

a. Metro will advertise the openings on the Metro CCI in January and July of each as needed through the year to citizens of the region, and will notify recognized neighborhood associations and citizen participation organizations of openings on the Metro CCI. Metro elected officials and interested existing citizen involvement organizations will be encouraged to solicit applicants to fill openings on the Metro CCI. Applications shall include a statement of commitment to be signed by the applicant.

b. Metro CCI will collect the applications and convene a nominating committee consisting of five members: one representative of each county citizen involvement committee and two members of Metro CCI whose positions are not being considered for nomination. The two Metro CCI members may not reside in the same County.

c. The nominating committee shall meet to review the applications and forward nominations for re-appointments to the full Metro CCI. All new applications shall be submitted to the Metro Council for approval and adoption by Resolution. The nominating committee may interview applicants, but the committee has authority to decide whether to conduct interviews. All Each Metro Councilors shall be invited and be given a reasonable opportunity to attend the meeting and to participate in the selection process for nomination of the representatives new members from his/her their district. If a Councilor is unable to attend the meetings, he/she they may communicate oral or written comments to the Chair and members of the committee prior to the meeting of the nominating committee.

d. One nomination from each vacant position shall be forwarded to the Metro Council for appointment to the Metro CCI. Applicants must be nominated by the nominating committee to be considered for appointment by the Metro Council, which shall make appointments through adoption of a Resolution. If any nominee is not appointed, the Council shall provide a written statement to the

97 nominating committee on the reasons why the nominee was not appointed; and the committee shall  
98 submit another nomination.  
99

100 **Section 3: Duties**  
101

102 The duties of each member shall be to implement the Mission and Purpose of the Metro CCI as stated in  
103 Article III of these bylaws.  
104

105 **Section 4: Tenure**  
106

107 a. Each Metro CCI members shall be appointed to a term of appointment shall be three years, as  
108 ~~determined in Section 4(e), except during the transition period as stated below in Section 4(e) of this~~  
109 ~~article; expiration dates of terms through December 31, 1997 shall be as stated in Section 4(e).~~  
110 Members may serve a maximum of two consecutive full three year terms with an absence of one  
111 year before they can re-qualify. A member whose initial appointment was to fill an un-expired term  
112 or was for a term of less than three years may serve up to two additional years, but in no case may a  
113 member serve more than eight years consecutively. Members seeking re-appointment cannot  
114 participate in their own selection process.  
115

116 b. Metro CCI positions will be numbered from one to twenty-seven as follows:  
117

118 **Metro CCI Positions Corresponding to Metro Council Districts:**  
119

120 Metro CCI Positions 1-3	Council District 1
121 Metro CCI Positions 4-6	Council District 2
122 Metro CCI Positions 7-9	Council District 3
123 Metro CCI Positions 10-12	Council District 4
124 Metro CCI Positions 13-15	Council District 5
125 Metro CCI Positions 16-18	Council District 6
126 Metro CCI Positions 19-21	Council District 7

127  
128 **County Positions Outside Metro District Boundaries:**  
129

130 Metro CCI Position 22	Clackamas County
131 Metro CCI Position 23	Multnomah County
132 Metro CCI Position 24	Washington County

133  
134 **County Citizen Involvement Committee Positions:**  
135

136 Metro CCI Position 25	Clackamas County CCI
137 Metro CCI Position 26	Multnomah County CIC
138 Metro CCI Position 27	Washington County CCI

139  
140 c. Terms for each member shall begin as established below and shall expire every three years  
141 thereafter in June beginning in FY 98-99. Through the transition between expiration in  
142 December and June, members will serve an additional six months. In order to provide for  
143 continuity in membership in the period of transition from thirteen Council districts to seven (in  
144 accordance with the provisions of the 1992 Metro Charter), position numbers established in the



Metro CCI bylaws adopted on May 28, 1992 and term expirations dates as established in Resolution No. 92-1666 are assigned as follows:

<u>Original Position Number</u>	<u>New Position Number</u>	<u>Term Expiration Date</u>
1	10	12/31/95
2	7	12/31/97
3	19	12/31/95
4	8	12/31/96
5	4	12/31/96
6	5	12/31/95
7	1	12/31/97
8	20	12/31/97
9	16	12/31/95
10	2	12/31/96
11	21	12/31/96
12	13	12/31/95
13	11	12/31/96
14	22	12/31/95
15	23	12/31/97
16	24	12/31/96
17	25	12/31/97
18	26	12/31/96
19	27	12/31/95

Terms which commenced prior to January 1, 1995 shall continue through December 31, 1994. All terms ending December 31, 1997 shall begin in January 1, 1995. Terms of positions # 4, 5, 8, 10, 11, 13, 16, 19, 21, 22, 24, 26, 27 will be continuation of terms begun prior to January 1, 1995. Terms of positions # 3 and 9 will be one year terms for the transition period only, terms of positions # 2, 14, and 17 will be tow year terms for the transition period only.

<u>Position</u>	<u>Original Appointment Date</u>	<u>Position</u>	<u>Original Appointment Date</u>
1	1-1-95	15	1-1-95
2	1-1-94	16	1-1-93
3	1-1-96	17	1-1-97
4	1-1-94	18	1-1-95
5	1-1-93	19	1-1-93
6	1-1-95	20	1-1-95
7	1-1-95	21	1-1-94
8	1-1-94	22	1-1-93
9	1-1-96	23	1-1-95
10	1-1-93	24	1-1-94
11	1-1-94	25	1-1-95
12	1-1-95	26	1-1-94
13	1-1-93	27	1-1-93
14	1-1-97		

#### Section 5: Vacancies

193 a. Members will be expected to attend all regularly scheduled meetings and special meetings.  
194 ~~Absence from Three consecutive un-excused~~ absences from regularly scheduled meetings for three  
195 ~~(3) consecutive months~~ shall require the Chair to declare a vacancy in the position. The vacancy  
196 shall be filled through the nomination and appointment process as described in Section 2 above.

197  
198 b. If a position becomes vacant for any reason, ~~prior to the annual recruitment process, those~~  
199 ~~applications which are on hand from prior recruitment or which have been received in the interim~~  
200 ~~will be used to fill the vacancy. A vacancy shall be filled within 30 days of the effective date of the~~  
201 ~~vacancy. If there are no eligible applications on hand, then limited recruitment will be done and the~~  
202 ~~vacancy will be filled within 90 days according to the procedure in Section 2 above. These~~  
203 ~~applicants who are under consideration for filling a vacancy (either by having their application on~~  
204 ~~file, or by submitting a new application following the occurrence of the vacancy) shall be informed~~  
205 ~~of the time line for filling the vacancy at the beginning of the process and periodically updated as~~  
206 ~~the recruitment/selection process advances.~~

207  
208 c. ~~Move out of District or Area represented.~~ When a members moves outside of the area they  
209 represent, their position shall be considered vacant ~~for the purpose of selecting~~ and a replacement  
210 shall be selected from qualified applicants as outlined above. However, the member vacating that  
211 seat may continue to represent that position on MCCI, including the right to vote, until the  
212 replacement member is selected and appointed, but in no case for more than 90 days.

## 213 214 ARTICLE V: OFFICERS & DUTIES

### 215 216 Section 1: Officers

217  
218 a. The Officers of the Metro CCI shall be a Chair and Vice Chair to be elected by a majority vote of  
219 ~~the members present at the first meeting and annually in December thereafter.~~ The Chair shall set  
220 the agenda, preside at all meetings and shall be responsible for the expeditious conduct of the Metro  
221 CCI business. In the absence of the Chair, the Vice Chair shall assume the duties of the Chair. Both  
222 the Chair and Vice Chair are entitled to vote on all issues.

223  
224 b. The Chair, Vice Chair and three additional Metro CCI members elected by a majority vote of the  
225 ~~Metro CCI members present at the first meeting and annually in December thereafter,~~ will serve as  
226 the Steering Committee for the Metro CCI, along with the Subcommittee Chairs. The Steering  
227 Committee shall advise the Chair in determining meeting agendas, and shall review matters to be  
228 considered by the full committee and shall review and coordinate including the work of Metro CCI  
229 subcommittees. The Metro CCI shall attempt to elect a Steering Committee that is broadly  
230 represents of the geographic areas and interests of the total membership of the all Metro CCI  
231 members. The Steering Committee may act in an emergency or temporary manner for the Metro  
232 CCI, but such actions shall be reviewed by the Metro CCI at the next regular meeting.

233  
234 c. A vacancy in a Metro CCI Officer position shall be filled by another Metro CCI member  
235 following a nomination and majority vote of the members.

### 236 237 Section 2: Term of Office

238  
239 Officers and Steering Committee members shall hold office for a period of one year, ~~from January 1 through~~  
240 ~~December 31 corresponding to the calendar year.~~ Officers may serve no more than two consecutive terms in  
241 the same office.

242  
243 Section 3: Subcommittees  
244

245 ~~The Chair may create subcommittees. The Chair shall appoint subcommittee chairs. Subcommittees may~~  
246 ~~be created as needed according to Metro CCI policy. Subcommittee chairs shall be Metro CCI members.~~  
247 Subcommittees may include people who are not Metro CCI members.  
248

249 **ARTICLE VI: MEETINGS, CONDUCT OF MEETINGS & QUORUM**  
250

251 Section 1: Regular meetings of the Metro CCI shall be held monthly at time and place established by the  
252 Chair, after consultation with the membership. Special or emergency meetings may be called by the Chair or  
253 a majority of the members of the Metro CCI.  
254

255 Section 2: Notice  
256

257 a. Notice, agenda and draft minutes of all regular meetings shall be mailed to all members of the  
258 Metro CCI at least five (5) regular business days before such meetings.  
259

260 b. Metro shall maintain a mailing list of persons and organizations who have expressed their interest  
261 in citizen involvement and the Metro CCI. Notice of Metro CCI meetings shall be mailed to  
262 everyone who has asked to be on that list.  
263

264 Section 3: A majority of the members in filled positions shall constitute a quorum for the conduct of  
265 business. The act of a majority of those present at meetings at which a quorum is present shall be the act of  
266 the Metro CCI.  
267

268 Section 4: All meetings shall be conducted in accordance with Robert's Rules of Order, Newly Revised.  
269

270 Section 5: The Metro CCI shall establish additional rules of procedure as deemed necessary for the conduct  
271 of business.  
272

273 Section 6: Metro shall provide staff to handle Metro CCI business, correspondence and public information.  
274 Other Metro resources may be called upon as necessary.  
275

276 Section 7: Staff shall prepare formal minutes of meetings for distribution at the next regular meeting subject  
277 to Metro CCI approval. Metro shall keep on file all minutes, as well as a current roster of members and any  
278 other records of Metro CCI actions as necessary and appropriate. Approved minutes shall be forwarded to  
279 Metro Councilors and the Executive Officer.  
280

281 Section 8: Any vote of the Metro CCI shall be called as a roll call vote upon request of any member.  
282

283 **ARTICLE VII: AMENDMENTS & REVIEW**  
284

285 Section 1: Amendment and Repeal of Bylaws  
286

287 These bylaws may be amended by a majority vote of the full membership of the Metro CCI (14 votes) and  
288 adoption of a Resolution by the Metro Council. Written notice of proposed amendment or repeal and the  
289 nature thereof shall have been given to the membership of the committee at least one consecutive month 30  
290 days prior to the date of the meeting at which the amendments are to be considered.

291

292 Section 2: Review of Bylaws

293

294 Bylaws will be reviewed at least every three (3) years. Written notice of such review shall be provided  
295 before the review.

**GOVERNMENTAL AFFAIRS COMMITTEE REPORT**  
**CONSIDERATION OF RESOLUTION 98-2645, FOR THE PURPOSE OF**  
**APPROVING 1998 BYLAWS AMENDMENTS FOR THE METRO COMMITTEE**  
**FOR CITIZEN INVOLVEMENT.**

---

**Date:** May 7, 1998

**Presented by:** Councilor Naito

**Committee Action:**

At its May 4, 1998, meeting, the Governmental Affairs Committee voted to recommend to the full council adoption of Resolution 98-2645, which makes changes to the Bylaws of the Metro Committee for Citizen Involvement (MCCI). Councilors McLain, Naito and McFarland voted in favor.

**Committee Discussion:**

The resolution was amended to clarify that nominations for new members to MCCI would be brought to the Metro Council for approval. Also, Councilor McFarland asked how many vacancies remained on MCCI. Aleta Woodruff and Karen Withrow responded that there are vacancies in the second, fourth, fifth and seventh districts.

## STAFF REPORT

### **CONSIDERATION OF RESOLUTION NO. 98-2645 FOR THE PURPOSE OF APPROVING BYLAWS AMENDMENTS FOR THE METRO COMMITTEE FOR CITIZEN INVOLVEMENT**

---

APRIL 20, 1998

KAREN WITHROW (x1539)

#### BACKGROUND

According to the November, 1994 version of MCCI's bylaws, MCCI bylaws are to be reviewed every three years. Three years was up in November, 1997 and work had already begun in April, 1997 to initiate this review process. With the change over to the Executive Office and loss of a staff member, the work was delayed and a final version was just submitted to MCCI membership prior to its April 15, 1998 meeting. The final version was approved by 2/3 of MCCI membership at the April 15, 1998 meeting and is now being forwarded with no changes for majority approval by the Metro Council.

The original MCCI bylaws were adopted by Resolution No. 92-1580 on May 28, 1992 and amended twice thereafter. In making the currently submitted amendments, MCCI desired to clarify bylaws language and keep procedural items out of the bylaws document as much as possible in order to simplify the document and keep future revision needs to a minimum. Policies and procedures will be developed to complement the bylaws once adopted by the Council.

Another goal MCCI agreed would be beneficial to all persons and projects would be to make changes necessary to establish MCCI operations on a fiscal year that will coordinate with all other Metro operations. The Executive Officer agreed with this and it will especially aid us as we work with a new sub-committee structure. The change will necessitate a transition period where currently serving members will be asked to serve an additional six months to accomodate the change from calendar to fiscal years. If this is not feasible, MCCI will request new members serve the additional six months to accomodate the change.

*Agenda Item 9.4*

**RESOLUTIONS**

**Resolution No. 98-2651, Adding the Second Largest Cities of Clackamas and Washington Counties to the Metro Policy Advisory Committee.**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADDING  
THE SECOND LARGEST CITIES OF  
CLACKAMAS AND WASHINGTON  
COUNTY TO THE METRO POLICY  
ADVISORY COMMITTEE

)  
)  
)  
)  
)

RESOLUTION NO. 2651

Introduced by Councilor McLain

WHEREAS, Metro has consistently sought a partnership with cities, counties, and citizens in the region in its regional planning program; and

WHEREAS, That partnership was described in September, 1991 in Goal I of Metro's Regional Urban Growth Goals and Objectives which were acknowledged on December 9, 1996; and

WHEREAS, Implementation of that partnership was intended to occur, in large part, through the creation of an ongoing Metro Policy Advisory Committee (MPAC) required by Section 27 of the Metro Charter to advise and recommend actions to the Metro Council on ways to address areas and activities of metropolitan significance; and

WHEREAS, A change in the membership composition of MPAC is authorized by Section 27(2) of the 1992 Metro Charter, when approved by a majority of MPAC members and a majority of all Metro Councilors; and

WHEREAS, A majority of MPAC members voted to change the voting status of the State Agency Growth Council members to non-voting; and

WHEREAS, A majority of MPAC members voted to add the second largest cities from Washington and from Clackamas Counties; now therefore,

BE IT RESOLVED:



The Metro Council approves changing the membership of MPAC to add the second largest city in Clackamas County and the second largest city in Washington County and to make the State Agency Growth Council representative a non-voting member.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_ 1998.

\_\_\_\_\_  
Jon Kvistad, Presiding Officer

APPROVED AS TO FORM:

ATTEST:

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

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

Article III  
Committee Membership

Section 1. Membership

- a. The Committee will be made up of representatives of the following:

Multnomah County Commission	1
Second Largest City in Multnomah County	1
Other Cities in Multnomah County	1
Special District in Multnomah County	1
 City of Portland	 2
 Clackamas County Commission	 1
Largest City in Clackamas County	1
<u>Second Largest City in Clackamas County</u>	<u>1</u>
Other Cities in Clackamas County	1
Special District in Clackamas County	1
 Washington County Commission	 1
Largest City in Washington County	1
<u>Second Largest City in Washington County</u>	<u>1</u>
Other Cities in Washington County	1
Special District in Washington County	1
 Tri-Met	 1
 Governing body of a school district	 1
 Citizens of Metro	 3
 State Agency Growth Council	 1
Clark County	1
City of Vancouver	<u>1</u>
 Total	 <u>2422</u>

- b. Members representing jurisdictions shall be appointed from among members of the governing body. All jurisdictions represented by members, including cities within each county, shall have territory within Metro boundaries.
- c. Alternates qualified to be members shall be appointed to serve in the absence of the regular members.
- d. Metro Councilors will participate with the Committee membership with three non-voting liaison delegates appointed by the Metro Council.
- e. Clark County, Washington, and City of Vancouver, Washington membership includes all duties of MPAC except approving or disapproving authorization for Metro to

**GOVERNMENTAL AFFAIRS COMMITTEE REPORT**  
**CONSIDERATION OF RESOLUTION 98-2651, FOR THE PURPOSE OF ADDING**  
**THE SECOND LARGEST CITIES OF CLACKAMAS AND WASHINGTON**  
**COUNTIES TO THE METRO POLICY ADVISORY COMMITTEE.**

---

**Date:** May 7, 1998

**Presented by:** Councilor McLain

**Committee Action:**

At its May 4, 1998, meeting, the Governmental Affairs Committee voted to recommend to the full council adoption of Resolution 98-2651, which adds Hillsboro and Oregon City, the second largest cities of Clackamas and Washington Counties, to the Metro Policy Advisory Committee (MPAC). Councilors McLain, Naito and McFarland voted in favor.

**Committee Discussion:**

Councilor McLain noted that the resolution was drafted so that as populations change in Clackamas and Washington County, if cities other than Hillsboro and Oregon City became the second largest cities, those cities could be brought on to MPAC.

# STAFF REPORT

## RESOLUTION 98-2651, FOR THE PURPOSE OF ADDING THE SECOND LARGEST CITIES OF WASHINGTON AND CLACKAMAS COUNTIES TO THE METRO POLICY ADVISORY COMMITTEE

Date: April 26, 1998

Introduced by: Councilor McLain

### BACKGROUND/ANALYSIS:

The Metro Charter requires the Council to confirm all membership changes to the Metro Policy Advisory Committee (MPAC). On April 9, 1998, MPAC voted unanimously to add the second largest cities of Washington and Clackamas Counties to their membership and to make the State Agency Growth Council representative a non-voting member. This resolution approves those changes.

This MPAC by-law amendment equalizes representation among the three counties in the region. Multnomah County's second largest city is already a part of the MPAC membership (see attached membership list).

The second largest city in Washington County at this time is Hillsboro. The second largest city in Clackamas County at this time is Oregon City.

These MPAC by-law changes result in a total voting membership of 24.

### BUDGET IMPACT:

None.

***Agenda Item 9.5***

***RESOLUTIONS***

**Resolution No. 98-2636, Confirming the Selection of First Chairperson and Vice-Chair for the Natural Hazards Technical Advisory Committee, and Appointing a Home Builder Delegate to the Committee.**

## BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONFIRMING	)	Resolution No. 98-2636
THE SELECTION OF FIRST CHAIRPERSON AND	)	
VICE-CHAIR FOR THE NATURAL HAZARDS	)	
TECHNICAL ADVISORY COMMITTEE, AND	)	
APPOINTING A HOME BUILDER DELEGATE	)	Introduced by: Mike Burton
TO THE COMMITTEE	)	Executive Officer

WHEREAS, the Council created the Natural Hazards Technical Advisory Committee; and

WHEREAS, the advisory committee by-laws specify that the first selection of its chair person requires nomination by the Executive Officer and confirmation by the Council; and

WHEREAS, the advisory committee by-laws specify a two-year term for its officers, running concurrently with their two-year appointment to the committee; and

WHEREAS, a home builder delegate nomination has been forwarded to fill an existing vacancy on the advisory committee in that category; now, therefore,

BE IT RESOLVED,

1. That the Metro Council hereby confirms the appointment of Edward Trompke as chair and Scott Porter as vice-chair of the Natural Hazards Technical Advisory Committee, both terms ending in May 1999.
2. That the Metro Council confirm John Godsey to serve the remainder of a two-year term as home builder delegate to the Natural Hazards Technical Advisory Committee, term ending in May 1999.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

---

Jon Kvistad, Presiding Officer

Approved as to Form:

---

Daniel B. Cooper, General Counsel

## **GROWTH MANAGEMENT COMMITTEE REPORT**

**CONSIDERATION OF RESOLUTION NO. 98-2636, FOR THE PURPOSE OF CONFIRMING THE SELECTION OF FIRST CHAIRPERSON AND VICE-CHAIR FOR THE NATURAL HAZARDS TECHNICAL ADVISORY COMMITTEE, AND APPOINTING A HOME BUILDER DELEGATE TO THE COMMITTEE.**

---

**Date:** May 7, 1998

**Presented by:** Councilor Morissette

### **Committee Action:**

At its May 5, 1998 meeting, the Growth Management Committee unanimously voted to recommend to Council adoption of Resolution No. 98-2636. Voting in favor: Councilors Naito, McCaig and Morissette.

### **Committee Issues/Discussion:**

There was no substantive discussion on this ordinance by the members of the Committee.

## Staff Report

CONSIDERATION OF RESOLUTION NO. 98-2636 FOR THE PURPOSE OF CONFIRMING THE SELECTION OF FIRST CHAIRPERSON AND VICE-CHAIR PERSON FOR THE NATURAL HAZARDS TECHNICAL ADVISORY COMMITTEE (HAZTAC), AND APPOINTING A HOMEBUILDER DELEGATE TO THE COMMITTEE.

---

Date: April 13, 1998

Presented by: Elaine Wilkerson  
Gerry Uba

## PROPOSED ACTION

This resolution confirms the Metro Executive Officer nomination of Edward Trompke as chair of the Metro Natural Hazards Technical Advisory Committee (HAZTAC) and Scott Porter as vice-chair of the committee, and appoints Mr. John Godsey as the homebuilder delegate to the HAZTAC.

## FACTUAL BACKGROUND

The Council established HAZTAC in 1996 to advise Metro on measures that local governments, businesses and citizens in this region can take to reduce damage from natural disasters.

At its February 9, 1998 meeting, HAZTAC members unanimously nominated Mr. Trompke and Mr. Porter to their respective positions.

According to the committee's Rules of Procedures approved by the Metro Council (via Resolution No. 96-2367), the initial selection of the HAZTAC chair requires nomination by the Executive Officer and confirmation by the Metro Council. Subsequent selection of officers will require only the majority vote of the committee.

The first homebuilder delegate appointed by the Metro Council in 1997 did not attend HAZTAC meetings and has taken new duties that would make future attendance unlikely.

The current applicant for the homebuilder position, Mr. John Godsey, is a member of the homebuilder association. The association (see Attachment A) endorsed Mr. Godsey's application for membership on HAZTAC. Mr. Godsey is a registered professional civil engineer with more than 25 years experience. Mr. Godsey is also a City of Hillsboro councilor.

## EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 98-2636.



## ATTACHMENT "A" TO STAFF REPORT



# Oregon Building Industry Association

375 Taylor Street NE • Salem, OR 97303 • (503) 378-9066 • Fax (503) 362-5120

## 1998 OFFICERS

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Lake Oswego, OR 97035  
(503) 639-8432

### National Representative

Derryl Bishop  
McIntosh Rtg. Htg & Sh Mtl  
PO Box 586  
Tillamook, OR 97141  
(503) 842-2772  
[dbishop@oregoncoast.com](mailto:dbishop@oregoncoast.com)

### Immediate Past President

Jim Standing  
Westland Industries, Inc.  
5 Nansen Summit  
Lake Oswego, OR 97035  
(503) 245-8715  
[standingj@aol.com](mailto:standingj@aol.com)

### Executive Vice President

Beth Bauer  
375 Taylor St., NE  
Salem, OR 97303  
(503) 378-8066  
[bbauer@navicom.com](mailto:bbauer@navicom.com)

March 18, 1998

Jerry Uba

600 NE Grand  
Portland, OR 97232

Dear Jerry Uba:

This letter is to inform you of our interest in having John Godsey serve as a member of HAZTAC. It is our belief that Mr. Godsey's engineering background, and city council experience in Hillsboro make him an excellent candidate for this committee.

If you have any questions please do not hesitate to call.

Sincerely,

Scott Barric

Oregon Building Industry Association



# Application Form for Citizen Involvement

\* Application Deadline: Monday, January 13, 1997

## Regional Natural Hazard Technical Advisory Committee

Name JOHN GODSEY Metro Council District/County McCLAIN/WASH  
 Address 15256 NW GREENBRIER PKWY City/State/ZIP BEAVERTON, OR 97006  
 Phone: Home 648-3220 Work 690-6600 Fax 690-2595  
 e-mail \_\_\_\_\_  
 Occupation/Employment CIVIL ENGINEER

Education and Work Experience SEE ATTACHED RESUME

List and describe any involvement you have had with professional boards/associations/organizations, civic groups, etc. List the dates (month/year) served.  
SEE ATTACHED RESUME

Have you served in the capacity of "liaison" for any professional groups, organization or association? List dates (month/year) served and your responsibilities as liaison.  
SERVED AS LIAISON FOR OREGON BUILDERS  
INDUSTRY ASSOCIATION TO REG. COMMITTEE  
THAT MADE RECOMMENDATIONS FOR A PROGRAM  
TO CONTROL EROSION FROM SITES LESS  
THAN 5 AC. 1996-97

List any relevant experience, skills or interests that have prepared you for a position on the Regional Natural Hazards Technical Advisory Committee. List the dates (month/year) served. (You may use extra sheets of paper if necessary.)  
CITY ENGINEER, CITY OF HILLSBORO 1975-79  
PUBLIC WORKS DIRECTOR, LAKE OSWEGO 1980-84



Why are you interested in serving on Regional Natural Hazards Technical Advisory Committee?

TO BRING A BUILDING INDUSTRY PERSPECTIVE TO THE DISCUSSION

What do you see as the opportunities and challenges for a regional natural hazards mitigation program over the next two years?

REVIEW SEPARATE JURISDICTIONAL PROGRAMS & LOOK FOR OPPORTUNITIES FOR COOPERATION AND COORDINATION

List two references (one familiar with your professional and one familiar with your volunteer work).

Professional Reference:

Name DON MORISSETTE Day Phone 620-7538  
Address 5000 SW MEADOWS ROAD SUITE 151  
LAKE OSWEGO, OR 97035

Volunteer Reference:

Name DAN ABERG Day Phone 648-1102  
Address 334 SE. 5th, HILLSBORO, OR 97123

Optional: Attach a resume.

Signature

*JM Godsey*

Date

3/12/98

JOHN M. GODSEY JR. P.E., P.L.S.

3076 S.E. OAK STREET  
HILLSBORO, OREGON 97123  
(503) 648-3220 HOME  
(503) 690-6600 WORK

#### Education

Bachelor of Science degree, Civil Engineering,  
University of Washington, 1971

Associate of Science degree, Seattle Community College,  
1969

Ingraham High School, Graduated 1962, Seattle,  
Washington

#### Registered Professional Engineer

State of Oregon Civil Engineer 8466, 1975  
State of Oregon Land Surveyor 1194, 1977  
State of Washington Civil Engineer 22716, 1985  
State of Washington E.I.T. 4976, 1971

#### Member

American Public Works Association  
Beaverton Area Chamber of Commerce  
Hillsboro Area Chamber of Commerce  
Home Builders Association of Metropolitan Portland

#### Military Experience

Served in the United States Air Force for four years in  
Texas, Mississippi, The Philippines, and Germany.  
Honorable discharge 1966.

## Experience

Mr. Godsey has held responsible positions in public as well as private industry as a Civil Engineer. He has served as Public Works Director in Lake Oswego, Assistant Engineering Manager for a private consulting firm, City Engineer in Hillsboro, and presently as President of Consulting Engineering Services, Inc. Mr. Godsey has designed and administered a wide variety of Civil Engineering Projects such as: construction of streets, highways, sewers, waterlines, storm drains, treatment plants, water reservoirs, water transmission lines, parking lots, and sites for development of residential, industrial and commercial property.

## Committees and Activities

Beaverton Area Chamber of Commerce; Transportation Committee  
Chairman, 1986-87  
Beaverton Area Chamber of Commerce; President 1990  
Beaverton Area Chamber of Commerce; Board Member 1988-94  
Beaverton Education Foundation; Board of Directors 1989-92  
Beaverton Sister Cities Foundation; Board of Directors 1990  
Beaverton School District #48, Special Siting and Boundary  
Committee Chairman 1991-93  
Hillsboro Area Chamber of Commerce; Economic Development  
Committee Chairman 1987-89  
Hillsboro Area Chamber of Commerce; Transportation Committee  
Chairman 1985-86  
Hillsboro Area Chamber of Commerce; Board of Directors 1995-98  
Hillsboro City Council 1990-92, Elected to serve 1993-97,  
Re-Elected to serve 1997-2000  
Metro Transportation Policy Advisory Committee 1987-90  
Metro Joint Policy Advisory Committee, Cities of Washington  
County Alternate 1993-96  
Portland Metro Home Builders Association  
Washington County Chairman 1989-91, 1995  
Portland Metro Home Builders Association  
Vice President, Secretary 1996  
Portland Metro Home Builders Association  
Vice President, Treasurer 1997  
Portland Metro Home Builders Association  
Vice President 1998  
Portland State University, Institute of Portland  
Metropolitan Studies, Board of Directors 1992-98  
Board Chairman 1996-1997  
Oregon State Home Builders Association; Director 1988-97  
Tri-Met Budget Committee 1987-90  
Tri-Met West Side Light Rail Citizens Advisory Committee  
1990-93  
Washington County Community Development Block Grant Program;  
Policy Advisory Board 1993-97  
Washington County Affordable Housing Study Coordinating  
Committee 1992-93

## Leisure Activities

Golf  
Hiking and Backpacking

***Agenda Item 9.6***

***RESOLUTIONS***

**Resolution No. 98-2633, Authorizing the Executive Officer to Execute an Intergovernmental Agreement Establishing the South/North Land Use Final Order (LUFO) Steering Committee.**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING )	RESOLUTION NO. 98-2633
THE EXECUTIVE OFFICER TO EXECUTE)	
AN INTERGOVERNMENTAL AGREEMENT )	Introduced by:
ESTABLISHING THE SOUTH/NORTH )	Ed Washington, JPACT and
LAND USE FINAL ORDER (LUFO) )	South/North Steering
STEERING COMMITTEE )	Committee Chair

WHEREAS, Participating jurisdictions representing areas of the South/North Project have been cooperating performing high-capacity transit studies under an organizational and oversight structure originally established in Metro Resolution No. 92-1179 and IRC Resolution No. 89-11-03 and amended in Metro Resolution No. 92-1549 and IRC Resolution No. 1-92-2; and

WHEREAS, The Oregon Legislature enacted Oregon Laws 1996, Chapter 12 (the act) establishing procedures for siting the South/North Light Rail Project through the use of a regional Land Use Final Order (LUFO) to be adopted by the Metro Council; and

WHEREAS, Section 1(21) of the act requires the establishment of a LUFO Steering Committee to be comprised at least of representatives of Metro, Tri-Met, ODOT and elected officials of the affected local governments and that the specific membership and manner of function of the LUFO Steering Committee are to be determined by intergovernmental agreement between Metro, Tri-Met, ODOT and the affected local governments; and

WHEREAS, Section 6(1) (a) of the act requires the LUFO Steering Committee to make recommendations to Tri-Met as to the light rail route, stations, lots and maintenance facilities, and the highway improvements for the Project, including their locations, prior to the time that Tri-Met applies to Metro for



approval of a LUFO for the Project; and

WHEREAS, The LUFO Steering Committee is scheduled to make its recommendations to allow a Metro Council final decision on the LUFO in July 1998; and

WHEREAS, The existing South/North Steering Committee has reviewed and unanimously recommended the proposed Intergovernmental Agreement for the LUFO Steering Committee, attached as Exhibit "A"; now therefore,

BE IT RESOLVED:

That the METRO Council authorizes the Executive Officer to execute an Intergovernmental Agreement with Tri-Met, ODOT, Clackamas County, Multnomah County, the City of Portland and the City of Milwaukie, substantively similar to Exhibit "A," on behalf of Metro to establish the LUFO Steering Committee and define the initial manner of function.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

Jon Kvistad, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

SK:lmk  
98-2633.RES  
4-21-98

Attachments: Exhibit A - South/North Light Rail Transit Project Steering Committee Agreement

SOUTH/NORTH LIGHT RAIL TRANSIT PROJECT  
STEERING COMMITTEE AGREEMENT

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 1998, by Metro, Oregon Department of Transportation (ODOT), Tri-County Metropolitan Transportation District of Oregon (Tri-Met), Clackamas and Multnomah counties, political subdivisions of the State of Oregon, and the cities of Milwaukie and Portland, incorporated municipalities of the State of Oregon.

WHEREAS, the existing South/North Light Rail Transit Project steering committee (hereinafter LPS steering committee) of policymakers from participating jurisdictions representing areas for Phase I and Phase II was established for the federal Locally Preferred Strategy process in the Evaluation Methods Report of May 20, 1996, to assure coordination on the federally required Draft Environmental Impact Study of a South/North Light Rail Project; and

WHEREAS, the Oregon Legislature enacted Oregon Laws 1996, Chapter 12 ("the Act") establishing mandatory state procedures for siting the South North MAX Light Rail Project by the use of a regional "land use final order" (LUFO) to be adopted by the Metro Council; and

WHEREAS, Section 4 of the Act requires the Land Conservation and Development Commission (LCDC) to establish criteria to be used by the Metro Council in making decisions in the land use final order on the light rail route, stations, lots and maintenance facilities, and the highway improvements for the project; and

WHEREAS, the LCDC held a public hearing on May 30, 1996 and adopted the region's proposed South/North Land Use Criteria, attached as Exhibit A, as the Criteria for use by the South/North Project; and

WHEREAS, Section 1(21) of the Act requires the establishment of a Steering Committee (hereinafter LUFO Steering Committee) for Phase I ("the Project") and Phase II ("the Project Extension") of the South North MAX Light Rail Project, to be comprised at least of representatives of Tri-Met, ODOT, and elected officials of the affected local governments and Metro, whose specific membership and manner of function are to be determined by intergovernmental agreement between Metro, Tri-Met, ODOT and the affected local governments for the Project or Project Extension; and

WHEREAS, Section 6(1)(a) of the Act requires the LUFO Steering Committee to make recommendations to Tri-Met as to the light rail route, stations, lots and maintenance facilities, and the highway improvements for the Project, including their locations, prior to the time Tri-Met applies to Metro for approval of a LUFO for the Project; and

WHEREAS, Section 11(1) and (2) of the Act requires a Steering Committee intergovernmental agreement identified in Section 1(21) to contain provisions to determine how any measures or improvements of the Project would be deferred or deleted if deferral or deletion is required as a condition of executing a Full Fund Grant Agreement or due to insufficient funds to fully execute the approved Full Funding Grant Agreement; and

WHEREAS, Section 8(3) of the Act requires that a Steering Committee intergovernmental agreement identified in Section 1(21) contain provisions by which the LUFO Steering Committee may determine whether locally-imposed development approval conditions are unreasonable or unnecessary or would prevent implementation of a land use final order; and

WHEREAS, participating jurisdictions representing areas for both Phase I and Phase II have been cooperating to study High Capacity Transit Studies under an organizational and oversight structure originally established in Metro Resolution No. 90-1179 and IRC Resolution No. 89-11-03, and amended in Metro Resolution No. 92-1549 and IRC Resolution No. 1-92-2; and

WHEREAS, upon completion of the Draft Environmental Impact Statement, a notice is published in the Federal Register to allow a minimum 45-day comment period, which includes a public hearing; and

WHEREAS, upon review of the public comments at the Project Managers Group, Citizen Advisory Committee and Downtown Oversight Committee, a federally required Locally Preferred Strategy will be recommended to the LPS steering committee, JPACT and the Metro Council for adoption of the federally required Locally Preferred Strategy; and

WHEREAS, Phase I of the South/North MAX Light Rail Project was defined in the Phase I South/North Corridor Project Locally Preferred Alternative Report to include light rail route, stations, lots and maintenance facilities for a project from Clackamas Town Center to Vancouver; and

WHEREAS, Project Extensions are being studied from Clackamas Town Center to Oregon City; and

WHEREAS, additional environmental study of Phase I will be done in the federally required Final Environmental Impact Statement (EIS); and

WHEREAS, federal approval of the Phase I Project for funding will be in the federally required Full Funding Grant Agreement, which may add or delete Project components; now, therefore,

METRO, TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRI-MET), CLACKAMAS AND MULTNOMAH COUNTIES, CITIES OF MILWAUKIE AND PORTLAND AND OREGON DEPARTMENT OF TRANSPORTATION (ODOT), AGREE AS FOLLOWS:

I. Affected Local Governments

For Phase I (the Project), Multnomah and Clackamas are the counties and Portland and Milwaukie are the cities in Oregon within which the light rail route, stations, lots and maintenance facilities and any highway improvements will be located. The LUFO Steering Committee for Phase I shall be comprised of one representative each from these affected local governments, and one representative each from Tri-Met, ODOT and Metro. The representatives of Metro, Milwaukie, Portland, Clackamas County and Multnomah County shall each be elected officials of those jurisdictions.

II. LUFO Steering Committee Membership

Consistent with the Act, Metro, Tri-Met, ODOT, Multnomah and Clackamas counties and the cities of Portland and Milwaukie shall be voting members of the LUFO Steering Committee for Phase I (the Project). The LUFO Steering Committee shall include other local governments and agencies represented on the LPS steering committee of all Phase I and Phase II participating jurisdictions as non-voting, ex officio members in the consideration of the recommendations to Tri-Met.

III. Phase I Recommendations

A. The LUFO Steering Committee shall forward recommendations to Tri-Met on the light rail route, stations, lots and maintenance facilities, and any highway improvements for the Project, including their locations, to be included in a land use final order. The recommendations shall be submitted to Tri-Met prior to the time Tri-Met applies to the Metro Council for approval of a land use final order for the Project.

B. If the Metro Council refers an application back to Tri-Met consistent with the Act, the LUFO Steering Committee may consider and recommend to Tri-Met any proposed revisions to the Phase I Project.

C. If the Metro Council refers an application back to Tri-Met consistent with the Act, Tri-Met shall request the views of the LUFO Steering Committee as to proposed revisions to its application if, in its judgment, time and circumstances reasonably permit.

IV. Manner of Function

A. Metro shall staff the LUFO Steering Committee through the time of publication of the Final Environmental Impact Statement for the Project. Thereafter, Tri-Met shall staff the LUFO Steering Committee.

B. Phase I Recommendations

1. Each voting member of the LUFO Steering Committee shall have one vote on Phase I recommendations to Tri-Met. A Phase I recommendation shall be forwarded to Tri-Met only upon an affirmative vote of a majority of voting members.

2. All members of the LPS steering committee that are not voting members of the LUFO Steering Committee may participate as non-voting, ex officio members in the consideration of the Phase I recommendation to Tri-Met by the LUFO Steering Committee.

V. Separate Phase I Intergovernmental Agreement

Upon adoption of a Phase I land use final order, the parties agree to begin development of a separate Phase I Intergovernmental Agreement to implement Sections 8(3), 11(1) and 11(2) of the Act.

VI. Amendments to Intergovernmental Agreement

The terms of this Agreement may be amended or supplemented by unanimous agreement of the parties to this Agreement. Any amendments or supplements shall be in writing, shall refer specifically to this Agreement, and shall be executed by the parties.

VII. Phase II Intergovernmental Agreement

The parties shall enter into a separate Intergovernmental Agreement for Phase II (the Project Extension). The Agreement shall be in accordance with Oregon Laws 1996, Chapter 12, and shall include additional affected parties as defined by the Act. The parties agree to exercise good faith efforts to enter into such agreement prior to the completion of a Draft Environmental Impact Statement for the Phase II Project Extension.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
For Metro

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
For Tri-County Metropolitan Transportation  
District of Oregon (Tri-Met)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
For Clackamas County

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
For Multnomah County

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
For City of Portland

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
For City of Milwaukie

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
For Oregon Department of Transportation  
(ODOT)

**Attachments:**

**Exhibit A: Adopted South/North Land Use Criteria**

**Exhibit B: HB 3478**

I:\DOCS#10.TRN\05LRT\02S-N\03S-N\DEC\02STRCMT.IGAW\08NSSC.AGT

ADOPTED SOUTH/NORTH LAND USE CRITERIA

1. Coordinate with and provide an opportunity for Clackamas and Multnomah Counties, the cities of Gladstone, Milwaukie, Oregon City and Portland, the Tri-County Metropolitan Transportation District of Oregon and the Oregon Department of Transportation to submit testimony on the light rail route, light rail stations, park-and-ride lots and vehicle maintenance facilities, and the highway improvements, including their locations.
2. Hold a public hearing to provide an opportunity for the public to submit testimony on the light rail route, light rail stations, park-and-ride lots and vehicle maintenance facilities, and the highway improvements, including their locations.
3. Identify adverse economic, social and traffic impacts on affected residential, commercial and industrial neighborhoods and mixed use centers. Identify measures to reduce those impacts which could be imposed as conditions of approval during the National Environmental Policy Act (NEPA) process or, if reasonable and necessary, by affected local governments during the local permitting process.
  - A. Provide for a light rail route and light rail stations, park-and-ride lots and vehicle maintenance facilities, including their locations, balancing (1) the need for light rail proximity and service to present or planned residential, employment and recreational areas that are capable of enhancing transit ridership; (2) the likely contribution of light rail proximity and service to the development of an efficient and compact urban form; and (3) the need to protect affected neighborhoods from the identified adverse impacts.
  - B. Provide for associated highway improvement, including their locations, balancing (1) the need to improve the highway system with (2) the need to protect affected neighborhoods from the identified adverse impacts.
4. Identify adverse noise impacts and identify measures to reduce noise impacts which could be imposed as conditions of approval during the NEPA process or, if reasonable and necessary, by affected local governments during the permitting process.
5. Identify affected landslide areas, areas of severe erosion potential, areas subject to earthquake damage and lands within the 100-year floodplain. Demonstrate that adverse impacts to persons or property can be reduced or mitigated through design or construction techniques which could be imposed during the NEPA process or, if reasonable and necessary, by local governments during the permitting process.
6. Identify adverse impacts on significant fish and wildlife, scenic and open space, riparian, wetland and park and recreational areas, including the Willamette River Greenway, that are protected in acknowledged local comprehensive plans. Where adverse impacts cannot practicably be avoided, encourage the conservation of natural resources by demonstrating that there are measures to reduce or mitigate impacts which could be imposed as conditions of

approval during the NEPA process or, if reasonable and necessary, by local governments during the permitting process.

7. Identify adverse impacts associated with stormwater runoff. Demonstrate that there are measures to provide adequate stormwater drainage retention or removal and protect water quality which could be imposed as conditions of approval during the NEPA process or, if reasonable and necessary, by local governments during the permitting process.

8. Identify adverse impacts on significant historic and cultural resources protected in acknowledged comprehensive plans. Where adverse impacts cannot practicably be avoided, identify local, state or federal review processes that are available to address and to reduce adverse impacts to the affected resources.

9. Consider a light rail route connecting the Clackamas Town Center area with the City of Milwaukie's Downtown. Consider an extension of the light rail route connecting the City of Oregon City and the City of Gladstone with the City of Milwaukie via the Interstate 205 corridor and/or the McLoughlin Boulevard corridor.

10. Consider a light rail route connecting Portland's Central City with the City of Milwaukie's Downtown via inner southeast Portland neighborhoods and, in the City of Milwaukie, the McLoughlin Boulevard corridor, and further connecting the Central City with north and inner northeast Portland neighborhoods via the Interstate 5/Interstate Avenue corridor.



# 1 9 9 6 O R E G O N L A W S

and

Senate Concurrent Resolution 15

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Enacted and Adopted by the  
Sixty-eighth Legislative Assembly

at its

Special Session

February 1 and 2, 1996

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Published by  
OREGON LEGISLATIVE ASSEMBLY

The hearing shall be conducted as a contested case hearing pursuant to the applicable provisions of ORS 183.413 to 183.470.

(8) Judicial review of an order made after a hearing under subsection (7) of this section shall be as provided in ORS 183.480 to 183.497 for judicial review of contested cases.

**SECTION 3.** This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on its passage.

Approved by the Governor February 26, 1996

Filed in the office of Secretary of State February 27, 1996

Effective date February 26, 1996

## CHAPTER 12

### AN ACT

HB 3478

Relating to procedures for the siting of the South North light rail line; creating new provisions; repealing ORS 197.550, 197.553, 197.556, 197.559, 197.562, 197.565, 197.568, 197.571, 197.574, 197.577, 197.581, 197.584 and 197.590; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

**SECTION 1.** As used in sections 1 to 13 of this Act, unless the context requires otherwise:

(1) "Administrator" means the State Court Administrator.

(2) "Affected local governments" means:

(a) For the project, the cities and counties within which the light rail route, stations, lots and maintenance facilities, and the highway improvements for the project will be located.

(b) For the project extension, the cities and counties within which the light rail route, stations, lots and maintenance facilities, and the highway improvements for the project extension will be located.

(3) "Board" means the Land Use Board of Appeals.

(4) "Commission" means the Land Conservation and Development Commission.

(5) "Council" means the elected legislative body of Metro.

(6) "Court" means the Oregon Supreme Court.

(7) "Criteria" means the land use criteria established by the commission, as provided in section 4 of this Act.

(8) "Development approval" means approval of a proposed development of land based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.

(9) "Draft Statement" means the Draft Environmental Impact Statement for the project

or project extension prepared pursuant to regulations implementing the National Environmental Policy Act of 1969.

(10) "Final Statement" means the final Environmental Impact Statement for the project or project extension, as may be amended from time to time, or any supplementary assessments or statements, prepared pursuant to regulations implementing the National Environmental Policy Act of 1969.

(11) "Full Funding Grant Agreement" means the contractual agreement entered into between the Federal Government and the local grant recipient establishing the maximum federal financing contribution for construction of the project or project extension and setting forth terms, conditions and limitations for federal financing of the project and project extension.

(12) "Highway improvements" means the highway improvements, if any, to be included in the project or project extension. The highway improvements shall be selected from among the highway improvements, if any, described in a Draft Statement or Final Statement for the project or project extension.

(13) "Land use final order" means a written order or orders of the council deciding:

(a) The light rail route for the project or project extension, including its location;

(b) Stations, lots and maintenance facilities for the project or project extension, including their locations; and

(c) The highway improvements for the project or project extension, including their locations.

(14) "Light rail route" means the light rail alignment to be included in the project or project extension. The light rail route shall be selected from among light rail route alternatives described in a Draft Statement or Final Statement for the project or project extension.

(15) "Locally Preferred Alternative Report" means a decision adopted in accordance with federal requirements determining whether or not to build the South North MAX Light Rail Project and, if to build, recommending the light rail route, stations, lots and maintenance facilities, and the highway improvements, including their locations, to be included in the South North MAX Light Rail Project.

(16) "Locations" means the boundaries within which the light rail route, stations, lots and maintenance facilities, and the highway improvements shall be located, as provided in section 6 of this Act.

(17) "Measures" includes any mitigation measures, design features, or other amenities or improvements associated with the project or project extension.

(18) "Project" means the portion of the South North MAX Light Rail Project within the Portland metropolitan area urban growth boundary, including each segment thereof as set

forth in the Phase I South North Corridor Project Locally Preferred Alternative Report as may be amended from time to time or as may be modified in a Final Statement or the Full Funding Grant Agreement. The project includes the light rail route, stations, lots and maintenance facilities, and any highway improvements to be included in the project.

(19) "Project extension" means the portion of the South North MAX Light Rail Project within the Portland metropolitan area urban growth boundary as set forth in the Phase II South North Corridor Project Locally Preferred Alternative Report as may be amended from time to time or as may be modified in a Final Statement or the Full Funding Grant Agreement. The project extension includes the light rail route, stations, lots, and maintenance facilities, and any highway improvements to be included in the project extension.

(20) "Stations, lots and maintenance facilities" means the light rail stations, light rail park-and-ride lots and light rail vehicle maintenance facilities to be included in the project or project extension, to be selected from among alternatives described in a Draft Statement or Final Statement for the project or project extension.

(21) "Steering Committee" means a committee staffed by Metro through the time of adoption of the initial land use final order for the project or project extension, and thereafter staffed by Tri-Met, comprised at least of representatives of the Department of Transportation, Tri-Met and elected officials of the affected local governments and Metro, whose specific membership and manner of function shall be determined by intergovernmental agreement between Metro, Tri-Met, the Department of Transportation and the affected local governments for the project or project extension.

(22) "Tri-Met" means the Tri-county Metropolitan Transportation District of Oregon.

**SECTION 2.** (1) The Legislative Assembly finds that a failure to obtain maximum federal funding for the South North MAX Light Rail Project in the upcoming federal transportation authorization act will seriously impair the viability of the transportation system planned for the Portland metropolitan area, the ability of the area to implement a significant portion of its air quality and energy efficiency strategies and the ability of affected local governments to implement significant parts of their comprehensive plans. The Legislative Assembly further finds that to maximize the state's and metropolitan area's ability to obtain the highest available level of federal funding for the South North MAX Light Rail Project and to assure the timely and cost-effective construction of the project, it is necessary:

(a) To establish the process to be used in making decisions in a land use final order on the light rail route, light rail stations, light rail park-and-ride lots, light rail maintenance facilities and any highway improvements to be included in the South North MAX Light Rail Project, including their locations;

(b) To expedite the process for appellate review of a land use final order; and

(c) To establish an exclusive process for appellate review.

(2) Sections 1 to 13 of this Act shall be liberally construed to accomplish the purposes enumerated in subsection (1) of this section.

(3) It is the intent of the Legislative Assembly that residents of neighborhoods within the Tri-County Metropolitan Transportation District of Oregon affected by land use decisions, limited land use decisions or land divisions resulting from the siting, construction or operation of any MAX Light Rail line, either as individuals or through their neighborhood associations, shall have the opportunity to participate in such decisions and divisions.

(4) The Legislative Assembly deems the procedures and requirements provided for in sections 1 to 13 of this Act, under the unique circumstances of the South North MAX Light Rail Project, to be equivalent in spirit and substance to the land use procedures that otherwise would be applicable.

**SECTION 3.** Notwithstanding any other provision of law, the procedures and requirements provided for in sections 1 to 13 of this Act shall be the only land use procedures and requirements to which the following land use decisions shall be subject:

(1) Decisions on the light rail route for the project and project extension, including its location;

(2) Decisions on the stations, lots and maintenance facilities for the project and project extension, including their locations; and

(3) Decisions on the highway improvements for the project and project extension, including their locations.

**SECTION 4.** The Land Conservation and Development Commission shall establish criteria to be used by the council in making decisions in a land use final order on the light rail route, stations, lots and maintenance facilities, and the highway improvements for the project and project extension, including their locations. The provisions in ORS chapters 183, 192, 195, 197, 215 and 227 and in any other law or regulation shall not apply to proceedings of the commission under sections 1 to 13 of this Act. The following procedures shall govern the proceedings of the commission in establishing criteria:

(1) The commission shall publish notice of a public hearing on criteria to be established by

the commission in a newspaper of general circulation within the Portland metropolitan area at least 20 days prior to the public hearing. The notice shall:

(a) Identify the general subject matter of the hearing and the date, time and place of the hearing;

(b) State that any criteria to be proposed to the commission must be filed at the Salem office of the Department of Land Conservation and Development at least 10 days prior to commencement of the hearing and will be available for public inspection following filing;

(c) State that appeals from an order establishing criteria must be filed within seven days following the date written notice of the order is mailed;

(d) State that failure by a person to raise an issue at the hearing in person or in writing, or failure to provide sufficient specificity to afford the commission an opportunity to respond to the issue raised, shall preclude appeal by that person to the court on that issue;

(e) State that persons whose names appear on petitions submitted into the public hearing record will not be considered by that action to have provided oral or written testimony at the hearing; and

(f) State that written notice of adoption of an order establishing criteria will be provided only to persons who provide oral or written testimony at the hearing and who also provide, in writing, a request for written notice and a mailing address to which notice should be sent.

(2) The commission also may provide such other notice as it deems appropriate to inform interested persons of the hearing. However, no other form of notice is required.

(3) A copy of the staff report, if any, shall be available for public inspection at least four days prior to the public hearing.

(4) The commission shall hold a public hearing on the criteria to be established by the commission. At the commencement of the hearing, a statement shall be made to those in attendance that:

(a) Identifies the general subject matter of the hearing;

(b) States that appeals from an order establishing criteria must be filed within seven days following the date written notice of the order is mailed;

(c) States that failure by a person to raise an issue at the hearing in person or in writing, or failure to provide sufficient specificity to afford the commission an opportunity to respond to the issue raised, shall preclude appeal by that person to the court on that issue;

(d) States that submittal of proposed criteria at the hearing will not be accepted unless the proposed criteria were filed at the Salem office of the Department of Land Conservation and

Development at least 10 days prior to the commencement of the hearing;

(e) States that persons whose names appear on petitions submitted into the public hearing record will not be considered by that action to have provided oral or written testimony at the hearing; and

(f) States that written notice of adoption of an order establishing criteria will be provided only to persons who provide oral or written testimony at the hearing and who also provide, in writing, a request for written notice and a mailing address to which notice should be sent.

(5) The commission shall allow for the submission of oral and written testimony at the hearing, subject to such hearing procedures as the commission may deem necessary. The commission may exclude irrelevant, immaterial or unduly repetitious testimony. The commission shall not allow the submission of proposed criteria at the hearing unless the proposed criteria were filed at the Salem office of the Department of Land Conservation and Development at least 10 days prior to the commencement of the hearing. Minutes of the hearing shall be taken.

(6) The commission shall close the hearing and adopt an order establishing the criteria within 14 days following commencement of the hearing. In establishing the criteria, the commission shall consider those statewide planning goals and those plan policies that are relevant to decisions regarding the light rail route, stations, lots and maintenance facilities, and the highway improvements, and their locations. The commission's order shall include a brief statement explaining how the criteria established reasonably reflect those statewide land use planning goals and those plan policies that are relevant to decisions regarding the light rail route, stations, lots and maintenance facilities, and the highway improvements, and their locations.

(7) Following establishment of the criteria, the commission as soon as reasonably possible shall:

(a) Notify in writing the council, Tri-Met, the Department of Transportation, the affected local governments and any person who provided oral or written testimony at the hearing and who also provided, in writing, a request for written notice and a mailing address to which notice should be sent of its order and the criteria it has established; and

(b) Make copies of its order and the criteria available for public inspection at the Salem and Portland offices of the Department of Land Conservation and Development.

(8) The commission shall adopt the order described in subsection (6) of this section within 90 days following the effective date of this Act.

**SECTION 5.** (1) Notwithstanding ORS 183.400, 183.482, 183.484, 187.825 or any other law

or regulation, exclusive jurisdiction to review a Land Conservation and Development Commission order establishing criteria under section 4 of this Act is conferred on the court.

(2) Proceedings for review of the commission's order shall be instituted when any person who is adversely affected files a notice of intent to appeal with the administrator that meets the following requirements:

(a) The notice shall be filed within seven days following written notice of the commission's order.

(b) The notice shall state the nature of the commission's order, in what manner the commission rejected the position raised by the petitioner before the commission and, with supporting affidavit, facts showing how the petitioner is adversely affected. The petitioner shall be considered adversely affected if:

(A) The petitioner provided oral or written testimony at the commission's hearing; and

(B) The petitioner proposed criteria, as provided in section 4 (5) of this Act, that the commission rejected in its order, or the petitioner, in the petitioner's testimony at the hearing, opposed the criteria which the commission selected in its order.

(c) The petitioner shall deliver a copy of the notice of intent to appeal by personal service to the commission at the Salem office of the Department of Land Conservation and Development, at the Salem office of the Department of Transportation, to the Attorney General, to the council at the office of Metro's executive officer, to Tri-Met at the office of Tri-Met's general manager and to the affected local governments.

(3) Within seven days following filing of the notice of intent to appeal, the commission shall personally deliver to the court a certified copy of the record of its criteria proceedings. The record shall include only:

(a) The commission's order establishing the criteria;

(b) Any written report received by the commission from the Department of Land Conservation and Development at the hearing;

(c) Proposed criteria submitted to the commission as provided in section 4 (5) of this Act and written testimony submitted to the commission at the hearing;

(d) Minutes of the public hearing before the commission;

(e) The published notice of public hearing; and

(f) Proof of mailing to persons entitled to notice of the commission's order.

(4) Within 14 days following the filing of the notice of intent to appeal, the petitioner shall file the petitioner's brief. The petitioner shall personally deliver the brief to the administrator, to the Attorney General, to the council at the office of Metro's executive officer, to Tri-Met at the office of Tri-Met's general manager and to

the affected local governments. The brief shall comply with the specifications for opening briefs set forth in the rules of appellate procedure.

(5) Within 28 days following the filing of the notice of intent to appeal, the commission, Metro, Tri-Met, the Department of Transportation and any affected local government, unless Metro, Tri-Met, the Department of Transportation or an affected local government is the petitioner, may file an answering brief that shall comply with the specifications for answering briefs set forth in the rules of appellate procedure.

(6) On review, the court may reverse or remand the commission's order only if it finds that the order:

(a) Violates constitutional provisions;

(b) Exceeds the statutory authority of the commission; or

(c) Was adopted by the commission without substantial compliance with the procedures in section 4 of this Act in a manner that prejudiced the substantial rights of the petitioner. Failure of the commission to notify a person entitled to written notice under section 4 (7)(a) of this Act shall not be a ground for reversal or remand if evidence of mailing to that person is provided. The court shall not substitute its judgment for that of the commission as to any issue of fact or as to any issue within the commission's discretion.

(7) The court shall not stay any action by the council under sections 1 to 13 of this Act pending the court's review under this section.

(8) The court may decide the matter on the briefs or it may hold oral arguments. The court shall decide the matter at its earliest practicable convenience, consistent with sections 1 to 13 of this Act.

**SECTION 6.** (1) A land use final order shall establish the light rail route, stations, lots and maintenance facilities, and the highway improvements for the project or project extension, including their locations, as provided in this section and in accordance with the procedures identified in section 7 of this Act.

(a) Prior to publication of the public hearing notice described in section 7 (1) of this Act, and following receipt of recommendations from the Department of Transportation and the Steering Committee, Tri-Met shall apply to the council for a land use final order approving the light rail route, stations, lots and maintenance facilities, and the highway improvements, including their locations. The applied for locations shall be in the form of boundaries within which the light rail route, stations, lots and maintenance facilities, and the highway improvements shall be located. These boundaries shall be sufficient to accommodate adjustments to the specific placements of the light rail route, stations, lots and maintenance facilities, and the highway im-

provements for which need commonly arises upon the development of more detailed environmental or engineering data following approval of a Full Funding Grant Agreement.

(b) Following a public hearing as provided in section 7 (3) of this Act, the council shall either adopt a land use final order establishing the facilities and locations applied for by Tri-Met or continue the public hearing and refer the proposed facilities and locations back to Tri-Met for further review.

(c) Upon referral by the council, Tri-Met shall consider amendments to its proposed facilities and locations and then forward a further application to the council for hearing and adoption. The council shall either adopt a land use final order establishing the facilities and locations applied for by Tri-Met or again continue the hearing and refer the proposed facilities and locations back to Tri-Met for further review and application to the council.

(2) Any siting of the light rail route, a station, lot or maintenance facility, or a highway improvement outside the locations established in a land use final order, and any new station, lot, maintenance facility or highway improvement, shall require a land use final order amendment or a new land use final order which shall be adopted in accordance with the process provided for in subsection (1) of this section.

**SECTION 7.** The council shall apply the criteria established by the commission in making decisions in a land use final order on the light rail route, stations, lots and maintenance facilities, and the highway improvements, including their locations. The provisions in ORS chapters 183, 192, 195, 197, 215, 227, 267 and 268 and in any other law or regulation shall not apply to proceedings of the council under sections 1 to 13 of this Act. The following procedures shall govern the council's proceedings in adopting a land use final order:

(1)(a) The council shall publish notice of a public hearing on the light rail route, stations, lots and maintenance facilities, and the highway improvements, including their locations, as to which decisions will be made in the land use final order of the council in a newspaper of general circulation within Metro's jurisdictional area at least 14 days prior to the hearing.

(b) The notice shall:

(A) Identify the general subject matter of the hearing and the street address where a staff report and the criteria may be found;

(B) Identify the date, time and place of the hearing;

(C) State that appeals from decisions in a land use final order must be filed within 14 days following the date the land use final order is reduced to writing and bears the necessary signatures;

(D) State that failure by a person to raise an issue at the hearing in person or in writing, or failure to provide sufficient specificity to afford the council an opportunity to respond to the issue raised, shall preclude appeal by that person to the board based on that issue;

(E) State that persons whose names appear on petitions submitted into the public hearing record will not be considered by that action to have provided oral or written testimony at the hearing; and

(F) State that written notice of adoption of the land use final order will be provided only to persons who provide oral or written testimony at the hearing and who also provide, in writing, a request for written notice and a mailing address to which notice should be sent.

(c) The council also shall provide such other notice as is, in its judgment, reasonably calculated to give notice to persons who may be substantially affected by its decision. No other form of notice is required.

(2) A copy of the staff report shall be available for public inspection at least seven days prior to the public hearing. The staff report shall set forth and address compliance with the criteria. The staff report also shall include a description of the proposed boundaries within which the light rail route, stations, lots and maintenance facilities, and the highway improvements shall be located, as recommended by Tri-Met under section 6 (1) of this Act. The staff report may be amended as the staff considers necessary or desirable prior to the public hearing without further notice.

(3) The council shall hold a public hearing on the light rail route, stations, lots and maintenance facilities, and the highway improvements, including their locations, as to which decisions will be made in the land use final order. At the commencement of the hearing, a statement shall be made to those in attendance that:

(a) Lists the criteria or directs those present to a place at the hearing location where any person may obtain a list of the criteria at no cost;

(b) Lists generally the light rail route, stations, lots and maintenance facilities, and the highway improvements, including their locations, as to which decisions will be made in the land use final order;

(c) States that testimony shall be directed towards the application of the criteria to the light rail route, stations, lots and maintenance facilities, and the highway improvements, including their locations, as to which decisions will be made in the land use final order;

(d) States that appeals from decisions in a land use final order on the light rail route, stations, lots and maintenance facilities, and the highway improvements, including their locations, must be filed within 14 days following

the date the land use final order is reduced to writing and bears the necessary signatures;

(e) States that failure by a person to raise an issue at the hearing, in person or in writing, or failure to provide sufficient specificity to afford the council an opportunity to respond to the issue raised, shall preclude appeal by that person to the board based on that issue;

(f) States that written notice of adoption of the land use final order will be provided only to persons who have provided oral or written testimony at the hearing and who also have provided, in writing, a request for written notice and a mailing address to which notice should be sent; and

(g) States that persons whose names appear on petitions submitted into the public hearing record will not be considered by that action to have provided oral or written testimony at the hearing.

(4) The council shall allow for the submission of oral and written testimony at the hearing, subject to such hearing procedures as the council may deem necessary or appropriate for the adoption of land use final orders. The council may exclude irrelevant, immaterial or unduly repetitious testimony.

(5) The council may take official notice at the hearing of any matter identified in ORS 40.065 and 40.090 or as authorized by the resolution, if any, of the council establishing hearing procedures for the adoption of land use final orders.

(6) The council shall close the hearing and shall adopt by resolution a land use final order. The council may continue the matter as provided in section 6 (1) of this Act or as it otherwise considers necessary for the purpose of land use final order adoption.

(7) The land use final order shall be accompanied by written findings demonstrating how the decisions on the light rail route, stations, lots and maintenance facilities, and the highway improvements, including their locations, comply with the criteria.

(8) Following adoption of a land use final order, the council as soon as reasonably possible shall:

(a) Provide media notice of the adoption; and

(b) Provide written notice of the adoption to persons who:

(A) Provided oral or written testimony at the hearing; and

(B) Provided at the hearing, in writing, a request for written notice and a mailing address to which written notice should be sent. Persons whose names appear on petitions provided at the hearing shall not be considered to have provided oral or written testimony at the hearing. The written notice of adoption provided hereunder shall indicate the date of written adoption and signature of the land use final order, identify the place at and time during which a copy

of the land use final order may be obtained and state that appeals from decisions in the land use final order must be filed within 14 days following written adoption and signature of the land use final order.

(9) The procedures established by this section establish the only opportunities that the council must provide for interested persons to participate in the proceedings of the council in adopting a land use final order. Subject to the other provisions established by this section, the council by resolution may establish additional procedures to govern its proceedings in adopting a land use final order.

**SECTION 8.** (1) The state, and all affected counties, cities, special districts and political subdivisions shall:

(a) Amend their comprehensive or functional plans, including public facility plans and transportation system plans and their land use regulations, to the extent necessary to make them consistent with a land use final order; and

(b) Issue the appropriate development approvals, permits, licenses and certificates necessary for the construction of the project or project extension consistent with a land use final order. Development approvals, permits, licenses and certificates may be subject to reasonable and necessary conditions of approval, but may not, by themselves or cumulatively, prevent implementation of a land use final order.

(2) Notwithstanding the provisions of subsection (1)(a) of this section or any other provision of state or local law, a land use final order shall be fully effective upon adoption.

(3) For purposes of subsection (1)(b) of this section, an approval condition shall be considered not reasonable or necessary, or shall be considered to prevent implementation of a land use final order, if:

(a) The measure has been deleted or deferred from the project or project extension in the Full Funding Grant Agreement; or

(b) The Steering Committee determines in accordance with the provisions of the intergovernmental agreement described in section 1 (21) of this Act that:

(A) There are not sufficient federal, state and local funds within the project or project extension budget to pay for the measure;

(B) The measure will significantly delay the completion or otherwise prevent the timely implementation of the project or project extension; or

(C) The measure will significantly negatively impact the operations of the project or project extension.

(4) Applications for development approvals under subsection (1)(b) of this section shall be treated as land use decisions and not as limited land use decisions.

(5) Plan and land use regulation amendments, to the extent required under subsection (1)(a) of this section shall not be reviewable by any court or agency.

(6) Development approvals and permit, license and certificate decisions under subsection (1)(b) of this section may be the subject of administrative and judicial review as provided by law. However, determinations of the Steering Committee made pursuant to subsection (3) of this section shall not be reviewable and shall control in the event of conflict.

(7) Each state agency, special district or affected local government that issues a development approval, permit, license or certificate for the project or project extension shall continue to exercise enforcement authority over the development approval, permit, license or certificate.

**SECTION 9.** (1) Notwithstanding ORS 183.482, 183.484, 197.825 or any other law or regulation, exclusive jurisdiction for review of a land use final order relating to the project or project extension is conferred on the Land Use Board of Appeals and the court as provided by sections 1 to 13 of this Act.

(2) Review of a land use final order relating to the project or project extension shall be initiated within 14 days following the date that the land use final order is reduced to writing and bears the necessary signatures by personal delivery to the board, to the administrator and to Metro at the office of Metro's executive officer of a notice of intent to appeal as required by this section.

(3) A person may petition for review of a land use final order relating to the project or project extension if the person:

(a) Personally delivered a notice of intent to appeal the land use final order as provided for in subsection (2) of this section; and

(b) Appeared before the council orally or in writing at the land use final order hearing on the project or project extension.

(4) A person's failure to raise an issue at the land use final order hearing, in person or in writing, or failure to provide sufficient specificity to afford the council an opportunity to respond to the issue raised, shall preclude that person from petitioning for review based on that issue.

(5) A notice of intent to appeal shall:

(a) Contain an affidavit stating the facts that support the petitioner's standing as provided in subsection (3) of this section;

(b) State with particularity the grounds on which the petitioner assigns error; and

(c) State the residence or business address of the petitioner to which documents may be delivered, and the telephone and facsimile number or numbers where the petitioner may be reached during normal business hours.

(6) Metro shall personally deliver to the board and to the administrator a certified copy of the record of the council's land use final order proceedings within seven days following the filing and delivery of a notice of intent to appeal as provided in subsection (2) of this section. Metro shall make copies of the record available to the public for the actual costs of copying. The record shall consist of the land use final order, the written findings accompanying the land use final order, the notice of the land use final order hearing, any audio cassette recordings of the hearing, a statement of matters that were officially noticed at the hearing, the staff report and any amendments thereto and documents accepted into the record at the hearing. Metro shall make a copy of the record available for inspection by petitioners and shall provide a copy of the record to any petitioner upon request for the actual costs of copying.

(7) Any objection to the record shall be personally delivered or transmitted by facsimile to the board, to the administrator and to Metro at the office of Metro's executive officer within four days following delivery of the record to the board. Within four days thereafter, responses of Metro to objections to the record shall be personally delivered or faxed to the board, to the administrator and to the residences or business addresses of the persons objecting. Thereafter, the board shall rule expeditiously on objections. The board's ruling on objections shall not affect the briefing schedule or decision timelines set forth in sections 1 to 13 of this Act.

(8) No stays or continuances of proceedings shall be permitted. No person may intervene in and thereby be made a party to the review proceedings, except that Tri-Met, the Department of Transportation and the affected local governments shall have standing to and may intervene on their own behalf.

(9) Within 14 days following the filing of the notice of intent to appeal, a petitioner shall personally deliver a petition for review and brief to the board, to the administrator, to Metro at the office of Metro's executive officer and to Tri-Met, the Department of Transportation or an affected local government if it has filed a motion to intervene in the review proceeding. The petition for review and brief shall set out in detail each assignment of error and shall identify those portions of the record in which the petitioner raised in the land use final order hearing the issues as to which error is assigned. The petition for review and brief shall comply with the specifications for opening briefs set forth in the rules of appellate procedure.

(10) Within 28 days following the filing of the notice of intent to appeal, Metro and any intervening party shall personally deliver to the board, to the administrator and to any petitioner at the petitioner's residence or business address their briefs in response to a petition for



review and brief. Responding briefs shall comply with the specifications for answering briefs set forth in the rules of appellate procedure.

(11) Within 35 days following the filing of the notice of intent to appeal, the board shall hear oral argument in the manner provided for in its administrative rules. The board shall issue a final opinion within 28 days following oral argument. The board's final opinion shall affirm or remand the council's land use final order, stating the reasons for the decision.

(12)(a) The board shall remand the land use final order only if it finds that the council:

(A) Improperly construed the criteria;

(B) Exceeded its statutory or constitutional authority; or

(C) Made a decision in the land use final order on the light rail route, on stations, lots or maintenance facilities, or the highway improvements, including their locations, that was not supported by substantial evidence in the whole record. The existence in the whole record of substantial evidence supporting a different decision on the light rail route, stations, lots or maintenance facilities, or the highway improvements, including their locations, shall not be a ground for remand if there also was substantial evidence in the whole record supporting the land use final order.

(b) Failure to comply with statutory procedures, including notice requirements, shall not be grounds for invalidating a land use final order.

(c) The board shall affirm all portions of the land use final order that it does not remand.

(13) Upon issuance of its final opinion, the board shall file the opinion with the administrator and transmit copies to the parties. The board also shall inform the parties of the filing of the final opinion by telephone or facsimile. Within seven days following issuance of its final order, the board shall file with the administrator a copy of the record of the board.

(14) Neither the board nor the court shall substitute its judgment for that of the council as to any issue of fact or any issue within the discretion of the council.

**SECTION 10.** (1) Any party appearing before the Land Use Board of Appeals under section 9 of this Act and objecting to the board's final opinion may petition the court for review of the final opinion as provided for in this section. The petition shall be filed with the administrator and served on the board and all parties within 14 days following the board's issuance of its final opinion in the manner provided for filing and service in the rules of appellate procedure. The petition shall be in the form of a brief and shall state, with particularity and with supporting authority, each reason asserted for reversal or modification of the board's decision. Insofar as practicable, the petition shall comply with the

specifications for petitions for review in the rules of appellate procedure.

(2) If a petition for review has been filed, then within 14 days thereafter, any other party appearing before the board may, but need not, file a response to the petition for review. In the absence of a response, the party's brief before the board shall be considered as the response. A party seeking to respond to the petition for review shall file its response with the administrator and serve it on the board and all parties in the manner provided for filing and service in the rules of appellate procedure. The response shall be in the form of a brief and shall comply with the specifications for responses to petitions for review in the rules of appellate procedure.

(3) The court may decide the matter on the briefs, or it may hold oral argument. The court may adopt the board's final opinion as its own, affirm without opinion or issue a separate opinion. The court shall decide the matter at its earliest practicable convenience, consistent with sections 1 to 13 of this Act.

(4) The court shall affirm or remand the land use final order, in whole or in part. The court shall affirm all parts of the final order that it does not remand. The court shall base its decision on the standards for review set out in section 9 (12) of this Act. If the court remands, the council shall respond as to those matters remanded by adopting by resolution a land use final order on remand. The provisions of section 7 of this Act shall govern the proceedings of the council in adopting a land use final order on remand. Upon adoption of a land use final order on remand, Metro shall immediately file with the administrator the land use final order on remand and the record of the council. Metro shall personally deliver copies of its land use final order on remand to the parties before the court and shall inform the parties of the filing of the final order on remand by telephone or facsimile.

(5) If the court remands, the court shall retain jurisdiction over the matters remanded. Within 14 days following adoption of a land use final order on remand, the parties before the court may submit memoranda to the court with respect thereto and shall personally deliver copies of the memoranda to other parties before the court. The court may limit the length of such memoranda. The court's decision on the land use final order on remand shall be based on the standards set forth in section 9 (12) of this Act.

**SECTION 11.** (1) If, as a condition of executing a Full Funding Grant Agreement, the Federal Government requires the deletion or deferral of portions of the approved project or project extension, or the deletion or deferral of measures expressly provided for in a Final Statement, a determination of which improve-

ments or measures to delete or defer shall be made in accordance with the provisions of the intergovernmental agreement described in section 1 (21) of this Act.

(2) If, subsequent to execution of a Full Funding Grant Agreement, additional deletions or deferrals are required due to insufficient funds in the budgets for the project or project extension, a determination of which improvements or measures to delete or defer shall be made in accordance with the provisions of the intergovernmental agreement described in section 1 (21) of this Act.

**SECTION 12.** (1) Upon execution of a Full Funding Grant Agreement, the council shall amend the land use final order to be consistent with the terms and conditions of the Full Funding Grant Agreement.

(2) The following amendments to a land use final order shall be considered technical and environmental and shall not be subject to judicial or administrative review:

(a) Amendments resulting from adoption of a Final Statement;

(b) Amendments required to ensure consistency with an executed Full Funding Grant Agreement; and

(c) Amendments to defer or delete a portion of the project or project extension as provided for in section 11 (2) of this Act.

**SECTION 13.** No action taken by the commission, the council, the board or the court under sections 1 to 13 of this Act shall be invalid due to a failure to meet a timeline established by sections 1 to 13 of this Act.

**SECTION 14.** ORS 197.550, 197.553, 197.556, 197.559, 197.562, 197.565, 197.568, 197.571, 197.574, 197.577, 197.581, 197.584 and 197.590 are repealed.

**SECTION 15.** This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on its passage.

Approved by the Governor March 4, 1996  
Filed in the office of Secretary of State March 6, 1996  
Effective date March 4, 1996

## CHAPTER 13

### AN ACT

HB 3479

Relating to the Columbia River Light Rail Transit Compact; creating new provisions; repealing ORS 391.300, 391.305 and 391.310; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

**SECTION 1.** The Legislative Assembly of the State of Oregon hereby adopts and ratifies the

Columbia River Light Rail Transit Compact set forth in section 2 of this Act, and the provisions of the compact are hereby declared to be the law of this state upon such compact becoming effective as provided in Article XXII of the compact.

**SECTION 2.** The provisions of the Columbia River Light Rail Transit Compact are as follows:

## ARTICLE I

### Columbia River Light Rail Transit Authority Established

The States of Oregon and Washington establish by way of this interstate compact an independent, separate regional authority, which is an instrumentality of both of the signatory parties hereto, known as Columbia River Light Rail Transit Authority (hereinafter referred to as the "Authority"). The Authority shall be a body corporate and politic, and shall have only those powers and duties granted by this compact and such additional powers as may hereafter be conferred upon the Authority by the acts of both signatories.

## ARTICLE II

### Definitions

As used in this compact, the following words and terms shall have the following meanings, unless the context clearly requires a different meaning:

(1) "C-TRAN" means the Clark County Public Transportation Benefit Authority based in Clark County, Washington, or any successor agency or authority.

(2) "Major feeder system" means all bus or other transit services provided by C-TRAN or Tri-Met that are or are planned to be connected with the South North light rail transit line, to accommodate the transfer of passengers to or from the light rail line and to transport light rail passengers between the light rail station and their trip origin or trip destination.

(3) "Signatory" or "signatory state" means the State of Oregon or the State of Washington.

(4) "South North light rail transit line" means the light rail line directly connecting portions of Clackamas County, Oregon, Portland, Oregon, and Clark County, Washington as may be extended from time to time, including any segment thereof, and also including, without limitation, all light rail vehicles, rights-of-way, trackage, electrification, stations, park-and-ride facilities, maintenance facilities, tunnels, bridges and equipment, fixtures, buildings and structures incidental to or required in connection with the performance of light rail service between portions of Clackamas County, Oregon, Portland, Oregon and Clark County, Washington. The South North light rail transit line shall include a system that comprises any future light rail lines and transit fa-

**TRANSPORTATION PLANNING COMMITTEE REPORT**

**CONSIDERATION OF RESOLUTION NO. 98-2633, FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT ESTABLISHING THE SOUTH/NORTH LAND USE FINAL ORDER (LUFO) STEERING COMMITTEE.**

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**Date:** May 6, 1998

**Presented by:** Councilor Washington

**Committee Action:** At its May 5, 1998 meeting, the Transportation Planning Committee unanimously recommended Council adoption of Resolution No. 98-2633. Voting in favor: Councilors Kvistad, McLain and Washington.

**Council Issues/Discussion:** Andy Cotugno, Transportation Department Director made the staff presentation. In 1996 the Oregon legislature adopted (HB 3478), defining the procedures for siting the South/North rail line, and establishing the process to be used to adopt a Land Use Final Order (LUFO). The LUFO in turn, defines the light rail route, light rail stations, park and ride lots and other related facilities. Per the HB 3478 process, Metro is required to enter into an intergovernmental agreement (IGA) with Tri-Met, ODOT, Clackamas and Multnomah counties, and the cities of Portland and Milwaukee. The IGA establishes a South/North LUFO Steering Committee, and directs that the charge of the committee is to adopt a recommended LUFO, to be forwarded to the Tri-Met Board of Directors. The IGA also notes that subsequent to adoption of the LUFO, the parties will work in good faith to execute a second IGA that would implement the requirement of other sections of HB 3478. Metro will be a voting member on the LUFO Steering Committee, which is a subcommittee of the South/North Steering Committee.

The committee clarified that the Transportation Planning Committee will forward a name to the Metro Presiding Officer for nomination to the LUFO Steering Committee.

## STAFF REPORT

### CONSIDERATION OF RESOLUTION NO. 98-2633 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT ESTABLISHING THE SOUTH/NORTH LAND USE FINAL ORDER (LUFO) STEERING COMMITTEE

Date: April 8, 1998

Presented by: Andrew Cotugno

## PROPOSED ACTION

This action would authorize the Executive Officer to execute an Intergovernmental Agreement (IGA) with Tri-Met, ODOT, Clackamas and Washington Counties and the cities of Portland and Milwaukie to establish the South/North LUFO Steering Committee and define the initial functions of the committee.

## FACTUAL BACKGROUND AND ANALYSIS

In February 1996, in special session called by the Governor, the Oregon Legislature adopted HB 3478 defining the procedures for siting of the South/North light rail line. The legislation established the process to be used to adopt a Land Use Final Order (LUFO) that will define the light rail route, light rail stations, park-and-ride lots, light rail operations and maintenance facilities and any highway improvements to be included in the South/North MAX Light Rail Project. The act is attached to the proposed IGA as "Exhibit B."

In the act, the Land Conservation and Development Commission (LCDC) was charged with establishing the criteria to be used by the Metro Council in adopting the LUFO. The LCDC, after holding a public hearing, adopted the criteria for the project. The LCDC adopted criteria are attached to the proposed IGA as "Exhibit A."

The act provides for a LUFO adoption process by the Metro Council which includes the following generalized steps:

1. Recommendation of the South/North Project's LUFO by the LUFO Steering Committee and ODOT to the Tri-Met Board of Directors;
2. Approval by the Tri-Met Board of Directors of an application for the South/North Project's LUFO to be submitted to the Metro Council; and
3. Metro Council adoption of the LUFO.

The attached draft IGA has been reviewed by the South/North Project Management Group and the South/North Steering Committee. The Steering Committee unanimously recommended approval of the draft IGA at their March 4, 1998 meeting. The draft IGA has been forwarded to Metro, Tri-Met, ODOT, Multnomah County, Clackamas County, the City of Portland and the City of Milwaukie for their

approval. These individual jurisdiction actions are scheduled to be completed by mid-May 1998.

Following are the major provisions of the IGA:

1. Membership. Establishes the membership of the LUFO Steering Committee. The LUFO Steering Committee would be a subcommittee of the 11-member South/North Project Steering Committee chaired by Metro Councilor Ed Washington. Voting members for the LUFO would be Metro, Tri-Met, ODOT, Multnomah County, Clackamas County, the City of Portland and the City of Milwaukie. All other members of the South/North Project Steering Committee would be ex-officio members of the LUFO Steering Committee.
2. LUFO Recommendations. The IGA establishes the charge of the LUFO Steering Committee to adopt a recommended LUFO to be forwarded to the Tri-Met Board of Directors.
3. Manner of Function. Gives each LUFO Steering Committee member one vote in approving the recommended LUFO.
4. Post LUFO IGA. The IGA notes that, subsequent to adoption of the LUFO as prescribed by HB 3478, the parties to the agreement will work in good faith to execute a second IGA that would implement the requirements of other sections of HB 3478.

*Agenda Item 9.7*

**RESOLUTIONS**

**Resolution No. 98-2644, Approving an Intergovernmental Agreement with the City of Cornelius for Management of Property in the Gales Creek Target Area.**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING AN )  
INTERGOVERNMENTAL AGREEMENT )  
WITH THE CITY OF CORNELIUS FOR )  
MANAGEMENT OF PROPERTIES IN THE )  
GALES CREEK GREENWAY TARGET AREA )

RESOLUTION NO. 98-2644

Introduced by Mike Burton  
Executive Officer

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

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

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

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

WHEREAS, on June 24, 1996, the Metro Council adopted a refinement plan for the Gales Creek regional target area, which included a confidential tax-lot specific map identifying priority properties for acquisition, and which encouraged partnerships involving Metro and local governments in the acquisition of land along Gales Creek and its tributaries; and

WHEREAS, in April, 1998, Metro acquired 0.22 acres on the Tualatin River (the "Property") and adjacent to property owned by the City of Cornelius in the Gales Creek target area; and

WHEREAS, the City of Cornelius contributed approximately 10% of the purchase price to the acquisition of the Property; and

WHEREAS, the City of Cornelius and Metro desire that the City of Cornelius should operate, manage, and maintain the Property; and

WHEREAS, an intergovernmental agreement (IGA) involving Metro and the City of Cornelius would benefit the Property, as well as the public in general by providing increased care for the Property and by encouraging public use; and

WHEREAS, the IGA attached to this resolution as Exhibit A sets forth management, maintenance, and operation guidelines for the City of Cornelius, requiring that the Property be managed for passive recreation, pedestrian/bicycle use, and habitat restoration, with the primary goal being to enable public canoe access at the westernmost point of the navigable stretch of the Tualatin River; now therefore,

BE IT RESOLVED,

That the Metro Council approves and authorizes the Metro Executive Officer to execute the Intergovernmental Agreement with the City of Cornelius, attached hereto as Exhibit A, wherein the City of Cornelius will manage the Property.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
Jon Kvistad, Presiding Officer

Approved as to Form:

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



EXHIBIT A  
RESOLUTION 98-2644

INTERGOVERNMENTAL AGREEMENT

Gales Creek/W-D Builders Property

This Intergovernmental Agreement ("Agreement") dated this \_\_\_\_ day of \_\_\_\_\_, 1998, is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter, located at 600 Northeast Grand Avenue, Portland, Oregon, 97232-2736 ("Metro"), and the City of Cornelius, located at 1355 N. Barlow Street, P.O. Box 608, Cornelius, Oregon 97113 ("the City").

RECITALS:

WHEREAS, the Gales Creek Target Area was identified as a regionally significant open space by the Metro Greenspaces Master Plan, and by the Metro Open Spaces, Parks and Streams 1995 Ballot Measure 26-26 ("Metro Open Spaces Bond Measure");

WHEREAS, Metro has entered into an Agreement of Purchase and Sale to acquire approximately .24 acres of real property ("the Property") within the Gales Creek Target Area, as more particularly described in Exhibit A attached hereto and incorporated herein;

WHEREAS, said Agreement of Purchase and Sale is conditioned on the City of Cornelius (hereafter "the City") contributing \$3,500 towards the purchase price and assuming long-term management, operation and maintenance of the Property;

WHEREAS, the Property is within the boundaries the City of Cornelius, Oregon and has been identified as a locally significant site by the City;

WHEREAS, the Property is adjacent to open space property currently owned by the City;

WHEREAS, Metro and the City wish to preserve the Property as open space in accordance with the Metro Open Spaces Measure and the Metro Greenspaces Master Plan;

WHEREAS, on \_\_\_\_\_, 199\_\_, the Cornelius City Council authorized the City to enter into this Agreement with Metro to contribute acquisition funds and to manage, operate and maintain the Property in accordance with the terms set forth in this Agreement; and

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

Now, therefore, the parties agree as follows:

**A. Acquisition**

1. The City hereby agrees to contribute \$3,500 towards the purchase of the Property. Said funds are to be tendered into escrow on or before the Closing date, April 28, 1998. The purchase price shall be FORTY THOUSAND DOLLARS (\$40,000). Metro shall contribute \$36,500, plus an amount sufficient to cover Closing costs.
2. Metro shall take full fee title to the Property.
3. Metro has entered into a Purchase and Sale Agreement to acquire the Property from the property owner, W-D Builders, Inc. Metro shall be responsible for performing under the terms and conditions of said Purchase and Sale Agreement and any other terms of the transaction as determined between Metro and the Property owner. Metro shall be responsible for conducting the normal due diligence investigations prior to Closing, pursuant to Metro Open Spaces Bond Measure practices. If the City requires any due diligence investigations not normally performed by Metro, the City shall be solely responsible for those items. Metro shall also be responsible for drafting and coordinating escrow instructions and Closing details, and shall pay the Buyer's Closing costs.

**B. Management, Maintenance, and Operation**

1. As required by the Metropolitan Greenspaces Master Plan, the long-term management guidelines for the Property shall be set forth in a Resource Management Plan ("Management Plan") for the Property, as set forth in Section D below. In the interim between the Closing Date of the acquisition of the Property and the adoption of the Management Plan, the Interim Protection Guidelines set forth in Section C below shall control. The use limitations for the Property outlined in Sections C and D below shall be incorporated in the Management Plan.
2. Metro and the City agree that the City shall be responsible for the ongoing management, maintenance, and operation of the Property, both during the interim period and after adoption of the Management Plan.
3. If Metro executes an agreement to purchase additional property within the Gales Creek Target Area which Metro would like the City to manage under the terms of this Agreement, Metro shall notify the City in writing in the form attached hereto as Exhibit B ("Notice of Acquisition"). The City shall notify Metro if the City does not wish to accept management responsibilities for that property in accordance with this Agreement, using the City's best efforts to make this notification prior to the Closing date for the acquisition. If the City has not so notified Metro within thirty (30) days of receiving Metro's Notice of Acquisition, then the City shall be deemed to have accepted the new Property for management, maintenance and operation responsibilities in accordance with the terms and conditions of this Agreement.

4. The term of the City's management, maintenance, and operation responsibilities for the Property shall be determined by the Management Plan, but in no event shall the term be less than ten (10) years from the effective date of this Agreement, renewable by mutual written agreement for additional ten (10) year periods.
5. Metro grants to the City, its agents and contractors, the right to enter the Property for the purpose of performing all activities reasonably necessary for the management, maintenance and operation of the Property and for the fulfillment of their duties under this Agreement and pursuant to the Management Plan.

**C. Interim Protection Guidelines**

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

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

1. The City shall develop a Resource Management Plan ("Management Plan") for the Property. The Management Plan shall set forth the acceptable management, operation, maintenance, types and levels of programmed and public use, and trail and improvement standards for the Property. The City shall manage the Property in accordance with the standards and guidelines developed in the Management Plan.
2. The Management Plan shall ensure that the Property is managed, maintained and operated in accordance with the Metro Greenspaces Master Plan and with this Agreement, and that all trails and improvements on the Property comply with the Greenspaces Master Plan and with this Agreement. The Management Plan shall also ensure that the Property is maintained as a natural area open space, with the primary goals being protection of the Property's natural resources, enhancement and protection of wildlife habitat, and public recreation consistent with the foregoing. As part of the process of developing the Management Plan, the City shall take an inventory of the resources on the Property.
3. Metro shall designate at least one staff member to participate in the Management Plan process for the Property. In addition to any other approvals required by the City, the Management Plan shall be subject to approval by the Metro Council prior to its implementation, which approval shall not be unreasonably withheld and shall be based on consistency with this Agreement and with the Greenspaces Master Plan.

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

1. As stated in the Greenspaces Master Plan, by accepting management responsibility for the Property the City agrees to be responsible for funding the operation and maintenance of the Property with the City's own resources. The City's management responsibility shall include responsibility for all taxes or assessments for the Property.
2. Prior to adoption of the Management Plan and thereafter, the City shall be responsible for obtaining any permits necessary for management, maintenance or operation of the Property.
3. Any permits granted by the City to users of the Property shall comply with the terms and limitations set forth in this Agreement and in the Management Plan for the Property.
4. The City shall be responsible for contacting and coordinating with other local or state agencies regarding any and all management, maintenance or operation issues that may arise with respect to the Property.

**F. General Provisions**

1. **Indemnification.** The City, to the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, shall defend, indemnify and save harmless Metro, its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from the management, maintenance or operation of the Property, including but not limited to construction, maintenance and operation of trails, public access, parking, or any other activity relating to an improvement on the Property.
2. **Oregon Constitution and Tax Exempt Bond Covenants.** The source of funds for the acquisition of this Property is from the sale of voter-approved general obligation bonds that are to be paid from ad valorem property taxes exempt from the limitations of Article XI, section 11(b), 11(c), 11(d) and 11(e) of the Oregon Constitution, and the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. The City covenants that it will take no actions that would cause Metro to be unable to maintain the current status of the real property taxes as exempt from Oregon's constitutional limitations or the income tax exempt status of the bond interest. In the event the City breaches this covenant, Metro shall be entitled to whatever remedies are available to either cure the default or to compensate Metro for any loss it may suffer as a result thereof.
3. **Signage.** The City shall provide on-site signage informing the public that the City is managing the site. Metro will provide on-site signage stating that funding for the acquisition came from Metro Open Spaces Bond Measure proceeds. The City shall also document in any publication, media presentation or other presentations in which the acquisition is mentioned, that funding for the acquisition came from Metro Open Spaces Bond Measure proceeds. On-site signage that provides recognition of Metro funding shall be subject to prior review and comment by Metro. All signage will be consistent with Metro guidelines for Open Spaces Projects.
4. **Joint Termination for Convenience.** Metro and the City may by mutual agreement terminate all or part of this Agreement based upon a determination that such action is in the public interest.
5. **Law of Oregon.** This Agreement shall be governed by the laws of the state of Oregon, and the parties agree to submit to the jurisdiction of the courts of the state of Oregon. All applicable provisions of ORS chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby incorporated as if such provisions were a part of this Agreement including but not limited to ORS 279.015 to 279.320.

6. Assignment. The parties may not assign any of its rights or responsibilities under this Agreement without prior written consent from the other party, except the parties may delegate or subcontract for performance of any of its responsibilities under this Agreement.
7. Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by fax and regular mail.

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

To City: City of Cornelius  
John C. Greiner  
City Manager  
1355 N. Barlow Street  
P.O. Box 608  
Cornelius, OR 97113

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

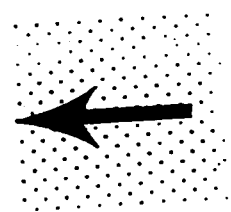
IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year set forth above.

CITY OF CORNELIUS

METRO

By: *John C. Greiner*  
Title: \_\_\_\_\_

\_\_\_\_\_  
Mike Burton  
Executive Officer



**EXHIBIT A**

**Lot 27, DANIELLE PARK, in the County of Washington, and State of Oregon**

## EXHIBIT B

Notice of Acquisition

\_\_\_\_\_, 199\_\_

City Manager  
City of Cornelius  
1355 N. Barlow Street  
P.O. Box 608  
Cornelius, OR 97113

Re: Acquisition of Property along [target area]

Dear \_\_\_\_\_:

Pursuant to the Metro Open Spaces Bond Measure 26-26, and the Intergovernmental Agreement between Metro dated \_\_\_\_\_, 1998, attached hereto ("Intergovernmental Agreement"), this shall serve as notice of acquisition of the following property along the [target area]:

[Property Address], in the City of \_\_\_\_\_, County of \_\_\_\_\_ and State of Oregon, being more particularly described in Exhibit I attached hereto ("the Property").

Pursuant to the Intergovernmental Agreement, Metro requests that the City manage this Property pursuant to the terms of the Intergovernmental Agreement. Please notify Metro in writing if the City does not wish to accept management responsibility for this Property. As set forth in the Intergovernmental Agreement, if the City does not so notify Metro within thirty (30) days of receipt of this letter, the City shall be deemed to have accepted the new Property for management, maintenance, and operation in accordance with the terms and conditions of the Intergovernmental Agreement.

If you have any questions please do not hesitate to contact me at 797-1914.

Sincerely,

Jim Desmond, Manager  
Metro Open Spaces Acquisition Division

cc: Charles Ciecko, Director, Metro Regional Parks and Greenspaces



## Staff Report

### **CONSIDERATION OF RESOLUTION NO. 98-2644 FOR THE PURPOSE OF APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF CORNELIUS FOR MANAGEMENT OF PROPERTY IN THE GALES CREEK TARGET AREA**

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**Date: April 13, 1998**

**Presented By: Charles Ciecko  
Jim Desmond**

## Proposed Action

Resolution No. 98-2644 requests authorization for the Executive Officer to execute an intergovernmental agreement (IGA) with the City of Cornelius for management of a property in the Gales Creek Target Area.

## Background and Analysis

In April 1998 Metro purchased from W-D Builders a 0.22-acre property in the Gales Creek target area ("the Property"). The Property is adjacent to a 0.76 acre tract owned by the City of Cornelius. More importantly, the Property is adjacent to the Tualatin River, and will enhance the City's efforts to develop a canoe access point at the site that they will call Steamboat Park. At the turn of the century, the site was a dock for steamboats which traveled the Tualatin from what is now Forest Grove to the Willamette River. Today, the site marks the westernmost point of the navigable extent of the Tualatin River. Canoe access facilities at Steamboat Park will add to the short list of sites where the public can easily access and experience the Tualatin.

The City of Cornelius contributed nearly 10% of the purchase price of the Property. In addition, the City is committed to assuming management responsibilities for the Property. The City of Cornelius IGA enumerates these responsibilities. In order to effectively transfer management responsibilities arising from the Property, the Metro Council should authorize the Executive Officer to execute the IGA.

## Findings

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

- The Gales Creek Target Area Refinement Plan includes a partnership objective which encourages the coordinated efforts of government agencies in order to avoid duplication of effort within the target area. The City of Cornelius IGA, by establishing a coordinated ownership and management relationship between Metro and the City of Cornelius, serves this objective.
- Target Area objectives also encourage the protection of riparian properties on Gales Creek and the Tualatin River in order to facilitate public passive recreation opportunities. The IGA serves this objective by allowing the City of Cornelius to implement its plan to develop a canoe access site on the Tualatin River.

- The relatively small size of the site, and its placement within a growing neighborhood, make management of the site more appropriate for a local, rather than a regional, agency.
- The IGA will relieve Metro of management costs arising from the Property, while fulfilling acquisition objectives related to the protection of riparian properties on the Tualatin River.

### **Budget Impact**

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

### **Executive Officer's Recommendation**

The Executive Officer recommends passage of Resolution No. 98-2644.

***Agenda Item 9.8***

***RESOLUTIONS***

**Resolution No. 98-2643, Amending the Tualatin River Access Points Target Area Refinement Plan and Authorizing the Executive Officer to Execute an Intergovernmental Agreement with the City of Tualatin to Manage Property.**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE	)	RESOLUTION NO. 98-2643
EXECUTIVE OFFICER TO AMEND THE TUALATIN	)	
RIVER ACCESS POINTS TARGET AREA	)	
REFINEMENT PLAN AND TO EXECUTE	)	
AN INTERGOVERNMENTAL AGREEMENT WITH	)	Introduced by Mike Burton
THE CITY OF TUALATIN TO MANAGE PROPERTY	)	Executive Officer

WHEREAS, in July, 1992, the Metro Council adopted by Resolution No. 92-1637 the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, Metro has purchased over 3,200 acres pursuant to the open spaces, parks and streams bond measure and the associated implementation work plan; and

WHEREAS, the Tualatin River Access Points target area was designated as a greenspace of regional significance in the Greenspaces Master Plan and identified as a regional target area in the open space, parks and streams bond measure; and

WHEREAS, on February 22, 1996, the Metro Council adopted a refinement plan for the Tualatin River Access Points target area which authorized the purchases of sites on the river, illustrated in a confidential tax-lot specific map identifying priority properties for acquisition; and

WHEREAS, an objective of the Tualatin River Access Points target area refinement planning focused on establishing acquisition or management partnerships with other public agencies providing for potential access sites and natural areas along the river, including the "Tualatin City Greenway," referring to the Tualatin River Greenway within the Tualatin Urban Growth Boundary (hereafter "the Tualatin River Greenway"); and

WHEREAS, the refinement plan map for Tiers I and II of the Tualatin River Access Points target area does not currently include the Tualatin River Greenway, which includes the properties identified in Exhibit A to this Resolution; and

WHEREAS, Metro staff omitted the Tualatin River Greenway from the Tualatin River Access Points target area refinement plan map due to a mapping error; and

WHEREAS, Metro and the City of Tualatin are interested in the potential to jointly purchase an 8.53-acre property designated as part of the Tualatin River Greenway in the Tualatin Development Code and listed in Exhibit A (hereafter "the 8.5-acre property"); and

WHEREAS, the City of Tualatin (hereafter "the City") has tentatively agreed to contribute 27% of the purchase price of the 8.5-acre property, and requested Metro to contribute 73% of the purchase price, and Metro and the City would share title as tenants in common proportionate to these contributions; and

WHEREAS, the open spaces, parks and streams bond measure provided that lands acquired by Metro with the regional share of the bond funds would be temporarily "land banked" with minimal maintenance, and no bond funds can be legally used for any operating expenses on these lands; and

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

WHEREAS, the City has agreed to accept responsibility for operation, maintenance and management of the 8.5-acre property; and

WHEREAS, an intergovernmental agreement (IGA) with the City would benefit the properties and public in general by providing integrated care for the properties; and

WHEREAS, such an IGA would set forth management, maintenance, and operation guidelines for the City, requiring that the property be managed for passive recreation, pedestrian/bicycle use, environmental education, and habitat restoration, with the primary goals being protection of the property's natural resources, enhancement and protection of wildlife habitat, and public recreation consistent with these goals; and

WHEREAS, the IGA attached hereto as Exhibit B has been approved by the Tualatin City Council for management of the 8.5-acre property in the Tualatin River Access Points target area; now, therefore

BE IT RESOLVED,

That the Metro Council amends the Tualatin River Access Points regional target area refinement plan to include the properties identified in Exhibit A, and authorizes the Metro Executive Officer to execute the attached IGA with the City of Tualatin, attached hereto as Exhibit B, wherein the City will manage the 8.5-acre property within the Tualatin River Access Points target area.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
Jon Kvistad, Presiding Officer

Approved as to Form:

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

EXHIBIT A

Resolution 98-2643

Properties in the Tualatin River Greenway to be added to the Tualatin River Access Points target area refinement plan:

Clackamas County  
Tax Account Number

Acreage

R21E19 01000 2.75

R21E19 00900 5.78

Total 8.53

Property under contract for purchase by Metro and the City of Tualatin, pending Metro Council amendment of the refinement map.

R21E19DA 10400 7.79

## INTERGOVERNMENTAL AGREEMENT

### Miller Property

This Intergovernmental Agreement ("Agreement") dated this \_\_\_\_\_ day of \_\_\_\_\_, 1998, is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter, located at 600 Northeast Grand Avenue, Portland, Oregon, 97232-2736 ("Metro"), and the City of Tualatin, located at 18880 SW Martinazzi Avenue, Tualatin, OR 97062-0369 ("the City").

### WITNESSETH:

WHEREAS, on May 16, 1995, voters approved Ballot Measure 26-26, Open Spaces, Parks, and Streams, authorizing METRO, a metropolitan service district organized under the laws of the State of Oregon and the 1992 METRO Charter, to issue up to \$135.6 million in general obligation bonds for the protection of open spaces, parks and streams ("Metro Open Spaces Bond Measure"); and

WHEREAS, the City is a local parks provider which has received Metro Open Spaces Bond Measure local share funding for this project through an intergovernmental agreement between METRO and the City entered into on October 24, 1995 ("Local Share IGA"); and

WHEREAS, the Tualatin River Greenway and Access Points Target Area and the Metro Greenspaces Master Plan identify regionally significant natural area sites in the Tualatin River watershed; and

WHEREAS, pursuant to the Metro Open Spaces Bond Measure, but contingent on Metro Council Approval, Metro entered into a Purchase and Sale Agreement, dated March 2, 1998 to purchase certain property on the Tualatin River in the City of Tualatin, Oregon, with Open Spaces Bond Measure proceeds, as follows:

Approximately 8.5 acres of real property, consisting of two tax lots, 900 and 1000, known as the Miller property, including a residence, outbuildings and dock, at 5485 Nyberg Lane, Tualatin, as more particularly described in Exhibit A attached hereto ("Miller Property");

WHEREAS, on \_\_\_\_\_, 1998, the Metro Council adopted resolution #98-2643, amending the Tualatin River Access Points Target Area Refinement Plan and authorizing Metro to enter into this Agreement and to jointly purchase, manage, operate and maintain the Miller Property in accordance with the Purchase and Sale Agreement and the terms set forth in this Agreement; and

WHEREAS, on April 27, 1998 the Tualatin City Council authorized the City to enter into this Agreement and to jointly purchase, manage, operate and maintain the Miller Property in accordance with the Purchase and Sale Agreement and the terms set forth in this Agreement;

EXHIBIT B  
Resolution 98-2643

WHEREAS, Metro and the City wish to purchase the Miller Property and preserve it as open space in accordance with the Metro Open Spaces Bond Measure, the Metro Greenspaces Master Plan, Tualatin's Greenway Protection District Overlay (GPO) and Natural Areas chapter of the Tualatin Development Code, and Tualatin's Greenway Development Plan, and Tualatin's Brown's Ferry Park Master Plan; and

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

Now, therefore, the parties agree as follows:

**A. Acquisition**

1. Metro and the City are hereby authorized to purchase the Miller Property for ONE MILLION ONE HUNDRED THOUSAND DOLLARS (\$1,100,000), in accordance with the Purchase and Sale Agreement. At Closing, Metro shall contribute (\$800,000), or approximately 73% of the purchase price, and the City shall contribute (\$300,000), or approximately 27% of the purchase price.
2. Metro and the City shall take title to the Property as tenants in common, with Metro having an undivided SEVENTY-THREE PERCENT (73%) interest and the City having an undivided TWENTY-SEVEN PERCENT (27%) interest in the property.
3. Metro shall be responsible for negotiating the sale and for determining the terms and conditions of said Purchase and Sale Agreement and any other terms of the transaction as determined between Metro and the Property owner. Metro shall be responsible for conducting the normal due diligence investigations pursuant to Metro Open Spaces Bond Measure requirements. If the City requires any due diligence investigations not normally performed by Metro, the City shall be solely responsible for those items. Metro shall also be responsible for drafting and coordinating escrow instructions and closing details, and shall pay the Buyer's closing costs.
4. The parties acknowledge that they have each had the opportunity to conduct due diligence investigations on the Property and have reviewed environmental reviews and analyses on the property.

**B. Management, Maintenance, and Operation of the Property**

1. The City shall be responsible for the ongoing management, maintenance, and operation of the Miller Property in accordance with the terms of this Agreement.
2. The Miller Property shall be managed, maintained and operated in accordance with the Greenspaces Master Plan, the Open Spaces Bond Measure, and the City of Tualatin's Brown's Ferry Park Master Plan, Tualatin's Greenway Protection District Overlay(GPO) and Natural Areas chapter of the Tualatin Development Code, and Tualatin's Greenway Development Plan, dated November 27, 1995 (collectively, "the Plans"), and the terms and conditions set forth in this Agreement. These Plans shall constitute the Resource Protection Plans for the Property, as described in the Metro Greenspaces Master Plan. In case of



conflict among Plans, the Plan affording the highest level of resource protection shall govern.

3. The residence, outbuildings, and dock will be managed and maintained by the City. The residence and other improvements may be used for park and recreation purposes consistent with the Greenspaces Master Plan, such as environmental learning, or for residential leasing. The residence and other improvements may not be used for purposes other than park uses, environmental learning or residential leasing. The income generated from the residence, if any, shall be split equally between the City and Metro, with Metro receiving one-half of the gross rental receipts minus direct expenses not paid by the lessee for utilities, maintenance and repairs, trash removal, and insurance from any residential leasing of the Property. The City shall provide Metro with copies of all leases, contracts, and/or other documents relating to uses of the improvements. No lease for longer than 5 years shall be executed without Metro approval. If the City uses the residence for office space or for a Flexible Space Building as contemplated in Section 3.7.1.4 (a) of the Brown's Ferry Park Master Plan, the City shall provide approximately 80 square feet of improved office space inside the residence and parking outside the residence adequate to serve one Metro Parks and Greenspaces employee.
4. If Metro executes an agreement to purchase additional property within the Tualatin River Access Points Target Area which Metro would like the City to manage under the terms of this Agreement, Metro shall notify the City in writing in the form attached hereto as Exhibit B ("Notice of Acquisition"). The City shall notify Metro if the City does not wish to accept management responsibilities for that property in accordance with this Agreement, using the City's best efforts to make this notification prior to the closing date for the acquisition. If the City has not so notified Metro within thirty (30) days of receiving Metro's Notice of Acquisition, then the City shall be deemed to have accepted the new Property for management, maintenance and operation responsibilities in accordance with the terms and conditions of this Agreement.
5. The term of the City's management, maintenance, and operation responsibilities for the Property shall be ten (10) years from the date of this Agreement, renewable by mutual written agreement for additional ten (10) year periods.

**C. Limitations on Use**

1. The Property shall be managed, maintained and operated by the City in accordance with the Open Spaces Bond Measure, the Plans, and the Agreements as set forth in section B above. The uses of the Property shall be consistent with maintaining the Property as a natural area open space, with the primary goal being protection of the Property's natural resources, enhancement and protection of wildlife habitat, and public recreation consistent with the foregoing.
2. The Residence Building and outbuildings on Tax Lot 1000 shall not remain vacant for an unreasonable length of time. The structures shall be regularly maintained by the City in a manner that preserves the structures in their current condition, as a minimum standard.

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3. The Property may be used by the public, in the City's discretion, for passive recreation, pedestrian activity, nonmotorized bicycle use, parks-related office space, and/or habitat enhancement or educational opportunities, consistent with the Greenspaces Master Plan and the Plans. Metro shall have the right to approve of any improvements, trails or alteration of any water or forest resource on the Property, and the City shall give Metro 90 days advance written notice of its intent to construct any improvements, trails, or alteration of water or timber resource on the Property. In emergency situations, the City may make changes necessary for the safe and effective function of the improvements without advance written consent of Metro, if such emergency situation makes such advance written consent impractical. In any event, no improvements or trails shall be constructed on the Property and no alteration of water or timber resource shall occur that are inconsistent with this Agreement, with the Plans, or with the Open Spaces Bond Measure.
4. Metro shall have the right to review and comment on any changes in the Plans relating to the management, maintenance, or operation of the Property. Any changes in the Plans made or proposed by the City that relate to management, maintenance, or operation of the Property shall not conflict with the guidelines set forth in this Agreement, in the Greenspaces Master Plan, or with the uses and restrictions described in the Open Spaces Bond Measure. The City shall give Metro written notice as soon as possible, but in any event no less than 90 days in advance of a proposal to amend the City's Plans where such amendment would alter the City's management, maintenance or operation of the Property.
5. The Property shall not be subdivided or partitioned, nor shall any development rights, timber rights, mineral rights, or other rights related to the Property be sold or otherwise granted, nor shall there be any alteration of any water or timber resource, except as necessary for construction of trail or other improvements, for the purpose of improving resource values, or as necessary to protect public safety.
6. The City shall maintain security of the Property, and shall provide additional fencing, gates, signage, and other measures as the City may deem necessary to increase safety on the Property, and to preserve and protect the Property's natural resources.

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

1. As stated in the Greenspaces Master Plan, by accepting management responsibility for the Property the City agrees to be responsible for funding the operation and maintenance of the Property with the City's own resources. The City's management responsibility shall include responsibility for all taxes or assessments for the Property.
2. The City shall be responsible for obtaining any permits necessary for management, maintenance or operation of the Property.
3. Any permits granted by the City to users of the Property shall comply with the terms and limitations set forth in this Agreement and in the Plans.
4. The City shall be responsible for contacting and coordinating with other local or state agencies regarding any management, maintenance or operation issues that may arise with respect to the Property.

**E. General Provisions**

1. Indemnification. The City, to the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, shall defend, indemnify and save harmless Metro, its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from the management, maintenance or operation of the Property, including but not limited to the public's use of the property and the waterfront, trail construction or tenant/landlord issues related to the improvements on the Property.
2. Oregon Constitution and Tax Exempt Bond Covenants. The source of funds for the acquisition of the Property is from the sale of voter-approved general obligation bonds that are to be paid from ad valorem property taxes exempt from the limitations of Article XI, section 11(b), 11(c), 11(d) and 11(e) of the Oregon Constitution, and the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. The City covenants that it will take no actions that would cause Metro to be unable to maintain the current status of the real property taxes as exempt from Oregon's constitutional limitations or the income tax exempt status of the bond interest. In the event the City breaches this covenant, Metro shall be entitled to whatever remedies are available to either cure the default or to compensate Metro for any loss it may suffer as a result thereof.
3. Funding Declaration and Signs. The City shall provide on-site signs informing the public that the City is managing the Property. Metro will provide on-site signs stating that funding for the acquisition came from Metro Open Spaces Bond Measure proceeds and local share bond measure contributions by the City. The City shall also document in any publication, media presentation or other presentations, that funding for acquisition of the Property came from Metro Open Spaces Measure bond proceeds. On-site signage shall be subject to prior review and approval by Metro. All signage shall be consistent with Metro guidelines for Open Spaces Projects.
4. Joint Termination for Convenience. Metro and the City may jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision shall be effective upon ten (10) days written notice of termination issued by Metro, subject to the mutual written agreement of the parties.
5. Termination for Cause. Either party may terminate this Agreement in full, or in part, at any time before the expiration date, whenever that party determines, in its sole discretion, that the party has failed to comply with the conditions of this Agreement and is therefore in default. The terminating party shall promptly notify the other party in writing of that determination and document such default as outlined herein. The other party shall have thirty (30) days to cure the problem.
6. Law of Oregon. This Agreement shall be governed by the laws of the state of Oregon, and the parties agree to submit to the jurisdiction of the courts of the state of Oregon. All applicable provisions of ORS chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby

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Resolution 98-2643

incorporated as if such provisions were a part of this Agreement including but not limited to ORS 279.015 to 279.320.

7. Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by fax and regular mail.

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

To City: City of Tualatin  
Paul Hennon  
Parks and Recreation Director  
18880 SW Martinazzi Avenue  
Tualatin, OR 97062-0369

8. Assignment. The parties may not assign any of its rights or responsibilities under this Agreement without prior written consent from the other party, except the parties may delegate or subcontract for performance of any of its responsibilities under this Agreement.
9. Severability. If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement.
10. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written agreements or representations relating to the Property. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

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

CITY OF TUALATIN

METRO

By: \_\_\_\_\_  
Lou Ogden

By: \_\_\_\_\_  
Mike Burton

Title: Mayor

Title: Executive Officer

EXHIBIT A  
PROPERTY DESCRIPTION

**PARCEL 1:** A tract of land in the Northeast one-quarter of Section 19, Township 2 South Range 1 East of the Willamette Meridian, in the City of Tualatin, County of Clackamas and State of Oregon, described as follows:

Beginning at a basalt stone set at the center of said Section 19; thence South 89° 22' East 318.00 feet to the Southwest corner of a tract of land conveyed to Carl L. Schaber, et ux, by deed recorded May 10, 1960 in Book 571, page 127, Clackamas County Deed Records; thence North 0° 18' East 100.26 feet to a three-fourths 3/4 inch iron pipe; thence North 2° 48' East 100 feet to an iron pipe; thence North 2° 48' East 105.47 feet to the North boundary line of a tract of land conveyed to John L. Raicy, et ux, by deed recorded August 3, 1940 in Book 271, page 301, Clackamas County Deed Records; thence West along the North boundary line of said Raicy tract to the Northwest corner thereof; thence South 0° 45' East tracing the West boundary line of said Raicy tract to the point of beginning. EXCEPT therefrom that portion described in Deed of Dedication from M. Scott Miller and Lynn B. Miller to The City of Tualatin, recorded March 3 1997, Fee No. 97-015239.

**PARCEL 2:** A tract of land in the Northeast one-quarter of Section 19, Township 2 South, Range 1 East of the Willamette Meridian, in the City of Tualatin, County of Clackamas and State of Oregon, described as follows:

Beginning at an iron pipe on the South line of the Northeast one-quarter of said Section 19 which is South 89° 22' East 318 feet from a basalt stone at the center of said section, said point being the Southwest corner of that tract described in deed to Carl L. Schaber, et ux, recorded May 10, 1960 in Book 571, page 126, Clackamas County Deed Records; thence South 89° 22' East 50 feet to an iron rod; thence North 0° 45' West parallel with the West line of that tract described in deed to M. Scott Miller, et al, recorded September 12, 1977 as Recorder's Fee No. 77 36680, Clackamas County Records, 200 feet to an iron rod; thence continuing North 0° 45' West 106.62 feet, more or less, to the North line of said Schaber tract; thence South 89° 05' 15" West along said North line 35.63 feet to the Northwest corner of said Schaber tract; thence South 2° 48' West along the West line of said Schaber tract 105.47 feet to an iron pipe; thence continuing South 2° 48' West along said West line 100 feet to an iron pipe; thence South 0° 18' West along said West line 100.26 feet to the point of beginning.

**PARCEL 3:** A tract of land located in the Northeast one-quarter of Section 19, Township 2 South, Range 1 East of the Willamette Meridian, in the City of Tualatin, County of Washington and State of Oregon, being more particularly described as follows:

Beginning at a 3/4 inch iron pipe located in the South boundary of said Northeast one-quarter that is South 89° 22' East 318.00 feet distant from the stone marking the center of said Section 19; from said beginning point thence North 0° 18' East 100.26 feet to a 3/4 inch iron pipe; thence North 2° 48' East, 100.0 feet to an iron pipe; thence continuing North 2° 48' East, 105.47 feet to the center of the Tualatin River; thence down stream on the center of said river along the following five courses and distances: North 89° 05' 15" East (description in Book 271 page 301, Clackamas County Deed calls this East) 219.61 feet; South 81° 40' East 222.35 feet; South 80° 52' East 215.70 feet; South 78° 06' East 331.90 feet (to the Southwest corner of the plat of Pilkington), South 75° 50' East 17.0 feet to the East boundary of the Southwest one-quarter of the Northeast one-quarter of said Section

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Resolution 98-2643

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EXHIBIT A  
PROPERTY DESCRIPTION

19; thence departing from said river and following the last mentioned boundary South 181.0 feet to the Southeast corner of the said Southwest one-quarter of the Northeast one-quarter; thence following the South boundary of the said Southwest one-quarter of the Northeast one-quarter North 89° 22' West 1004.34 feet to the place of beginning.

EXCEPTING THEREFROM that portion thereof conveyed to Scott Miller by Deed recorded January 17, 1980, Recorder's Fee No. 80-1749, Clackamas County Records.

PARCEL 4: A tract of land in the Northeast one-quarter of Section 19, Township 2 South, Range 1 East of the Willamette Meridian, in the City of Tualatin, County of Washington and State of Oregon, described as follows:

The North 32 feet of the East one-half of the Northwest one-quarter of the Southeast one-quarter of Section 19, Township 2 South, Range 1 East of the Willamette Meridian, in the County of Clackamas and State of Oregon.

EXCEPTING THEREFROM that portion described in Deed of dedication from M. Scott Miller, et al to the City of Tualatin, recorded March 3, 1997, Fee No. 97015238, Clackamas County Records.

**EXHIBIT B**

**Notice of Acquisition**

\_\_\_\_\_, 199\_\_

City of Tualatin  
Paul Hennon  
Parks and Recreation Director  
8515 SW Tualatin Road  
Tualatin, OR 97062

Re: Acquisition of Property along Tualatin River

Dear \_\_\_\_\_:

Pursuant to the Metro Open Spaces Bond Measure 26-26, and the Intergovernmental Agreement between Metro and the City of Tualatin (hereafter "the City") dated \_\_\_\_\_, 1998, attached hereto ("Intergovernmental Agreement"), this shall serve as notice of acquisition of the following property along the [target area]:

[Property Address], in the City of Tualatin, County of \_\_\_\_\_ and State of Oregon, being more particularly described in Exhibit I attached hereto ("the Property").

Pursuant to the Intergovernmental Agreement, Metro requests that the City manage this Property pursuant to the terms of the Intergovernmental Agreement. Please notify Metro in writing if the City does not wish to accept management responsibility for this Property. As set forth in the Intergovernmental Agreement, if the City does not so notify Metro within thirty (30) days of receipt of this letter, the City shall be deemed to have accepted the new Property for management, maintenance, and operation in accordance with the terms and conditions of the Intergovernmental Agreement.

If you have any questions please do not hesitate to contact me at 797-1914.

Sincerely,

\_\_\_\_\_  
Jim Desmond  
Manager, Metro Open Spaces Acquisition Division

cc: Charles Ciecko, Director, Metro Regional Parks and Greenspaces

## Staff Report

### **CONSIDERATION OF RESOLUTION NO. 98-2643 FOR THE PURPOSE OF AMENDING THE TUALATIN RIVER ACCESS POINTS TARGET AREA REFINEMENT PLAN AND AUTHORIZING THE EXECUTE OFFICER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF TUALATIN TO MANAGE PROPERTY**

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**Date: April 14, 1998**

**Presented by:**

**Charles Ciecko  
Jim Desmond**

## **PROPOSED ACTION**

Resolution No. 98-2643 would provide Metro Council approval for an amendment to the Tualatin River Access Points Target Area confidential refinement map, and approval for an Intergovernmental Agreement (IGA) with the City of Tualatin Parks and Recreation Department to manage properties jointly purchased by Metro and the City of Tualatin in the Tualatin River Access Points Target Area.

## **BACKGROUND AND ANALYSIS**

### **Amendment to Refinement Map**

On February 22, 1996, the Metro Council approved Resolution No. 96-2299 for the purpose of approving a refinement plan for the Tualatin River Access Points Target Area, including a confidential, tax-lot specific refinement map (the "Map") outlining areas in which Metro is authorized to purchase properties under the open spaces, parks and streams bond measure. The primary objective of the refinement plan is to acquire a minimum of 266 acres to establish four regional access point sites along the Tualatin River Greenway in the area identified on the Map as Tier I. Thus far, Metro has acquired two sites totaling 262 acres and is negotiating on additional properties. The Map also identified two Tier II areas, both east and west of the Tier I area. In the eastern Tier II area, Metro has purchased a 12.5-acre site, and in the western Tier II area Metro is in the process of purchasing a small riverfront parcel.

The Metro Council also adopted Partnership Objectives for the refinement plan (see Attachment A), including an objective to "Establish acquisition or management partnerships with other public agencies providing for current, proposed or potential access sites and natural areas along the river including: ... the Tualatin City Greenway," referring to the Tualatin River Greenway within the Tualatin Urban Growth Boundary (hereafter "the Tualatin River Greenway"). The City of Tualatin's Greenway Development Plan, Map 72-1 (Attachment B) identifies the location of the Tualatin River Greenway extending from Brown's Ferry Park on Nyberg Lane through privately-owned riverfront properties to another city-owned property to the east.

The confidential, tax-lot specific refinement map inadvertently omitted the Tualatin River Greenway within the Tualatin Urban Growth Boundary, resulting in an inability to develop partnerships and acquire properties as envisioned in the Refinement Plan. An amendment to the refinement map will add two contiguous properties, one of which has recently become



available for purchase, to the map and allow for a joint purchase by the City of Tualatin (the "City") and Metro.

The sites are an 8.5-acre property and a 7.8-acre property between the City's Brown's Ferry Park and a parcel already owned by the City. The 8.5-acre parcel immediately east of Brown's Ferry Park, available for purchase, has approximately 1,300 linear feet of high quality Tualatin River frontage and is improved with a single-family residence. The City has committed to contribute 27% of the purchase price of the 8.5-acre property, and Metro and the City will share title on the properties as tenants in common, Metro with a 73% undivided interest, and the City with a 27% undivided interest. It would effectively be added to Brown's Ferry Park and be managed by the City of Tualatin Parks and Recreation Department under the terms of an IGA.

The owners of the 8.5-acre parcel have entered into a purchase and sale agreement with Metro, subject to the Metro Council's approval of the amendment of the refinement plan map and of the IGA. In order to acquire the property, Metro would have to amend the Tualatin River Access Points Target Area refinement map to include the property.

#### **Intergovernmental Agreement**

The open spaces, parks and streams bond measure anticipated that some acquired lands could be managed by local parks providers. Metro has previously entered into intergovernmental agreements (IGAs) with other local parks providers to manage some of the properties acquired with bond funds. The proposed resolution would authorize the executive officer to enter into an IGA with the City of Tualatin to manage the 8.5-acre subject property in a manner consistent with the bond measure covenants. The terms and provisions of the proposed IGA are consistent with other comparable IGAs previously authorized by the Council.

The Tualatin City Council has authorized the City to enter into an intergovernmental agreement (IGA) to operate, manage and maintain the property as open space. Under the IGA, the property would also be more likely to become available for public use and benefit at an earlier date than if Metro retains all operations and management responsibilities.

#### **FINDINGS**

Amendment of the Tualatin River Access Points Target Area refinement plan is recommended based upon these findings:

The City of Tualatin's River Greenway area should have been on the refinement map because an objective of the refinement plan encouraged acquisition or management partnerships with other public agencies providing for current, proposed or potential access sites and natural areas along the river, including the Tualatin City Greenway. The original map was in error.

The Target Area descriptions in the Greenspaces Master Plan and Bond Measure Fact Sheet (authorized by Council Resolutions 95-2113, 94-2050 and 94-2029B) include the Tualatin River Greenway within the Urban Growth Boundary of the City of Tualatin.

The refinement plan describes the accessory conditions and add-on qualities that are desirable around a canoe access point, such as additional land for picnicking, good vehicular access from an arterial or collector road, and parking. Brown's Ferry Park, at 19.8 acres, is relatively small

and the additional properties represent an opportunity to build on to an existing, top-quality canoe ramp and park, with plentiful parking and other amenities. The City of Tualatin has indicated that this acquisition is a top priority that will provide the potential to greatly improve public access to the river at Brown's Ferry Park, thus increasing the regional significance of this access point.

Resolution 98-2643 would authorize Metro to amend the refinement plan map for the Tualatin River Access Points Target Area and correct a mapping error. It would therefore also authorize Metro to purchase land identified as "Privately Owned Parcels" in Attachment B.

Resolution 98-2643 would authorize Metro to enter into a Tualatin River Access Points IGA with the City of Tualatin for the City to manage the 8.5-acre parcel and potentially other properties within the Tualatin River Access Points Target Area. Metro and the City will share title as tenants in common with Metro having a 73% undivided interest and the City having a 27% undivided interest.

#### **BUDGET IMPACT**

Bond funds will supply 73% of the acquisition cost. Pursuant to the IGA, the City of Tualatin would become responsible for the management, maintenance and operation of certain property purchased with open spaces, parks and streams bond funds. This would reduce Metro's land banking costs and future operation and maintenance expenses. Maintenance costs of the property may also be offset by any rental income generated under the City's management. If the City uses the property for rental purposes, the net rental income will be divided equally between the City and Metro.

#### **Executive Officer's Recommendation**

The Executive Officer recommends passage of Resolution No. 98 - 2643.

## ATTACHMENT A

### **OBJECTIVES:**

The following are prioritized specific objectives of the Tualatin River Access Points Proposed Refinement Plan. The Refinement Plan area contains approximately 9,000 acres.

#### **TIER I**

Acquire a minimum of 266 acres to establish four regional access point sites along the Tualatin River Greenway that meet the following objectives:

- Locations along the river at intervals of 5 to 10 river miles, allowing for day trips and shorter trips than is now practicable
- Safe accessibility from a public roadway that can adequately accommodate additional traffic
- Developable for boat ramps and/or docks by reason of existing shallow slopes and banks
- Associated with sufficient uplands for such features as parking, restrooms, picnic areas, and buffering from the River and adjacent uses.
- Preservation of floodplain, wetland and riparian habitats along the river, while providing possible access to natural areas in and around the access points, including distinctive habitats such as the interiors of oxbows and the confluences of major creek tributaries.

#### **TIER II**

Acquire additional access sites to provide for one or more take-out points to accommodate a variety of trip lengths, mid-trip rest stops, or to provide sufficient space for camping areas.

Acquire, through the use of easements, donations or dedications, or partnership agreements, larger natural area and open space habitats concentrating on those with distinctive features such as oxbows that provide the highest ratio of river frontage to acreage.

#### **PARTNERSHIP OBJECTIVES**

Establish acquisition or management partnerships with other public agencies providing for current, proposed or potential access sites and natural areas along the river including:

- US Fish and Wildlife Service's TRNWR, and the Jackson Bottom Wetlands Preserve
- Other natural area preserves on or near the River, particularly Fernhill Wetlands, Bryant Woods/Canal Acres, and the Tualatin City Greenway
- Oregon State Marine Board
- Oregon Department of Fish and Wildlife

Cooperative agreements with groups such as the Tualatin Riverkeepers for the purpose of monitoring and/or maintenance of acquired sites.

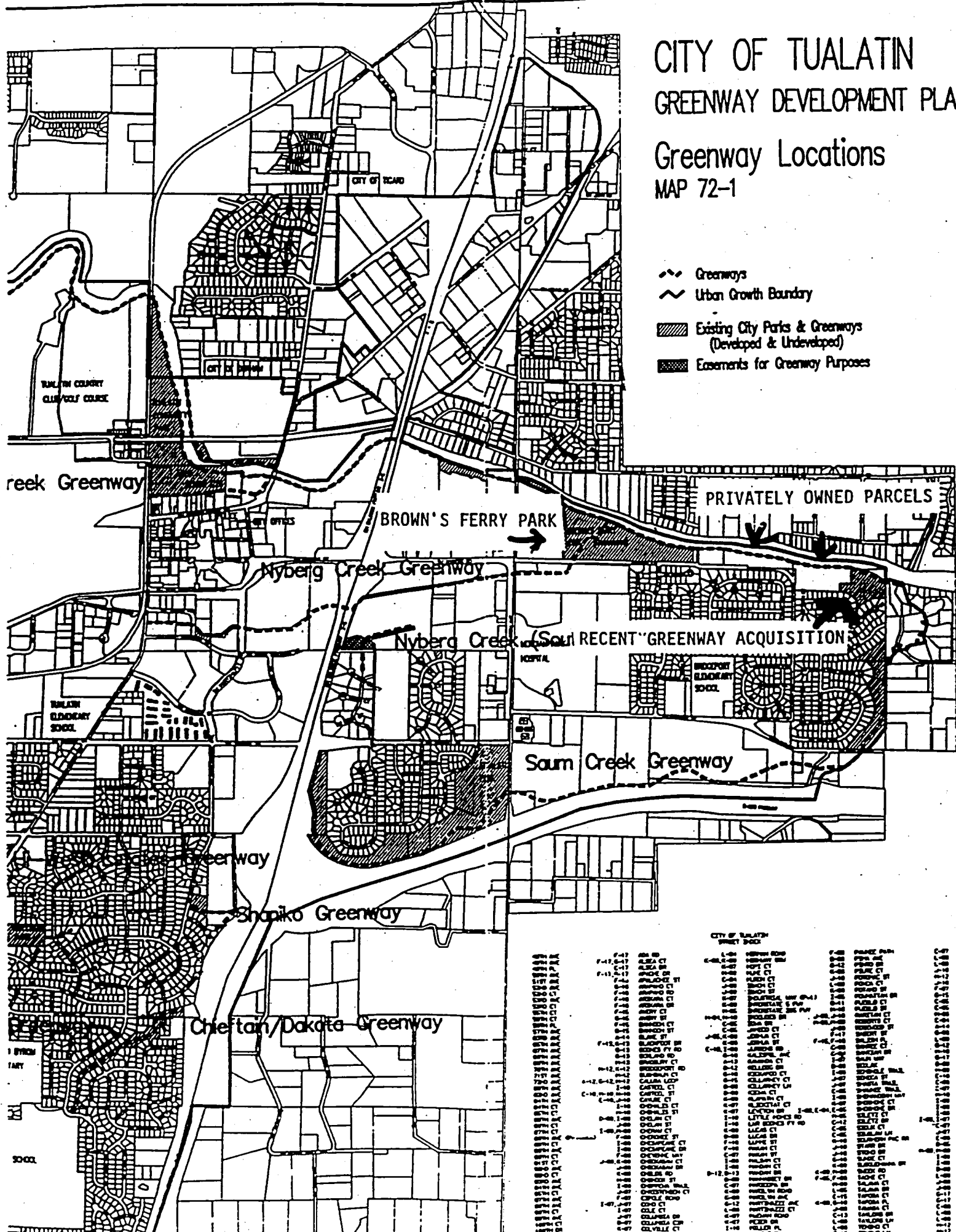
Investigate the potential to improve portage around the Lake Oswego Diversion Dam in cooperation with the Lake Corporation.

#### **Executive Officer's Recommendation**

The Executive Officer recommends passage of Resolution No. 96-2299.

# CITY OF TUALATIN GREENWAY DEVELOPMENT PLAN

## Greenway Locations MAP 72-1



*Agenda Item 9.9*

**RESOLUTIONS**

**Resolution No. 98-2641, Confirming the Nominations of Sylvia Milne and Brian Scott to the Regional Parks and Greenspaces Advisory Committee.**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONFIRMING THE	)	RESOLUTION NO. 98-2641
NOMINATIONS OF SYLVIA MILNE AND	)	
BRIAN SCOTT TO THE REGIONAL PARKS	)	Introduced by
AND GREENSPACES ADVISORY COMMITTEE	)	Mike Burton, Executive Officer

WHEREAS, The Metro Council approved Resolution 94-2026A to establish the Regional Parks and Greenspaces Advisory Committee; and

WHEREAS, The Regional Parks and Greenspaces Advisory Committee meets monthly to review and advise on the policies, plans and programs of the Metro Regional Parks and Greenspaces Department; and

WHEREAS, Two (2) vacancies exist on the Regional Parks and Greenspaces Advisory Committee; and

WHEREAS, Resolution 94-2026A requires Council confirmation of nominees to the committee; now, therefore,

BE IT RESOLVED

1.) That the Metro Council hereby confirms two (2) nominees listed in Exhibit A to fill vacancies on the Regional Parks and Greenspaces Advisory Committee.

ADOPTED by the Metro Council on this \_\_\_\_ day of \_\_\_\_\_, 1998.

---

Jon Kvistad, Presiding Officer

**REGIONAL PARKS AND GREENSPACES ADVISORY COMMITTEE**

**Nominations Forwarded by the Executive Officer to the Council for Conformation**

**Metro Council District #2**

**Sylvia Milne** - Community Involvement Coordinator; Oak Lodge Neighborhood Park Advisory Board; Friends of Kellogg and Mt Scott Creeks; Trails Club of Oregon; Ecumenical Ministries of Oregon Drug Education Advisory Board; academic background in social science/psychology.

**Metro Council District #6**

**Brian Scott** (incumbent)- Financial management/marketing; Metro Regional Parks and Greenspaces Advisory Committee; Rose City Neighborhood Association; academic background in business and journalism.

## STAFF REPORT

### **CONSIDERATION OF RESOLUTION NO. 98-2641 FOR THE PURPOSE OF CONFIRMING THE NOMINATIONS OF SYLVIA MILNE AND BRIAN SCOTT TO THE REGIONAL PARKS AND GREENSPACES ADVISORY COMMITTEE**

Date: April 17, 1998

Presented by: Ron Klein

## BACKGROUND AND ANALYSIS

On October 13, 1994 Metro Council adopted Resolution 94-2026A to establish the Regional Parks and Greenspaces Advisory Committee. The purpose of the committee is to review, comment, and make recommendations related to policies, plans, programs, user fee structure, annual budget plans and similar issues facing the Metro Regional Parks and Greenspaces department. The committee only serves an advisory role to Metro Council and the Metro Regional Parks and Greenspaces Department.

The committee has 11 positions: one representative from each Metro Council district; one representative from Clackamas, Multnomah and Washington counties outside Metro boundaries; and one representative from Clark County. Attachment 1 lists current members serving on the Regional Parks and Greenspaces Advisory Committee. Committee positions subject to Metro Council confirmation include Metro Districts #2 and #6. The vacancies are a result of term expiration.

Citizen applications were solicited through announcements at public meetings, to the Metro Committee for Citizen Involvement and Metro Regional Parks and Greenspaces Advisory Committee, communications to the Metro Executive Office and Metro Councilors, and publication in the Metro GreenScene. Nine (9) committee member applications were sent to interested citizens in Metro Council Districts #2 and #6. Five (5) citizens (Attachment 2) submitted applications including one from the incumbent committee member representing Metro Council District #6.

The appointments for confirmation are made by the Executive Officer for Metro Council consideration (Exhibit A).

## STAFF RECOMMENDATION

Staff recommends consideration of Sylvia Milne (District #2) and Brian Scott (District #6) for confirmation to two (2) positions on the Regional Parks and Greenspaces Advisory Committee as forwarded to the Metro Council by the Executive Officer.

## EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 98-2641.



## Metro Regional Parks and Greenspaces Advisory Committee Roster

### District # 1

Robert Akers (Bob)  
1038 S.E. 224th, Gresham, OR 97030  
665-5519 (h)  
(Term expires March 31, 2000)

### District # 2

Sylvia Milne  
1864 SE Anspach Street, Milwaukie OR 97267  
653--1394 (h); 654-2166 (fax)  
(Term expires March 31, 2001 pending Metro Council approval)

### District # 3

John Griffiths (vice-chairman)  
10245 S.W. 153rd Ave., Beaverton, OR 97007  
524-6170 (h) or 264-7282 (w) / 264-7756 (fax).  
(Term expires March 31, 2000)

### District # 4

A. Jay Hamlin  
337 NE 2nd Ave., Hillsboro, OR 97124  
640-6936 (h) or 642-0717 (w) / 642-3630 (fax)  
(Term expires March 31, 2000)

### District # 5

J. Michael Reid, chairman  
2920 N.E. 24th Avenue, Portland, OR 97212  
281-4104  
(Term expires March 31, 2000)

### District # 6

Brian Scott  
1725 NE 61st Avenue, Portland, OR 97213  
281-7614 (w)  
(Term expires March 31, 2001 pending Metro Council approval)

### District # 7

Jim Battan  
7710 S.W. 51st Place, Portland, OR 97219  
768-9998  
(Term expires March 31, 2000)

**Clackamas County, outside Metro boundary**

Rick Charriere (committee alt rep on WRPAC)  
19595 S. Fischers Mill Road, Oregon City 97045  
631-8140 (h) or 655-9161 (w)  
(Term expires March 31, 1999)

**Multnomah County, outside Metro boundary**

Seth Tane (committee rep on WRPAC)  
13700 NW Newberry Road, Portland, OR 97231  
286-6339  
(Term expires March 31, 1999)

**Washington County, outside Metro boundary**

Faun Hosey  
13515 N.W. Jackson Quarry Rd., Hillsboro, OR 97124  
647-3286 (h) or 649-4643 (w)  
(Term expired March 31, 1999)

**Clark County, Washington**

Julie Garver  
1301 Officers Row, Vancouver, WA 98661  
(360) 737-2544 (w)  
(Term expired March 31, 1999)

**Metro Staff**

Charles Ciecko, Director  
Metro Regional Parks and Greenspaces  
600 NE Grand Ave., Portland, Oregon 97232  
797-1843

Ron Klein  
Metro Regional Parks and Greenspaces  
600 NE Grand Ave., Portland, Oregon 97232  
797-1774

**Liaison to Metro Council**

Councilor Lisa Naito  
600 N.E. Grand Ave., Portland, Oregon 97232  
797-1552  
"ex officio" appointed by the Metro Presiding Officer

**Citizen Applicants Received for the  
Regional Parks and Greenspaces Advisory Committee**

Metro Council District #2 (position expires 1998)

Sylvia Milne  
Hal Busch

Clackamas County outside Metro boundary (position expires 1999)

Robert Hamm (applied for District #2, but does not reside in district)

Metro Council District #6 (position expires 1998)

Brian Scott (incumbent)  
Susan Petersen

***Agenda Item 10.1***

**CONTRACT REVIEW BOARD**

**Resolution No. 98-2624, Extending a Three-Year Contract to a Five-Year Contract for Soft-Drink Dispenser Machines, Maintenance of Same, and Syrups.**

**BEFORE THE METRO CONTRACT REVIEW BOARD**

FOR THE PURPOSE OF EXTENDING A	)	RESOLUTION NO. 98-2624
THREE-YEAR CONTRACT TO A FIVE-	)	
YEAR CONTRACT FOR SOFT-DRINK	)	
DISPENSER MACHINES, MAINTENANCE	)	Introduced by Mike Burton,
OF SAME, AND SYRUPS	)	Executive Officer

WHEREAS, the Metro Washington Park Zoo budgeted \$25,000 in FY 1997-98 and \$25,000 in FY 1998-99 for the purchase of soft drink syrup; and

WHEREAS, the contract for soft-drink dispenser machines, maintenance of same, and syrups is a three-year contract; and

WHEREAS, the zoo is constructing a new food service and catering facility as part of the new Oregon exhibit; and

WHEREAS, extensive new equipment and construction coordination is being provided by the current soft drink supplier for the new facilities; and

WHEREAS, it would result in a cost savings to the zoo to enter into a five-year contract vs. a three-year contract; now, therefore,

BE IT RESOLVED,

That the Contract Review Board authorizes The Executive Officer to amend contract #904852 for soft-drink dispenser machines, maintenance of same, and syrups until February 8, 2001.

ADOPTED by the Metro Contract Review Board this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
Jon Kvistad, Presiding Officer

**AMENDMENT OR CHANGE ORDER NO. 1**

**CONTRACT NO. 904852**

This Agreement hereby amends the above titled contract between Metro and Portland Bottling Company, hereinafter referred to as "Contractor."

This amendment is a change order to the original Scope of Work as follows:

1. The maximum sum payable under this Contract is hereby increased by \$50,000 for an extended contract total not to exceed \$136,000.
2. The contract expiration date is hereby extended to 2/08/01.
3. Contractor shall furnish, install and maintain in good operating condition and appearance, the following additional machines to be located in the new restaurant/banquet facility at the Metro Washington Park Zoo, 4001 S.W. Canyon Road, Portland, Oregon 97221:
  - a. Two (2) six-head dispenser base towers with one (1) carbonator.
  - b. One (1) eight-head dispenser base towers.
  - c. Three (3) portable BIB carts with five-head dispensing units and ice bins.
  - d. All post-mix units must have the capability of dispensing soda water.
  - e. Three (3) under-counter ice bins as part of the beverage dispensing units.

Except for the above, all other conditions and covenants remain in full force and effect.

In Witness to the above, the following duly authorized representatives of the parties referenced have executed this Agreement:

**CONTRACTOR**

**METRO**

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
NAME

\_\_\_\_\_  
NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
TITLE

## CHANGE ORDER SUMMARY

CHANGE ORDER NO: \_\_\_\_\_ INITIATION DATE: 4-17-98  
CONTRACT NO: 904852 PROJECT: Soft drink dispensers maintenance & syrup  
CONTRACTOR: Portland Bottling VENDOR # 000000219  
PROPOSED BY: Tony Hendryx, Zoo Visitor Services  
PROJECT MANAGER/DEPARTMENT

### FINANCIAL IMPACT

BUDGET CODE/TITLE: 5220-120-26200 -X-X-X-1998

Original Contract Sum: \$ 86,000  
Net Change Orders to Date: \$ —  
Contract Sum Prior to this C/O: \$ 86,000  
This Change Order Request: \$ 50,000  
New Contract Sum, Post C/O: \$ 136,000

Fiscal Year — - —

Appropriation \$ \_\_\_\_\_

Contract, Paid to Date: \$ 57,483.25

Est. Appropriation Remaining: \$ 78,516.75

EFFECTIVE DATE(S): 2/9/96 - 2-8-01

### REVIEW & APPROVAL:

\_\_\_\_\_  
DIVISION MANAGER DATE

\_\_\_\_\_  
FISCAL DATE

\_\_\_\_\_  
DEPARTMENT DIRECTOR DATE

\_\_\_\_\_  
BUDGET (MULTI-YEAR ONLY) DATE

\_\_\_\_\_  
DIRECTOR REGIONAL FACILITIES DATE

\_\_\_\_\_  
LEGAL DATE

## **STAFF REPORT**

### **CONSIDERATION OF RESOLUTION NO. 98-2624 (FOR THE PURPOSE OF EXTENDING A THREE-YEAR CONTRACT TO A FIVE-YEAR CONTRACT FOR SOFT-DRINK DISPENSER MACHINES, MAINTENANCE OF SAME, AND SYRUPS)**

---

Date: \_\_\_\_\_, 1998

Presented By:           Tony Hendryx and  
Teri Dresler

### **BACKGROUND AND FACTUAL ANALYSIS**

The Zoo budgeted \$593,803 in FY 97-98 and \$791,640 in FY 98-99 for the purchase of food for resale. Approximately \$25,000 of this goes toward the purchase of soft drink syrup, which is a major component of the zoo's food service offerings.

The current contract is for a period of three years and will end February 8, 1999. The new restaurant and catering facility in the Oregon exhibit are slated to open mid-September, 1998. Four months into the operation of the new facility does not provide an adequate opportunity to evaluate the needs in relation to soft drink usage and issue a new RFP.

The current contract calls for the vendor to "furnish, install and maintain.... any additional equipment reasonably called for by the addition of new facilities...". We have a good working relationship with our current vendor, but we cannot expect them to furnish and install the equipment needed to outfit the new restaurant and catering facility if they are looking at the possibility of removing that same equipment in 4-1/2 months. Offering the vendor an additional two years would provide adequate time to evaluate our needs and give the vendor incentive to provide the additional equipment required for the new facilities.

When the zoo awarded this contract, our current vendor was the only respondent who gave us a realistic product pricing option that allowed us to maintain our established retail pricing structure. Since that time, they have been very receptive to our needs and have worked hand-in-hand developing equipment specifications for cabinetry, plumbing, and electrical in the new Oregon Project facilities.

It is to the Zoo's advantage to extend this three-year contract to a five-year contract, with an expiration date of February 8, 2001. The extension would result in an overall cost savings to the zoo by eliminating the need for any redesign of the cabinetry, plumbing, and electrical elements to accommodate another contractor's specifications.

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

The Executive Officer recommends approval of Resolution No. 98-2624.



**REGIONAL FACILITIES COMMITTEE REPORT**

**CONSIDERATION OF RESOLUTION NO. 2624, FOR THE PURPOSE OF  
EXTENDING A THREE YEAR CONTRACT TO A FIVE YEAR CONTRACT FOR  
SOFT DRINK DISPENSER MACHINES, MAINTENANCE OF SAME, AND  
SYRUPS.**

---

**Date:** May 14, 1998

**Presented by:** Councilor Naito

**Committee Action:** At its May 6, 1998 meeting, the Regional Facilities Committee unanimously recommended Council adoption of Resolution No. 98-2624. Voting in favor: Councilors McCaig, Naito and McFarland.

**Council Issues/Discussion:** Tony Hendryx made the staff presentation for the Zoo. Mr. Hendryx explained that this contract was entered into with Portland Bottling in 1996, with a February 1999 completion date. This date will be just four months after the expected opening the new food service facility at the Zoo. The current contract called for the vendor to "furnish, install and maintain.....any additional equipment reasonably called for by the addition of new facilities...", which they have done. The current end date of this contract does not necessarily allow the vendor to realize a return on this investment, nor allow the Zoo time to evaluate its needs, when it eventually rebids the contract.

In response to a committee question, Mr. Hendryx stated that this vendor was the only bidder to submit a bid that would allow costs to be held down, and has been a good supporter of the Zoo.

**REGIONAL FACILITIES COMMITTEE REPORT**

**CONSIDERATION OF RESOLUTION NO. 98-2642, FOR THE PURPOSE OF  
AMENDING THE CANEMAH BLUFF SECTION OF THE WILLAMETTE RIVER  
GREENWAY TARGET AREA REFINEMENT PLAN.**

---

**Date:** May 13, 1998

**Presented by:** Councilor Naito

**Committee Action:** At its May 6, 1998 meeting, the Regional Facilities Committee unanimously recommended Council adoption of Resolution No. 98-2642. Voting in favor: Councilors McCaig, Naito and McFarland.

**Council Issues/Discussion:** Staff presentation was made by Nancy Chase of the Regional Parks and Greenspaces Department. This resolution amends the Canemah Bluff section of the Willamette River Greenway target area to include an undeveloped 10,000 square foot parcel. This parcel is between Oregon City park land and a site previously purchased by Metro. A purchase and sale agreement has been negotiated with the owner of the property, subject to Metro Council approval. Oregon City is supportive of Metro purchase of this property.

There was no committee discussion of this item.

**REGIONAL FACILITIES COMMITTEE REPORT**

**CONSIDERATION OF RESOLUTION NO. 98-2644, FOR THE PURPOSE OF APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF CORNELIUS, FOR MANAGEMENT OF PROPERTY IN THE GALES CREEK TARGET AREA.**

---

**Date:** May 13, 1998

**Presented by:** Councilor McFarland

**Committee Action:** At its May 13, 1998 meeting, the Regional Facilities Committee unanimously recommended Council adoption of Resolution No. 98-2644. Voting in favor: Councilors McCaig, Naito and McFarland.

**Council Issues/Discussion:** Nancy Chase made the staff presentation for the Regional Parks and Greenspaces Department. In April of 1998 Metro purchased a .22 acre parcel in the Gales Creek target area. This property is adjacent to a .76 acre tract owned by the City of Cornelius. The City wants to develop the parcel for access to the Tualatin River and call it Steamboat Park. The city contributed nearly 10% of the purchase price of the property, and is committed to assuming management responsibility for it. The intergovernmental agreement clarifies those management responsibilities.

## **REGIONAL ENVIRONMENTAL MANAGEMENT COMMITTEE REPORT**

CONSIDERATION OF ORDINANCE NO. 98-742, AMENDING THE FY 97-98 BUDGET AND APPROPRIATIONS SCHEDULE BY TRANSFERRING \$150,000 FROM CONTINGENCY TO CAPITAL OUTLAY IN THE SOLID WASTE REVENUE FUND TO PROVIDE FOR INITIAL EXPENDITURES ASSOCIATED WITH THE REPLACEMENT OF COMPACTION SYSTEMS AT METRO SOUTH STATION AND DECLARING AN EMERGENCY

-----  
Date: May 13, 1998

Presented by: Councilor McFarland -

**Committee Recommendation:** At its May 5 meeting, the Committee considered Ordinance No 98-742 and voted unanimously to send the resolution to the Council with a do pass recommendation. Voting in favor: Councilors McFarland and Washington and Chair Morissette.

**Background:** The Council-adopted Capital Improvement Plan (CIP) for FY 98-99 includes the replacement of both compactors at Metro South Station. Funding for the total cost of the replacement was included in the recently approved FY 98-99 budget. The Council also approved the release of an RFP for the project.

At the time of the CIP adoption, REM staff advised that it would be proceeding with the procurement prior to the end of the current fiscal and, as a result, might have to introduce a budget amendment to cover costs that would be incurred before the end of the fiscal year. This ordinance addresses the projected need to make initial payments for the new compactors prior to the end of the fiscal year.

**Committee Issues/Discussion:** Bruce Warner, Regional Environmental Management Director, presented the staff report and reviewed the history of the compactor replacement project. He noted that staff is currently negotiating with SSI, the successful bidder on the terms of a contract. Staff estimates that an initial payment of approximately \$375,000 will be needed prior to the end of the fiscal year. Since the capital outlay portion of the Solid Waste Revenue Fund's General Account has a remaining balance of only \$359,000, the proposed ordinance would transfer an additional \$150,000 from the Renewal and Replacement Account Contingency (\$4.2 million) to capital outlay to cover the cost of this payment and additional budgeted capital outlay work for the remainder of the fiscal year.

Warner explained that the overall cost of the replacement of the compactors will not exceed the original estimate of \$1.5 million. Adoption of the ordinance will simply move the initial portion of the expenditure to the current fiscal year, while reducing the expenditure in FY 98-99 by a corresponding amount.

May 14, 1998

Mike Burton

Endangered Species Act Briefing before the Metro Council

### **Introduction**

By now, you have heard or read something about the implications on the region of the listing of steelhead under the Endangered Species Act. I want to give you a brief update on the listing and initial efforts underway to respond.

### **Endangered Species Act Overview**

Federal regulation that mandates protection and recovery for species in immediate and near-immediate danger of extinction.

### **What was listed and who is the responsible federal agency?**

- On March 13, 1998, Steelhead trout were listed as a threatened species in the Lower Columbia River Evolutionarily Significant Unit (ESU) which includes the Columbia River and its tributaries from Longview upstream to Hood River and the Willamette River and its tributaries upstream to Oregon City. Consequently, the entire Portland/Vancouver metropolitan area will be affected by this action.
- The National Marine Fisheries Service (NMFS) is the federal agency charged with the listing and recovery of anadromous fish.
- NMFS is currently considering listing other species including chinook salmon, and cutthroat trout that could affect even more watersheds including the Willamette River above the falls in Oregon City. Listings also expected in Seattle metropolitan area.

### **Why does NMFS list a species?**

- Present or threatened destruction, modification or curtailment of its habitat or range;
- Over-utilization for commercial, scientific or educational purposes;
- Disease or predation;
- Inadequacy of existing regulatory mechanisms; and
- Other natural or manmade factors affecting its continued existence.
- Estimated that there has been a 90% reduction in the Steelhead population in the Lower Columbia River ESU.

### **What does NMFS require when a species is listed?**

- Determination of habitat that is critical to the recovery of the species (i.e. breeding, feeding and sheltering areas)

- I anticipate critical habitat will include Lower Bull Run River, mainstem Willamette, Tryon Creek and Johnson Creek.
- Consultation on the impact of any activity that includes federal elements (e.g. transportation activities with federal funds, low-income housing, dams) and non-federal activities including land use actions;
- A prohibition on any activity (including issuing permits) that results in a “take” of the listed species;
- A “take” includes anything that harms individuals or habitat of the species.

**Are there any exceptions to these requirements?**

- Incidental Take Permits can be issued if the take is incidental and there is an approved mitigation plan for the take;
- Under Section 10 of the ESA, these mitigation plans are called Habitat Conservation Plans and they can be written for individual project or whole programs.

**Metro’s Role**

**Charter Preamble:** “... planning and policy making to preserve and enhance the quality of life and the environment for ourselves and future generations...”

**Growth Management Services Department: Mission Statement** - “The department’s mission is to provide leadership in forming a regional consensus on a model growth management system that preserves and enhances the livability of the metropolitan region.”

**Regional Parks and Greenspaces Department: Mission Statement** - “Ensure a vital green heritage within our regional community where people and nature can live in harmony.”

**Regional Framework Plan: Title 3 - Intent** - “To protect the beneficial water uses and functions and values of resources within the Water Quality and Flood Management Areas by limiting or mitigating the impact on these areas from development activities, protecting life and property from dangers associated with flooding and working toward a regional coordination program of protection for Fish and Wildlife Habitat Areas.”

**As NMFS struggles with its first major urban listing, we have a unique opportunity to help shape the recovery plan and highlight Metro’s role in the region. Metro has at least three important roles in the Steelhead recovery effort:**

**1) Identify Metro activities that potentially impact Steelhead.**

**Examples of opportunities include:**

- Regional Framework Plan
- Title 3 - the first modest step towards addressing deteriorating water quality

- Implementation of the Open space, parks and streams bond measure has already protected over 3,200 acres around the region including approximately 20 miles of stream and river frontage
  - Education efforts aimed at children and adults (Salmon Festival/Oregon Exhibit)
  - Nationally recognized restoration and education grants program
  - Public support for a regional vision that maintains quality environment
- Examples of potential negative impacts that need analysis**
- Urban reserve planning efforts that could add pressure on watersheds
  - Operation and maintenance of Metro facilities including parks and the zoo pesticides, removal of native vegetation, wateruse

## **2) Ensure Regional Coordination - Programmatic Approach**

- Watersheds don't adhere to political boundaries
- Local, state, bi-state and federal coordination needed to ensure comprehensive response, avoid duplication, ensure consistency

## **3) Communication**

- personal behavior affects steelhead - water use, development, lawn care, transportation, etc.
- Metro can help develop a clear, consistent message and help disseminate information to give local governments and citizens tools they need

## **Next Steps**

Many people at many levels of government and the private sector are tuning in:

- City of Portland
- Chamber of Commerce
- Governor - Willamette Restoration Plan
- Seattle Tri-County Initiative
- Federal Agencies struggling to deal with urban listing

1) I have formed an in-house Steering Committee with representatives of every department and the Council to get up to speed ASAP.

2) Metro will sponsor a regional briefing and forum on June 23 at the Hilton Hotel to brief elected officials, city managers, service providers and interested citizens in the region on the listing.

Two goals:

- Ensure that everyone in the region is starting with the same base of information
- Initiate a workplan that identifies problems for salmon, strategy for recovery and long-term funding plan

3) I've requested staff to consider the composition of a small science-based group that could identify potential components of a recovery effort in a priority ranking. This group

could identify the "best hope" streams in the region and suggest strategies to restore or enhance these resources so that they might once again support anadromous fish.

4) Considering the likelihood of additional ESA listings in the Willamette basin and the Governor's initiative to clean up the Willamette, it is important that Metro be involved with the Willamette Basin Task Force. The Governor recently invited me to serve on his strategic salmon group. I will regularly report back to you as issues of interest arise.



**BRIEFING PACKET FOR CITY COUNCIL ON THE  
STEELHEAD LISTING UNDER  
THE ENDANGERED SPECIES ACT**

**Prepared for the City Council Work Session  
5 May 1998**

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## **I. INTRODUCTION**

### **The Briefing Packet**

This briefing packet will provide the reader with a very basic overview of the issues associated with the March 13th threatened species listing of the steelhead trout in the Columbia River. The listing was made by the National Marine Fisheries Service (NMFS) pursuant to the federal Endangered Species Act (ESA).

The packet includes a brief summary of the ESA, a description of the steelhead trout - its life history and habitat within the Lower Columbia River, an overview of the likely impacts of the listing on city operations and a summary of policy issues for City Council consideration. This briefing packet is not exhaustive but it will provide the reader with a good overview of the ESA steelhead listing and its implications for the City of Portland.

In addition to the main text, this packet contains a number of helpful appendices that provide background material to the text. Appendix E is particularly important as it is a summary of terms, acronyms, and their definitions that will help the reader better understand the text. Also included are appendices on the fisheries activities undertaken by the Water Bureau over the past year, the legal implications of the ESA, a list of the members of the City's Steelhead Steering Committee, and a history of the ESA.

### **Overview of the Endangered Species Act**

The Endangered Species Act (ESA) provides for the conservation of species which are in danger of extinction throughout all or a significant portion of their range. The process used to protect and recover these species is a fairly complicated series of steps taken between the listing agency (either National Marine Fisheries Service (NMFS) or the U.S. Fish & Wildlife Service) and affected parties. Generally, the U.S. Fish and Wildlife Service (FWS) coordinates ESA activities for terrestrial and freshwater species, while NMFS is responsible for marine and anadromous species.

### ***The Listing***

The first step in this process of protection is the listing of a species as threatened or endangered. An individual or organization may petition to have a species considered for listing under the act as endangered or threatened. An endangered species is a species in danger of extinction throughout all or a significant part of its range, while a threatened species is in danger of becoming an endangered species in the foreseeable future. The listing of a species qualifies it for increased protective measures. Within 90 days of a listing petition's filing, an agency decision must be made on whether to reject the petition, or accept it and conduct a status review of the species. NMFS or FWS can also initiate a status review of a species without a petition for listing. If a status review is conducted, it is initiated with a public solicitation of information and data relevant to the population size and life history of the species.

A species must be listed if it is threatened or endangered due to any of the following five factors:

- present or threatened destruction, modification, or curtailment of its habitat or range;
- over-utilization for commercial, recreational, scientific, or educational purposes;
- disease or predation;
- inadequacy of existing regulatory mechanisms; and
- other natural or manmade factors affecting its continued existence.

The ESA prohibits the consideration of economic impacts in making species listing decisions. The listing agency is required to use the best scientific and commercial data available in making listing determinations. A maximum one-year time limit is placed on making the decision to propose a species for listing. If the agency proposes a listing, public comments are again solicited on the proposed listing, and a final decision must be made within one year after the issuance of the proposal.

Concurrent with the final listing decision, critical habitat necessary for the continued survival of the species may be designated. For this decision, economic impacts must be considered. If information is insufficient to designate critical habitat at the time of final listing, the agency may take an additional year to identify it.

#### ***Post-Listing***

Once a species is listed there is a determination of the habitat that is critical to the recovery plan. In Portland we are anticipating that these areas for steelhead trout will include Lower Bull Run River, mainstem Willamette, and probably Tryon and Johnson Creek. The listing agencies then develop recovery plans which identify conservation measures to be initiated to improve the species' status. In addition, Section 7 of the ESA requires all Federal agencies to use their authorities to conduct conservation programs and to consult with the listing agency concerning the potential effects of their actions on any species listed under the ESA. These consultations occur on an on-going basis between Federal action agencies and the listing agency to avoid, minimize or mitigate the impacts of their activities on listed species. They usually include a biological assessment done by the Federal action agency which the listing agency uses to issue a biological opinion finding of "jeopardy" or "no jeopardy" for the project or activity.

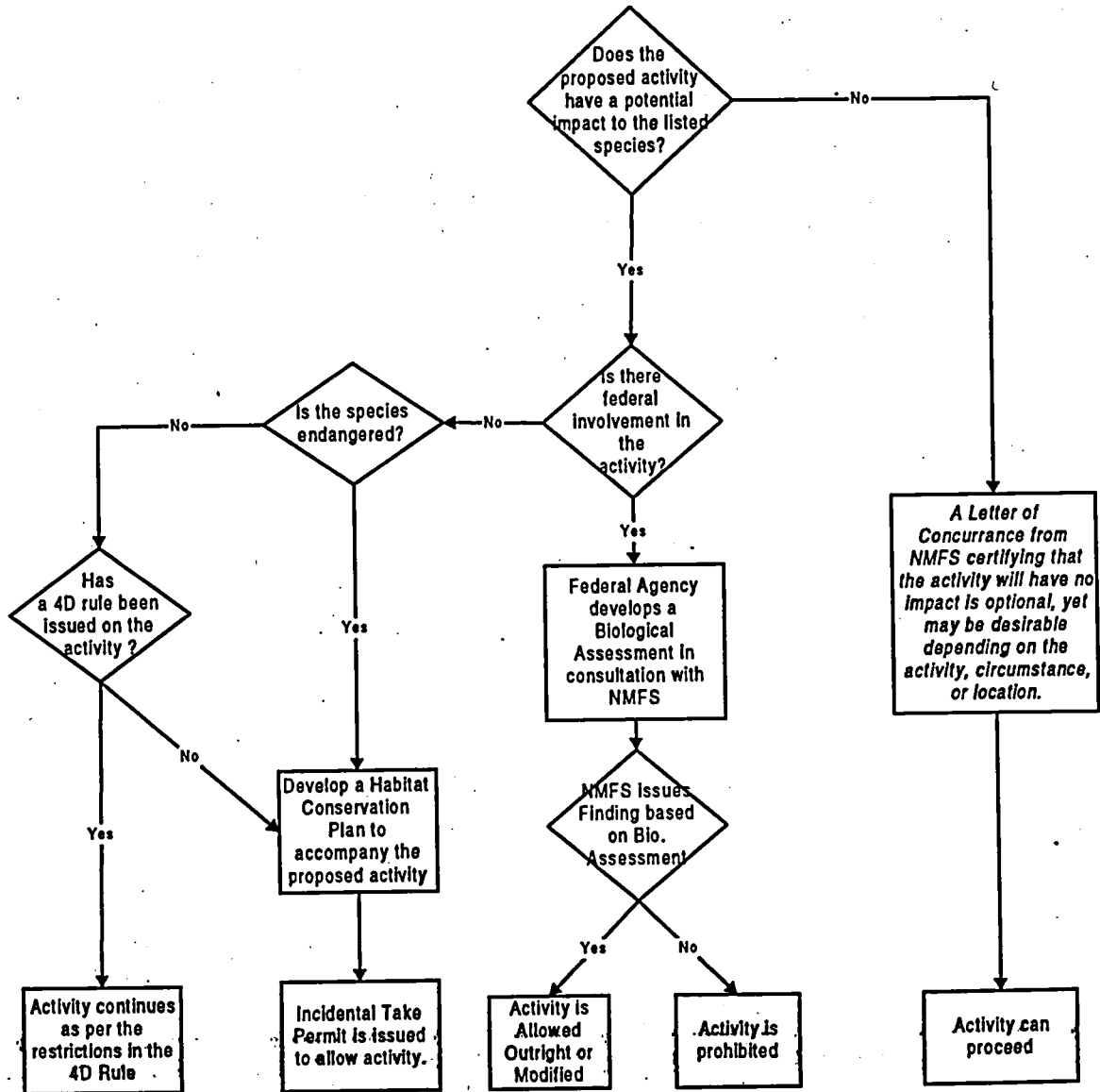
In addition, the listing agency reviews any activities, Federal or non-Federal, which may affect species listed under the ESA. Section 9 of the ESA prohibits a "take" of such species. A "take" of a listed species includes both physical harm and harassment of individual plants or animals and significant habitat modification or impairment of behavior essential to the survival of the species.

If an activity is going to incidentally affect a threatened species, the interested party can apply for an incidental take permit (ITP) under Section 10 of the ESA (NB - this permit process does not apply to endangered species). These permits are issued for specific

normally lawful activities not aimed at a listed species taking yet which may have an unintentional effect or potentially take a listed species. The incidental take permit must show how the incidental take will be mitigated. This mitigation plan is prepared by the permittee and is referred to as a habitat conservation plan (HCP). Once the HCP and the permit are approved by the listing agency, a "no surprise" policy protects the permittee from any new additional regulations or requirements.

Section 4(d) of the ESA allows exemptions to this incidental take permitting process for threatened species. This section allows the listing agency to establish certain rules (called the 4(d) Rules) to allow activities that may impact threatened species, such as restoration efforts or monitoring and research, without an ITP.

# NMFS Permitting/Approval Processes under the Endangered Species Act



## **II. INFORMATION ON STEELHEAD TROUT**

### **Steelhead Listing for the Lower Columbia River Evolutionarily Significant Unit**

Steelhead were listed as a threatened species in the Lower Columbia River evolutionarily significant unit (ESU) on 13 March 1998. The Lower Columbia River ESU for steelhead extends from approximately Scapoose on the west to Hood River on the east. This includes both the Willamette River and its tributaries, up to the Willamette Falls, and the Sandy River and its tributaries, including the Little Sandy and the Bull Run. The City has operations in both the Willamette and the Sandy that affect steelhead and their habitat. The issues in the two watersheds are different. In the Sandy the concern is principally water drawdowns and blockage of fish passage due to water supply operations at the Bull Run Dams. In the Willamette and its tributaries the problems are mainly habitat loss, degradation, and blockage of fish passage by structures such as culverts.

### **Steelhead Issues**

Steelhead trout in the Lower Columbia River Evolutionarily Significant Unit (Scapoose to Hood River) were listed as a threatened species this March under the Endangered Species Act (ESA). This is the first formal statement of the seriousness of the state of the steelhead in the watersheds most heavily used by the City of Portland - the Bull Run River and the Lower Willamette River (up to Oregon Falls), including its tributaries. Declines in steelhead populations result largely from human impacts on the environment, including forestry, agriculture, industrial activities, urbanization, dams, and fishing. The City is involved directly or indirectly in all of these activities.

In addition to the steelhead listing, other salmonid fish and steelhead areas have been proposed for listing. The species proposed for future listings include cutthroat trout and Chinook and chum salmon. These species have different habitat requirements than the steelhead.

### **Steelhead Life History**

The National Marine Fisheries Services (NMFS) implements the response to the ESA listing for steelhead. NMFS has this responsibility due to their regulatory authority over marine and anadromous fish species. Steelhead are anadromous because they reproduce and spend a portion of their time in fresh water before migrating to the ocean where they continue to mature before returning to fresh water to spawn. Low streamflows, high water temperatures, road culverts, and excessive water turbidities are some of the factors that can impede adult steelhead on their migration.

Steelhead currently use the Willamette and Bull Run rivers, and Johnson and Tryon creeks in the Portland area. Adult steelhead swim up the Willamette River and head for the upper stream reaches (Johnson and Tryon creeks) for spawning; the lower Bull Run river is also used for spawning and rearing of juvenile steelhead.

Spawning success is affected by a number of water and habitat quality issues. Altered streamflows, loss of spawning gravels availability, and sedimentation from eroding streambanks all negatively affect spawning habitat. Water quality can be a concern due to decreased water oxygen concentrations and the presence of toxic contaminants. Spawning issues are particularly important in this species because, unlike other salmonids, the steelhead can spawn more than once.

Juvenile steelhead rear in Portland streams for 1-3 years before migrating to the ocean. Habitat and water quality conditions during this period are critical to the survival of the fish. Juvenile steelhead can migrate great distances up- and downstream in our local streams to use various habitats and to search out food or resting areas. Therefore, migration barriers (e.g., culverts) can affect both steelhead migration and juvenile survival.

Steelhead rearing can be compromised by low water and habitat quality as well. Alterations of the riparian and floodplain areas can cause high water temperatures and low food availability. Toxic contaminants and bacteria can also adversely affect development of juvenile steelhead.

#### **Water Quality Issues That Affect Steelhead**

Most of Portland's streams and rivers have poor water quality which affects steelhead survival. The Willamette mainstem, Johnson Creek, Fanno Creek, Tryon Creek, and the Columbia Slough are all listed as "water quality limited" under the State's 303(d) list. The three streams of primary concern for steelhead use in the Lower Willamette area are the Willamette mainstem, Johnson Creek, and Tryon Creek.

The reasons the City's major streams are currently listed (1996 listing) as "water quality limited" are summarized below:

Stream	Water Quality Limitations
Willamette Mainstem	bacteria, temperature, toxic contaminants, fish skeletal deformities
Columbia Slough	bacteria, algal growth, dissolved oxygen, nutrients, pH, temperature, toxic contaminants
Johnson Creek	bacteria, temperature
Tryon Creek	temperature
Fanno Creek	algal growth, dissolved oxygen, bacteria, temperature, nutrients

The water quality limitations in the Willamette River, Johnson Creek, and Tryon Creek are parameters that adversely affect steelhead. These water quality problems arise from several basic urbanization factors. While these issues are not unique to the City of Portland, the fact that we share our streams with steelhead means we need to better understand and address these issues.

First, human activities in these watersheds tend to increase the quantity of stormwater reaching our streams while simultaneously decreasing stormwater quality. This results in



more sediments reaching our streams and this stormwater runoff carries many of the contaminants of concern (bacteria, toxics, nutrients, and biochemical oxygen demand). Second, as development occurs in watersheds, particularly in the flood plains and along riparian areas, steelhead habitat is removed or compromised by removal of riparian trees, loss of woody debris in the streams, and wetland fill. Finally, we use our streams as drainage ways for our stormwater. The increases in stormwater quantity discharged into our streams causes a number of steelhead habitat problems including scouring of the streambed which ruins spawning and rearing habitat, increased bank erosion which adds to the silting in of spawning beds, and culvert construction for improved water capacity which can block steelhead passage.

### III. CURRENT CITY PRACTICES AND OPERATIONS THAT IMPACT STEELHEAD

Our activities in the City of Portland can affect steelhead in a positive or a negative way. We have a number of City policies and practices that should support steelhead protection and recovery. Examples of these positive activities include voluntary programs with private businesses; educational programs; and our Sustainable City Principles. In addition, we have a number of practices and operations that adversely affect steelhead. Examples of these include the dams on the Bull Run, the impact of stormwater on water quality, and in-stream obstacles to fish passage.

#### Things We are Already Doing

The Goal of the Sustainable City Principles, as adopted by City Council in November 1994, includes the following language:

*The City of Portland will promote a sustainable future that meets today's needs without compromising the ability of future generations to meet their needs, and accepts its responsibility to:*

- *Support a stable, diverse, and equitable economy;*
- *Protect the quality of the air, water, land, and other natural resources;*
- *Conserve native vegetation, fish, wildlife habitat, and other ecosystems; and*
- *Minimize human impacts on local and worldwide ecosystems.*

This shows a clear direction from the Council to support the steelhead that are now threatened with extinction in our streams. The Council's adopted language goes on to discuss in more detail how this goal will be met by City actions. Many of them are protective of natural resources, such as the steelhead.

In support of these principles, the City is engaged in a number of programs that have direct or indirect positive effects on our water quality and habitat that is important to steelhead. These include, but are not limited to:

- A number of educational and outreach programs such as:
  - ⇒ The Clean River Works program is a BES public outreach and involvement campaign to involve the public in BES activities that help clean up our streams.
  - ⇒ The Energy Office's Green Neighborhood Network addresses environmental issues in the central northeast Portland area.
  - ⇒ The Energy Office's Global Action Plan's Ecoteam Program works with neighborhood groups on environmental issues.
  - ⇒ The Energy Office's Block-by-Block program provides information on, among other things, water conservation, natural gardening, and downspout disconnections.
  - ⇒ BES also funds the Stewardship Program in partnership with PSU. This program provides small grants for projects to enhance our watersheds or to educate citizens about water quality.

- ⇒ The BES Watershed Program helps support volunteer environmentally positive activities in watersheds. This includes support for local watershed councils.
- ⇒ The downspout disconnect program is a cornerstone activity in BES' CSO removal program. This program encourages citizens to disconnect their roof downspouts to reduce the amount of stormwater entering the City's combined system.
- Several business assistance and recognition programs, such as:
  - ⇒ The BES Pollution Prevention (P2) program offers on-site and information and referral assistance to businesses on pollution prevention opportunities.
  - ⇒ Annual BES pollution prevention awards recognize businesses for accomplishments in pollution prevention and stormwater management.
  - ⇒ The Business, Industry, and Government (BIG) program offers technical assistance to large water users to help them reduce water consumption..
  - ⇒ The Businesses for an Environmentally Sustainable Tomorrow (BEST) program is a partnership between Energy, BES, PDOT, and Water that offers assistance and recognition in environmental issues to Portland's businesses.
- The Bureau of Transportation Bicycle Program is actively involved in bike pathway construction and provides support and education for citizens and business.
- The Bureau of Parks and Recreation has an Urban Forestry Management Plan which includes measures for protecting and expanding the urban forest and re-establishing native landscape.
- The Planning Bureau has set out E-zone and Greenway requirements along most of the urban streams to help protect riparian habitat.
- BES has an extensive riparian and wetland revegetation program that works with businesses and other City Bureaus to improve watershed conditions.
- BES is substantially reducing the number of CSO events to the Willamette River and the Columbia Slough.

#### **Things That Will Likely Require Further Action**

Unfortunately, all that we do does not have a positive impact on steelhead and their habitat. There is also a set of activities that could be either beneficial or detrimental to steelhead and their habitat depending on how they are implemented. Frequently it is less expensive and/or quicker to use the less beneficial approach to these activities. Currently, the City does not screen their project and operations choices through a steelhead protection test. Therefore it is likely that many of those activities that have the potential to assist the steelhead are not meeting that potential.

The chart on the following two pages is a summary of information provided by all of the City's Bureaus on their on-going activities. These activities are listed in the lefthand column and areas for potential impacts on steelhead are listed in the columns to the right. These impacts are divided to show which steelhead habitat parameter would be affected.

### Activities that Could Adversely Affect Steelhead or Their Habitat

Activity	Lead Bureau	Water Quality	Habitat Access	Habitat Conditions	Flow or Hydrology	Watershed Conditions
Eastbank Park project	PDC, Parks, PDOT	X		X		X
North Macadam Greenway	PDC	X		X		X
Lents Revitalization Plan	PDC	X		X	X	X
Columbia Slough Trail Project	PDC			X		X
Fire and Haz. Mat. response	Fire	X				
Dredging at sea wall	Fire	X		X		
Maintenance of Parks areas	Parks	X		X		X
Permits for right of way trees	Parks			X		X
Urban Forest management	Parks	X		X		X
Maintenance of storm systems	BES, Parks, PDOT	X	X	X	X	X
Natural areas management	Parks	X		X	X	X
Management of non-park areas, ex: moorages & Ross Island	Parks	X		X		X
General planning & permitting	Planning, Buildings	X	X	X	X	X
Permitting of Ross Island uses	Planning	X		X		
Environmental overlay zones	Planning	X	X	X	X	X
Greenway overlay zones	Planning	X		X		X
Development permits	Planning	X	X	X		X
SW Portland community plan	Planning	X	X	X	X	X
Tree protection code	Planning	X		X		X
Operation of Bull Run Dams	Water	X	X	X	X	X

Installation of water mains and sewer lines in stream channels	Water, BES	X	X	X	X	X
Release of chlorinated water	Water	X				
Management of hydrant permits	Water	X			X	
Review of storm facilities for new development	BES	X		X	X	X
Review and enforcement of erosion control plans	BES, Buildings	X		X		
Installation of sewer lines in stream channels or riparian areas	BES	X	X	X	X	X
Construct and maintain municipal drainage system (combined, sanitary, and storm)	BES, BOM	X		X	X	X
Management POTWs	BES	X				
Public works permits	BES	X		X		
Discharge permits to storm and sanitary sewer system	BES	X				
Permits for drainage at new development	BES	X		X	X	
Erosion control from road construction and maintenance	PDOT	X		X		X
Road construction in riparian areas	PDOT	X	X	X	X	X
Road and parking lot maintenance	BOM, Parks	X	X	X	X	
Grading and clearing permits	Buildings	X		X	X	X
Building permits	Buildings	X		X	X	X
Private street permits	Buildings	X		X	X	X
Inspection of construction sites	Buildings	X		X	X	

### **Examples**

The following examples may help to better understand the impacts of some of these issues.

- The Eastbank Park project includes a floating walkway along part of the route. Any floating structure in a stream that is used for steelhead passage or rearing habitat can improve conditions for other fish that prey on steelhead. Therefore, if this project does include a standard floating walkway, it could negatively impact steelhead. In contrast, design modifications that provided less cover for predatory fish or mitigation for increased steelhead habitat in other areas could help alleviate this problem.
- Infrastructure construction in or near streams can be problematic due to both design and construction impacts. Stream crossings by roads and utilities may block fish passage due to things such as culvert design or pipe layout. Obviously, proper design choices can mitigate such problems. Construction in general is always a concern because of the increased potential for erosion which then increases turbidity and contaminants in streams. However, many tools are available for controlling erosion so construction does not have to have a negative impact on water and habitat quality.
- Alternatives for the Combined Sewer Overflow reduction program include the current approach which emphasizes addressing one problem (sanitary waste) at the end of the system. However, there is also the potential to substantially reduce overflows by addressing many watershed/stormwater related problems in the Willamette and its tributaries. The watershed alternative would have a significantly larger impact on steelhead habitat throughout the City compared to the end-of-the pipe solution which addresses only the mainstem.

Many of the activities that negatively affect, directly or indirectly, water and habitat quality are common municipal practices in many parts of the nation. However, we have both the good fortune and responsibility of having salmonid species in our waterways. This adds to our challenge of managing an economically viable and environmentally sustainable city.

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#### **IV. POLICY CHOICES FOR CITY COUNCIL'S RESPONSE TO STEELHEAD LISTING**

There are four basic policy choices the City Council will need to make in response to the steelhead listing.

1. What basic strategy does the Council want the City to take in discussions with NMFS? There are three possibilities - a global, comprehensive, integrated, programmatic approach, a project-by-project approach, or some combination of a programmatic and project approach.
2. Where on the continuum from doing the bare minimum to doing everything possible to recover steelhead and other potentially endangered fish species should the City place its benchmarks?
3. What role does the Council want the City to play in the region's response to the steelhead listing?
4. And finally, how would the Council define its goals and objectives for involving the public in the development of the City's response to the steelhead listing?

The direction being sought at this point is best described as "general" since too little information is available at this point to support detailed analysis of alternatives and their implications for the City and its citizens. The Council's direction at this point will aim the City working group and help them develop more detailed information for further consideration by the Council in the coming months.

##### **Programmatic Vs. Project Specific Approach to NMFS**

Taking a programmatic approach in response to the steelhead listing would mean developing a comprehensive, integrated, consistent, city-wide plan covering all our on-going and planned activities. The development of such a comprehensive program also requires an integrated City strategy that would guide ongoing operating and maintenance activities as well as development and land use strategies and policies. A project specific approach would mean consulting with NMFS on each project independently.

A programmatic approach takes more work to create but probably takes less work to implement. A project-by-project approach is likely to give faster resolution to pending projects or issues, but may result in more duplication of effort by continually requiring the education of City staff to deal with NMFS staff on specific projects and issues. In addition, it does not provide any integration of mitigation efforts between projects.

Adopting a programmatic approach to response planning, does not have to mean "one size fits all." For example, the City could adopt a dual track strategy of addressing many, if not most, City issues programmatically while allowing some issues to proceed through



project specific review, especially if criteria for being included on one track or the other can be quickly developed and agreed upon by City staff and the Council.

In considering how to proceed, having an understanding of what kind of City activities are likely to be affected by the steelhead listing is important. What the working group has so far developed is a preliminary inventory of those activities the City conducts that may affect steelhead or their habitat (See Current City Practices Section, pp. 8-12.). This inventory indicates that many of the City's ongoing operating and maintenance activities either do or could adversely affect steelhead or their habitat. In addition, the listing highlights the potential impacts of many of the City's development plans and activities. These potential impacts will require a reassessment of some of the current development approaches for a variety of major and minor projects and may necessitate some design modifications.

In spite of how this preliminary analysis looks, it is important to note that the "take" prohibitions have not yet been written by NMFS for the Lower Columbia steelhead listing. We anticipate NMFS will establish the "take" prohibitions under Section 4 in the very near future. In addition, 4(d) Rules will also be established defining exceptions to those take prohibitions. Until NMFS has issued its take rules it will be very difficult to fully understand the degree to which City activities will be affected by the listing.

It may be possible for the City to help develop these 4(d) Rules in conjunction with NMFS by committing to a comprehensive proposal to avoid or minimize takings. In several conversations with City of Portland staff, NMFS staff have indicated that they recognize they are heading into new territory with this listing and will be looking to us to help them learn about our impacts and the actions we might take to mitigate them.

NMFS' lack of knowledge and experience working in an urban environment creates an opportunity. It is the perfect situation in which a city or region that wants to "do more than the minimum required" could create a productive partnership with NMFS staff and work toward a model solution. It is this potential that seems to be worth exploring more fully.

It is recommended that the Council direct the working group to further explore how a programmatic approach could be developed, how NMFS would respond to such a proposal, how the time required to develop such a proposal would fit with the City's needs, what resources and staff commitments would be necessary to create and implement a programmatic approach, and whether there are opportunities to apply a programmatic approach regionally.

#### **Minimal Vs. Active Response**

Some minimal level of response from the City will be required by the NMFS as part of the 4(d) Rule that will define what activities constitute a take and therefore must be prohibited. To be in compliance with the ESA, the City need only avoid those activities

prohibited, except where federal funds or permits are involved. However, based on the very high degree of support by citizens of Portland for environmental protection, doing more than the minimum required would seem likely to receive considerable popular support. Further, doing more than the minimum also creates an opportunity to bring together Portland's citizen, business, industry, development, and government interests to focus on the issue. By involving all of the citizens, there is more certainty of effectively addressing the problem while still providing for the economic vitality of the city.

It is recommended that the City "aim high," and commit itself to fully exploring the actions necessary to support steelhead recovery, not just survival at its current depleted levels. Adopting this general policy direction at this point would mean that the working group would focus on identifying and evaluating the City's opportunities for improving conditions for steelhead rather than limiting its efforts to simply avoid making their situation worse. Working toward steelhead recovery will be most successful if the City also uses both a regional and "programmatic" approach to the problem. This combination of approaches is more likely to result in identifying those activities with synergistic effects and those that invest in high yield outcomes, whether or not they are physically located within the city limits.

#### **Responding on a Regional Vs. City of Portland Only Basis**

One key challenge is finding a way to balance the City's daily operations and assuring that it will be "in compliance" with federal requirements. Using the programmatic approach described above will help by identifying opportunities for synergy and increased cost effectiveness within the City's program. In addition, a regional approach, working with other government agencies around the metro region, would further improve this synergy by partnering with opportunities outside our city boundaries. Regional consistency and fairness would also be improved as the result of a more regional approach to the listing. Finally, because steelhead use the entire metropolitan area, a regional approach would provide a more stable and consistent environment for their protection and recovery.

Some obvious difficulties of a regional approach are that many more people will need to be brought along in the process. The number of jurisdictions and interest groups increases, probably exponentially, the likelihood of more competing needs, values, and time lines. There will, therefore, be a greater need for leadership that can effectively bring people together to address these issues.

However there are some obvious opportunities inherent to a regional approach. These opportunities include a larger regional area in which to develop a more interesting and significantly more successful steelhead protection plan. In addition, the duplicative development of "best management practices" for certain kinds of ongoing urban activities such as development standards, riparian protection policies, land use policies, street, sewer, and water operations, can be avoided. And finally, a consistent and common message can be developed and communicated to the region's citizens about the nature of the problem and the region's response.

From the City of Portland's perspective, a regional focus presents the kinds of opportunities for creative approaches to problem solving, such as those Commissioner Sten has been discussing with the Port and state and federal regulators regarding the CSO program for the Willamette. There seems to be genuine interest by other local governments in a regional approach as well. This was illustrated by the response Governor Kitzhaber received in a meeting with local elected officials on April 23<sup>rd</sup>. At that meeting, representatives from the Cities of Tualatin, West Linn, Portland, Metro, Washington County, and the Port of Portland supported the idea of working together in response to the listing.

If the Council supports a regional approach, providing positive leadership to organize and facilitate such an effort in the region will be important. It seems there are willing and interested partners, but it is also clear that the parties are looking around to see who can bring them together and how they can work together. Political leadership in this process is important and necessary in order to develop an effective framework for action. Whatever structure gets established needs to have ongoing political leadership, a strong policy focus, and the technical support needed to assess issues and evaluate options.

It is recommended that the Council work within a regional framework and provide the political leadership to assure the process is timely and efficient. Adopting this general policy direction at this point would mean that the working group would focus on identifying and evaluating the City's opportunities for working with and leading the regional response to the listing.

#### **Public Participation in Developing the City's Response to the Steelhead Listing**

The steelhead listing has the potential to affect every resident of the City of Portland and the region. Just a few examples of potential impacts on citizens would include:

- changes in water and sewer rates and other costs;
- changes in the City's ability to follow-through on existing plans and projects, particularly those with federal funding or permitting issues; and
- by the need for the public to change their own individual practices.

Therefore, involving the public in planning the response is required to make this a successful public program.

The working group has so far focused only on the preliminary assessment of the potential impacts of the listing on the City's activities and plans and would welcome input from City staff on opportunities to build on existing outreach efforts. In addition, direction is needed from the Council on the goals and objectives the City should try to achieve in creating public education, information, and involvement programs related to the steelhead listing. This direction will enable the working group to prepare approaches to public participation for further consideration by the Council.

## **APPENDIX A**

### **HISTORY OF THE ENDANGERED SPECIES ACT OF 1973**

- 1973      The Endangered Species Act (ESA) was signed on December 28, 1973, (replacing the Endangered Species Conservation Act of 1969). The ESA's ultimate purpose is to conserve the Nation's natural heritage for the enjoyment and benefit of current and future generations. One of the major new provisions of the 1973 act was to make a federal offense of any act that could harm a species before it was in critical danger of extinction, i.e. the establishment of the threatened listing.
- 1978      Reauthorization and amendments of ESA to allow consideration of economic factors in determining critical habitat.
- 1982      Reauthorization and amendments of ESA to:
- allow issuing incidental take permits;
  - establish time tables to ensure listing petitions are dealt with expeditiously; and
  - establish procedures for shortening the consultation process.
- 1988      Reauthorization and amendments of ESA to:
- allow improved procedures for the development and implementation of recovery plans;
  - require monitoring of de-listed species for five years following their de-listing; and
  - allow increases in the maximum penalties for violating the ESA.
- 1992      Authorization of the ESA expires and implementation continues through annual appropriations for the Departments of Commerce and the Interior.
- 1994      "No Surprises" policy adopted by listing agencies to protect Section 10 incidental take permit holders from new, additional regulations governing listed species once their permit is accepted by the listing agency.
- 1995      Moratorium placed by Congress on further species listings and designation of critical habitat under the ESA until reauthorization of the Act occurs.
- 1996      Moratorium of listings and habitat designations is lifted.
- Present      Implementation of the ESA continues without reauthorization.

## **APPENDIX B**

### **PORTLAND BUREAU OF WATER WORKS UPDATE**

#### **Preparations for Steelhead Listing as a Threatened Species in the Bull Run Watershed**

##### **Past Actions**

- The Water Bureau started a preliminary assessment of the fisheries resources and habitat needs for the Bull Run Watershed in 1994. From the assessment, the Water Bureau developed a range of alternatives for improving fish habitat conditions. This assessment will be a key component in our discussions with NMFS and other regulatory agencies involved in the Bull Run watershed.
- The Water Bureau hired a fish biologist in 1996 to deal with developing fisheries, Endangered Species Act (ESA), and Clean Water Act (CSA) issues. The addition of the fisheries biologist has and will continue to be a critical help in working both in the Bull Run and in the urban streams that are steelhead habitat.
- Since 1996, the Water Bureau has funded and started two technical studies on the steelhead's habitat needs:
  - ⇒ Spawning/gravel surveys in the lower Bull Run River
  - ⇒ Juvenile fish surveys to determine steelhead productivity
- In 1997, the Water Bureau and the Bureau of Environmental Services developed eight steelhead conservation measures for inclusion in Governor Kitzhaber's steelhead supplement to the Oregon Salmon Plan:
  - ⇒ Flow augmentation or gravel supplementation for spawning steelhead trout in the lower Bull Run River;
  - ⇒ Participation in the Sandy River Basin Fisheries Working Group;
  - ⇒ Riparian and in-stream restoration in Portland's urban streams;
  - ⇒ Wetland restoration;
  - ⇒ Water conservation;
  - ⇒ Combined sewer overflow reduction;
  - ⇒ Stormwater quality improvement; and,
  - ⇒ Environmental education.

##### **Current Activities**

- Since 1995, the Water Bureau has actively served on several multi-agency committees for the development of fisheries management direction for the Sandy/Bull Run Basin:
  - ⇒ Technical Advisory Committee for the Oregon Department of Fish and Wildlife Sandy River Fish Management Plan
  - ⇒ Cooperative Advisory Committee for the Sandy Plan

⇒ Sandy River Fisheries Working Group to discuss technical fisheries issues

- In January (1998), the Water Bureau initiated a dialogue with NMFS (National Marine Fisheries Service) since they regulate salmon and steelhead under the ESA. The Water Bureau operations do negatively affect steelhead in the Bull Run Watershed, and we are in violation of the ESA.
- We are also communicating with the U. S. Fish and Wildlife Service. We have briefed those agencies so they would understand our water supply operations, the fisheries issues in the Bull Run Basin, and the difficulties with providing water for people and fish.
- Since we also have CWA issues in the lower Bull Run and Sandy rivers, we will also coordinate with Oregon Department of Environmental Quality and Oregon Department of Fish and Wildlife.
- The Water Bureau wants to initiate regulatory compliance efforts that address the ESA and CWA at the same time.

#### **Future Activities**

- The Water Bureau would like to take a basin-wide approach to the analysis of both the challenges and opportunities for fishery enhancement programs.
- The Water Bureau will promote fisheries mitigation opportunities within the Sandy Basin that would offset lost fish habitat and limited flow conditions in the Bull Run River.
- The Water Bureau will be involved with a variety of agencies in evaluating fishery restoration and enhancement projects. The time frame for completion of these discussion is expected to take 3 to 5 years.

The ultimate goal is to continue to provide excellent water from the Bull Run, while addressing the fisheries needs and the intent of the ESA and CWA

## APPENDIX C

### SUMMARY OF SALMON AND STEELHEAD LEGAL OBLIGATIONS: ENDANGERED SPECIES AND CLEAN WATER ACT

A brief summary of the legal obligations concerning salmon and steelhead issues is outlined below followed by a more detailed analysis (Obligations Under Endangered Species Act and Clean Water Act) prepared by the City Attorney's Office.

#### ENDANGERED SPECIES ACT

##### Prohibition On Taking Of Species

- Once a species is listed, no person or municipality may "take" (harm or harass) individual fish or so disrupt habitat as to "take" an individual fish *without a permit*. (Fish can be eggs, babies, or adults.)
- State or local governments that authorize private acts that take species can themselves be liable for the take.

##### Legal Liabilities

###### Federal Enforcement

- Violation of the law can result in criminal penalties of \$50,000, one year in jail, or civil penalties of \$25,000. Individual decision-makers can be found liable, as well as a municipality as an entity.

###### Citizen Enforcement

- Any citizen can sue to enforce the ESA, including the prohibition on "take." Citizens can not exact civil or criminal penalties. A successful citizen will result in an injunction against the violation and award of attorneys fees to the plaintiff.

##### Incidental Take Permits And Habitat Conservation Plans

- The federal government will issue "incidental take permits" for activities that have minimal impacts on species if the applicant prepares a "habitat conservation plan" that shows how the species will be protected. HCPs can be for many species, both those listed and those that may later be listed.
- One method to assure long-term protection from ESA liability is to obtain approval for an HCP. Then all acts in compliance with the plan are deemed legal. The costs and benefits of developing a "salmon HCP" in the urban setting is not clear. The Seattle metro area has it under consideration as a tool for addressing their proposed salmonid listings. Other areas have prepared such HCPs to deal with other species.

### **Consultation On Federal Projects**

- Any projects requiring a federal permit or that are funded by federal dollars and that might adversely affect a listed species must now go through ESA "consultation."
- Under the consultation process, the listing agency will consider the effects of the project on the listed species.
- No project may proceed that will "jeopardize the continued existence of a species" or "adversely modify critical habitat." The listing agency can prohibit a project or require changes to protect the listed species and their habitat.
- "Critical habitat" is identified by rule; no rule has yet been issued for the steelhead. We expect it will include the Willamette (the migration route for the species) and any streams where steelhead are found.

### **CLEAN WATER ACT**

#### **General Regulation**

- The Clean Water Act of 1972 regulates discharges of pollution to waters of the United States. The regulations are applied through a number of sections of this act including:
  - ⇒ the National Pollution Discharge Elimination (NPDES) permits and
  - ⇒ the assignment of Total Maximum Daily Loads (TMDLs) to water bodies that do not meet water quality standards.

#### **Water Quality Standards**

- Water quality standards incorporate the uses of water bodies and the criteria necessary to protect those uses.
- Water quality standards are designed to protect fish, allow recreation, and consider use for drinking water, and agricultural and industrial purposes.
- Discharge limits in NPDES permits are calculated so that the total of all discharges to a water body will not exceed the water quality standard.

#### **303(d) List/TMDLs**

- When DEQ determines that water quality standards are not being attained, it develops a list of water quality limited streams ("the 303(d) list").
- DEQ then assigns TMDLs to direct and indirect dischargers of particular pollutants so that the water quality standard will be achieved.

#### **303(d) Streams In or Affected By Portland**

- Johnson Creek, Tryon Creek, the Columbia Slough, and the Willamette River are all water quality impaired streams that appear on the DEQ 303(d) list.
- DEQ also proposes to list the lower Bull Run River for elevated temperatures.





CITY OF  
**PORTLAND, OREGON**  
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April 24, 1998

INTEROFFICE MEMORANDUM

TO: Members of the City Council

FROM: Jeffrey L. Rogers *JLR*  
City Attorney  
Terence Thatcher, Jan Betz *JTB*  
Deputy City Attorneys

SUBJECT: Obligations Under Endangered Species Act And Clean Water Act

In March, 1998, the National Marine Fisheries Service (NMFS) added the lower Columbia steelhead trout to the list of threatened species under the federal Endangered Species Act. This includes steelhead that live, among other places, in the Sandy Basin, where the City's Bull Run water supply is located, the Willamette River below Oregon Falls, and the Clackamas River. Within a year, we expect to see a listing of Sandy Basin chinook salmon and additional salmonid species in the Willamette.

In a related development, the Oregon Department of Environmental Quality has listed or proposed to list essentially all the major rivers and streams within Portland as "water quality limited" under the Clean Water Act. The lower Bull Run River, below the City's dams, is also proposed to be added to the CWA list because of high temperatures.

These listings under the ESA and CWA may have significant effects on City activities in the future. This memorandum is designed to give you some basic background on the relevant provisions of the two laws at issue.

**A. THE ENDANGERED SPECIES ACT**

The federal Endangered Species Act ("ESA"), 16 USC §§1531 *et seq.* is designed to protect and recover species that are in risk of extinction. Species can be listed either as "endangered" or "threatened." Endangered species are considered in greater danger of extinction than threatened species. Some parts of the law impose obligations on the federal government and, thereby, those who seek federal approval or funding for their own actions. Other provisions directly limit actions by any person or entity, including local governments. The primary federal ESA regulators are the U.S. Fish

and Wildlife Service and the National Marine Fisheries Service (NMFS). NMFS is in charge of anadromous fish, including steelhead and salmon.

### 1. The Prohibition on "Take" By Any Person Or Entity

The ESA prohibits any person from "taking" a species listed as "endangered" unless he or she has applied for and obtained a federal permit to do so. 16 USC§1538, 1539; ESA §§ 9,10. "Taking" means to kill or harass individual animals. It also includes "significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering." 50 CFR §17.3. See *Babbitt v. Sweet Home Chapter of Communities*, 132 L.Ed. 2d 597 (1997).

Although the law does not automatically prohibit "taking" threatened species (such as lower Columbia steelhead), NMFS can by regulation under Section 4(d) of the Act extend the "take" prohibition to threatened species as well. 16 USC§1533(d). We expect NMFS to issue such regulations for the steelhead and, if they are listed, for other anadromous fish. We have been told that the regulations for steelhead may come out this fall. Thus, within six months or so it will be illegal for any person to harm lower Columbia steelhead or significantly damage steelhead habitat without a permit. (See discussion of permits, below.)

Once the so-called 4(d) rules are issued, a direct City action that harms steelhead or significantly damages steelhead habitat will be against the law. In addition, City permits or authorizations that allow private parties to do things (e.g., develop land) in a way that kills steelhead or significantly disrupts habitat would also violate the ESA.<sup>1</sup>

### 2. Federal and Citizen Suit Enforcement

The federal government can enforce the ESA against the City as an entity or against the responsible City officials (including the Commissioner-in-Charge of a bureau) through several mechanisms: civil penalties up to \$25,000 a violation, criminal fines up to \$50,000 a violation, incarceration in jail for up to one year, and civil injunctive actions by the government. While we

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<sup>1</sup> As the First Circuit put it, "a governmental third party pursuant to whose authority an actor directly exacts a taking of an endangered species may be deemed to have violated the provisions of the ESA." *Strahan v. Cox*, 127 F. 3d 155, 163 (1st Cir. 1997) (holding that state fish net regulations that allowed whales to be harmed were a "take"). See also *Ramsey v. Kantor*, 96 F. 3d 434 (9th Cir. 1996) (state fishing regulations required incidental take permit); *Defenders of Wildlife v. EPA*, 882 F. 2d 1294, 1301 (8th Cir. 1989) (EPA's registration of pesticides containing strychnine, thus allowing the pesticides use by private parties, constituted a take); *Loggerhead Turtle v. County Council of Volusia County*, 896 F.Supp. 1170, 1180-81 (M.D. Fla. 1995) (allowing public vehicular access to a beach found to take sea turtles).

cannot give any guarantees, experience suggests that NMFS is unlikely soon to commence civil or criminal prosecution to enforce the ESA against the City officials. Even if it does not immediately initiate formal enforcement action against the City, however, NMFS has already said that it will only forgo enforcement if local governments such as Portland take (as yet unidentified) steps to help reduce ongoing harm to the steelhead.

Federal agency action is not the only way that the ESA can be enforced. Individual citizens can also sue any person or entity for harming an endangered species or otherwise violating the ESA. 16 USC § 1540(g). A successful citizen suit would result in an injunction against the activities that caused the harm and payment of the plaintiff's attorneys fees. Although there has been no direct citizen enforcement of the ESA to protect Northwest salmon and steelhead yet, one cannot accurately predict what any individuals or groups may do.

### **3. Obtaining A "Take" Permit: Habitat Conservation Planning**

One can obtain a permit to allow otherwise legal actions that result in what is called an "incidental take" of a species listed under the ESA. Such permits are only issued, however, after the applicant has submitted an acceptable "habitat conservation plan" (HCP). 16 USC §1539(a)(2)(B). Among other things, such an HCP must, "to the maximum extent practicable, minimize and mitigate the impacts of such taking." Further, a plan may be approved only if the federal regulators find that the incidental take "will not appreciably reduce the likelihood of the survival and recovery of the species." (Incidental take is also allowed if a federally licensed or permitted activity has been approved through consultation with National Marine Fisheries Service. See discussion, below.)

In recent years, entities that are concerned that their ongoing activities may have an adverse effect on endangered species have developed and sought approval for long term HCPs. Such HCPs essentially set the standards for private party actions so as to avoid violating the ESA. A particular advantage of such a plan is that it protects its holder from future liability under the law, either from federal enforcement or citizen suits, as long as the holder complies with the plan. See 50 CFR §§ 17.22, 17.32, and 222. Plans can consider many species at once, including species not yet listed but which might be listed later.

In the Northwest, several timber firms have created such plans to allow them to manage their land without fear of enforcement regarding spotted owls. Some fish related HCPs have also been written and others are under development. In Southern California, land owners and municipalities have put together an HCP covering thousands of acres and many species. The local governments in the Seattle metropolitan area are investigating this approach to address their ESA obligations to threatened salmon.

The City may wish to discuss with NMFS the development of one or more HCPs that approves or authorizes City programs as consistent with the ESA. Such a course could reduce

any risks of non-compliance with the law and protect the City from enforcement actions. It would also probably require extensive analysis and negotiation. Alternatively, the City could simply work to prevent any of its actions from harming the species and expect and hope that actual substantial compliance with the law will be sufficient protection against agency or citizen enforcement action.

#### 4. Federal Consultation Requirements

Under the ESA no federal agency may take any action that will "jeopardize the continued existence" of a threatened or endangered species or result in "the destruction or adverse modification of [critical] habitat." 16 U.S.C. §1536(a)(2), ESA § 7. Federal "actions" include not just activities engaged in directly by a federal agency, but any private or local action permitted, licensed, or directly funded by the federal government. Critical habitat is designated by NMFS regulation. Critical habitat for the lower Columbia steelhead has not yet been officially identified, but we would expect it to include any spawning and rearing areas and migration routes.

*Jeopardize* means to "engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species . . . by reducing the reproduction, numbers, or distribution of that species." 50.CFR § 402.02. Obviously, a jeopardy determination requires substantial biological analysis and allows the exercise of substantial, although not unbridled, agency discretion.

*Destruction or adverse modification of habitat* is defined as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species." *Id.* It would appear that Fish and Wildlife Service and NMFS do not read the law on habitat destruction literally, however. Not all habitat destruction is unacceptable. Instead, the agencies have interpreted the law and implementing regulations to mean this: destruction or adverse modification of critical habitat is proscribed only if it is determined that the modification is likely to jeopardize the species involved. Again, this determination entails substantial biological analysis and permits the exercise of agency discretion. (This interpretation is also under legal challenge by environmental groups.)<sup>2</sup>

Given these substantive protection obligations, every federal agency proposing an action --including funding or permitting local or private actions-- that might adversely affect a listed threatened or endangered anadromous fish species must consult with NMFS. 16 U.S.C. § 1536 (a). If NMFS determines that a proposed action will jeopardize a species or adversely modify its

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<sup>2</sup> One additional complicating note: The destruction of habitat that creates a "take" is differently defined than the "adverse modification of habitat" term used in the federal agency protection standard.

habitat, it must suggest "reasonable and prudent alternatives," if they exist, that would not harm the species. In any case, a federal action or federally permitted or funded action that jeopardizes a species or adversely modifies habitat may not proceed.

There is one way for a federal or federally authorized projects that harm species to proceed. If NMFS determines that a project will jeopardize the continued existence of a species or adversely affect critical habitat, the federal action agency or permit applicant may apply for an ESA exemption from the Endangered Species Committee. This committee is commonly known as the "God Squad" because it has authority to make life and death decisions for entire species. 16 U.S.C. § 1536(e)--(o). When it receives an exemption application, the Committee holds a formal evidentiary, quasi-judicial hearing to determine whether to grant the request. An exemption can be granted if, among other things, "there are no reasonable and prudent alternatives to the agency action," the proposal is of national or regional significance, and "the benefits of [the] action clearly outweighs the benefits of alternative courses of action consistent with conserving the species. . . ." 16 U.S.C. § 1536(h). There have been four God Squad proceedings in the history of the ESA, all of which became national environmental *causes celebres*. No project has ever been granted an exemption.

The federal consultation and protection obligations are likely to affect City activities in the Bull Run, since so much of what the City does there is governed by federal permits or licenses. In addition, there may be some City projects within Portland itself that involve federal approvals or direct federal funding that will also require consultation. This means that some City projects will require more time and analysis before they can move forward and some may have to be altered or dropped if they would significantly harm steelhead.

## **B. THE CLEAN WATER ACT AND WATER QUALITY LIMITED STREAMS**

### **1. Overview**

The federal Clean Water Act regulates direct and indirect discharges of pollutants to waters of the United States. 33 USC §1251 *et seq.* Control of pollutant discharges is accomplished largely through the National Pollution Discharge Elimination (NPDES) permitting program. NPDES permits are issued to "point source" dischargers (direct discharges to surface waters, usually from piped systems) and contain limits for discharges of specific pollutants as well as monitoring and reporting and other requirements. The City holds NPDES permits for the Columbia Boulevard Wastewater Treatment Plant, the Tryon Creek Wastewater Treatment Plant, and its municipal separate storm sewer system.

"Nonpoint source" discharges, diffuse discharges such as those from agricultural and forestry activities or dam construction and operation, are not regulated by the NPDES program. These activities are, however, subject to regulation through the "TMDL" process discussed below.

## **2. Water Quality Standards**

In Oregon, the federal Clean Water Act programs are administered and implemented by the Department of Environmental Quality (DEQ). Under this authority, DEQ has developed water quality standards for all waters of the state. Water quality standards define the water quality goals of a water body by designating the uses of the water and by setting criteria necessary to protect those uses. 40 CFR §130.3. In most cases, water quality standards are designed for the protection and propagation of fish, shellfish and wildlife, and for recreation, and take into consideration use for public water supplies and agricultural, industrial and navigational purposes.

These water quality standards serve as the regulatory basis for the NPDES permitting program. Pollutant discharge limits are calculated so the water quality standards are not exceeded in the water body receiving the discharges. DEQ is required to monitor the water quality of Oregon's surface waters and to review water quality standards on a regular basis. Section 303 (d) of the Clean Water Act requires DEQ to identify and prioritize state waters where NPDES permit limits are not stringent enough to implement applicable water quality standards. 33 USC §1313 (d).

## **3. 303 (d) List/TMDLs**

DEQ has identified surface water bodies in Oregon which do not meet state water quality standards and has issued what is known as a "303 (d) list." Most of the 303 (d) streams are listed because they have not attained the water quality standard for temperature. Many are also listed because they exceed the water quality standard for bacteria, dissolved oxygen, suspended solids, or toxics. Some of these water quality conditions could affect the health of threatened salmon and steelhead.

After identifying and prioritizing these "water quality limited" waters, DEQ will engage in planning and regulatory processes to achieve compliance with the standards. Where the temperature standard is a problem, DEQ will implement a "temperature management plan" to bring the stream into compliance over time. Both point and nonpoint dischargers whose activities affect stream temperature must comply with the plan's directives.

For other pollutants, DEQ must develop Total Maximum Daily Loads (TMDLs) for the particular pollutants that cause the water body to exceed the water quality standards. All point source dischargers to a 303 (d)-listed stream will be assigned a waste load allocation, which limits the amount of a particular pollutant they can discharge to the stream. All nonpoint source dischargers to a 303 (d)-listed stream will be assigned a load allocation, limiting the amount of a particular pollutant they can discharge to the stream. For each pollutant, the total of waste load and load allocations will be less than the amount the stream can assimilate and still attain the

water quality standard. This is because DEQ is required to build in a margin of safety in calculating how much of each pollutant the stream can assimilate.

**4. 303 (d) Listed Streams In Or Affected By Portland**

Johnson Creek, Tryon Creek, the Columbia Slough and the Willamette River all are listed or proposed for listing as "water quality limited." TMDLs for the Columbia Slough have been proposed by DEQ. The lower Bull Run River is proposed for listing because of high temperatures.

Some of the City's activities may have a direct impact on water quality which affects the health of fish, such as reducing flows in the Bull Run River in the summer months. The City also is responsible for the effects on water quality limited streams from point source discharges from its wastewater treatment plants and municipal storm sewer system. Other City activities may indirectly affect the water quality of 303 (d)-listed streams. The City worked closely with DEQ in the TMDL process in the Columbia Slough. DEQ will expect the City to do the same to develop TMDLs for other water quality limited streams in Portland.

**APPENDIX D**  
**STEELHEAD STEERING COMMITTEE MEMBERS**

Mary Abrams	BES	823-7032
Jan Betz	Attorney's Office	823-4941
Fred Cuthbertson	Risk	823-5277
Bob Durston	Commissioner Sten	823-3599
Sallie Edmunds	Planning	823-6950
Matt Emlen	Energy	823-7224
Kathleen Gardipee	BES	823-7133
Steve Kucas	Water	823-6976
Doug MacCourt	PDOT	823-7052
Michael McElwee	PDC	823-3351
Rosemary Menard	Water	823-7792
Gary Pagenstecher	Commissioner Hales	245-0719
Kermit Robinson	Bureau of Buildings	823-7619
Rich Rodgers	Commissioner Sten	823-3607
Susan Schneider	Govt. Affairs	823-3012
Russ Sill	Fire Bureau	823-3767
Jim Sjulín	Parks	823-5122
Terry Thatcher	Attorney's Office	823-4047
Brant Williams	PDOT	823-5767
Karen Williams	PDC	823-3220
Angela Wilson	Commissioner Sten	823-3603



## **APPENDIX E**

### **GLOSSARY OF USEFUL TERMS AND ACRONYMS FOR UNDERSTANDING THE STEELHEAD LISTING**

<b>Term</b>	<b>Acronym</b>	<b>Definition</b>
Anadromous Fish		Fish that reproduce in fresh water but spend part of their growth cycle in the ocean.
Biological Assessment	BA	Identification of proposed and/or listed species which are/is likely to be affected by a project followed by an assessment of the extent of those impacts.
Biological Opinion		Finding by NMFS, based on a BA, on whether a proposed and/or listed species will be risked or critical habitat destroyed by a project. The finding is either a "jeopardy" or "no jeopardy" finding.
Clean Water Act	CWA	Federal act that regulates discharges of pollutants into surface and ground waters.
Consultation		A formal process of involving NMFS or USFW in the decisions/actions of other federal agencies that harm or negatively impact a listed species.
Critical Habitat Designation		Designation of habitat that is critical to the listed species. This can happen any time in the year following a listing.
Cummulative Effects		Effect of future, non-federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation.
Endangered		A species in danger of extinction throughout all or a significant part of its range.
Endangered Species Act	ESA	The federal regulation that governs the listing, protection, and recovery of threatened and endangered species.

Evolutionarily Significant Unit	ESU	A genetically unique, interbreeding yet relatively isolated group of organisms. On a regulatory basis, this definition is used interchangeably with species (see definition below).
4(d) Rules		An exemption to the ESA's general prohibition on takings (see definition below). The name refers to Section 4(d) of the ESA that describes the circumstances under which exemptions from the incidental take permit requirements are allowed for such activities as restoration efforts or monitoring.
Habitat Conservation Plan	HCP	A mitigation plan developed to mitigate for an incidental Take (see definition below).
Incidental Take Permit	ITP	An exception permit that allows a Take of listed species which requires the development of a mitigation plan known as a Habitat Conservation Plan (see definition above).
Jeopardy		To engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.
National Marine Fisheries Service	NMFS	One of the two agencies, along with US Fish and Wildlife Service, designated to implement the Endangered Species Act. They are responsible for listings of marine fish which includes anadromous fish (see definition above). This service is part of the Department of Commerce.
Recovery		The improvement in the status of the listed species to the point at which listing is no longer appropriate.
Recovery Plan		A plan for recovery of a species that the listing agency is required to prepare under the ESA.
Section 4		Section of the ESA which defines what

consistutes a take for each listing.

**Section 7**

Section of the ESA which regulates any action authorized, funded, or carried out, in whole or in part by federal agencies.

**Section 9**

Section of the ESA which prohibits the taking of a listed species by any person subject to the jurisdiction of the US. This section is broader than Section 7 which only applies to federally related projects.

**Section 10**

Section of the ESA which authorizes incidental takings of endangered species.

**Species**

A species, subspecies, or "distinct population of vertebrate fish or wildlife." On a regulatory basis, this definition is used interchangeably with an evolutionary significant unit.

**Take**

Any action that harms, threatens, endangers, or harasses a species or modifies or degrades that species' habitat.

**Threatened**

A species in danger of becoming an endangered species in the foreseeable future.

**COUNCIL MEETING SUPPLEMENTAL DOCUMENTS**

**051498c-03, 051498c-04, and 051498c-05**

**MAY BE FOUND IN THE SOUTH NORTH LIGHT RAIL PERMANENT  
RECORD**