



METRO

Agenda

MEETING: METRO COUNCIL
DATE: September 6, 2007
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. OREGON HEALTH SCIENCES UNIVERSITY PRESENTATION ON CAMPUS CHANGES Williams

4. CONSENT AGENDA

4.1 Consideration of Minutes for the August 16, 2007 Metro Council Regular Meeting.

5. RESOLUTIONS

5.1 **Resolution No. 07-3862**, Adopting the Hearings Officer's Proposed Order Regarding Metro Notice of Violation 162-06 Issued to USA General Contractors, LLC and Authorizing the Chief Operating Officer to Issue a Final Order Newman

5.2 **Resolution No. 07-3833**, Approving the Natural Areas Acquisition Refinement Plan for the Forest Park Connections Target Area Hosticka

5.3 **Resolution No. 07-3834**, Approving the Natural Areas Acquisition Refinement Plan for the Rock Creek Headwaters and Greenway Target Area Hosticka

5.4 **Resolution No. 07-3835**, Approving the Natural Areas Acquisition Refinement Plan for the Westside Trail Target Area Hosticka

5.5 **Resolution No. 07-3836**, Approving the Natural Areas Acquisition Refinement Plan for the Cooper Mountain Target Area Hosticka

5.6 **Resolution No. 07-3837**, Approving the Natural Areas Acquisition Refinement Plan for the Fanno Creek Linkages Target Area Hosticka

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| 5.7 | Resolution No. 07-3838 , Approving the Natural Areas Acquisition Refinement Plan for the Tryon Creek Linkages Target Area | Hosticka |
| 5.8 | Resolution No. 07-3840 , Approving the Natural Areas Acquisition Refinement Plan for the Columbia Slough Target Area | Hosticka |
| 5.9 | Resolution No. 07-3841 , Approving the Natural Areas Acquisition Refinement Plan for the Springwater Corridor Target Area | Hosticka |
| 5.10 | Resolution No. 07-3842 , Approving the Natural Areas Acquisition Refinement Plan for the Sandy River Gorge Target Area. | Hosticka |
| 5.11 | Resolution No. 07-3843 , Approving the Natural Areas Acquisition Refinement Plan for the Clear Creek Target Area | Hosticka |
| 5.12 | Resolution No. 07-3858 , Approving the Natural Areas Acquisition Refinement Plan for the Willamette Narrows and Canemah Bluffs Target Area | Hosticka |

6. CHIEF OPERATING OFFICER COMMUNICATION

7. COUNCILOR COMMUNICATION

ADJOURN

Television schedule for September 6, 2007 Metro Council meeting

Clackamas, Multnomah and Washington counties, and Vancouver, Wash. Channel 11 -- Community Access Network www.tvctv.org -- (503) 629-8534 2 p.m. Thursday, Sept. 6 (live)	Portland Channel 30 (CityNet 30) -- Portland Community Media www.pcmv.org -- (503) 288-1515 8:30 p.m. Sunday, Sept. 9 2 p.m. Monday, Sept. 10
Gresham Channel 30 -- MCTV www.mctv.org -- (503) 491-7636 2 p.m. Monday, Sept. 10	Washington County Channel 30 -- TVC-TV www.tvctv.org -- (503) 629-8534 11 p.m. Saturday, Sept. 8 11 p.m. Sunday, Sept. 9 6 a.m. Tuesday, Sept. 11 4 p.m. Wednesday, Sept. 12
Oregon City, Gladstone Channel 28 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.	West Linn Channel 30 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.

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

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

Agenda Item Number 4.1

Consideration of Minutes for the August 16, 2007 Metro Council
Regular Meeting

Consent Agenda

Metro Council Meeting
Thursday, September 6, 2007
Metro Council Chamber

MINUTES OF THE METRO COUNCIL MEETING

Thursday, August 16, 2007
Metro Council Chamber

Councilors Present: David Bragdon (Council President), Kathryn Harrington, Robert Liberty, Rex Burkholder, Rod Park, Brian Newman

Councilors Absent: Carl Hosticka (excused)

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

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

There were none.

3. REGIONAL TRAVEL OPTIONS PROGRAM EVALUATION REPORT

Pam Peck, Planning Department, shared information about the Regional Travel Options (RTO) Program. She introduced Professor Jennifer Dill from Portland State who would provide a summary of the report. Ms. Peck shared a PowerPoint presentation on the RTO program. They were going to provide the Grand Prize winner for vanpool/car pool participants. Council President Bragdon announced the winner.

Ms. Peck said they had been successful with the Drive Less/Save More campaign. She provided additional updates on the RTO. Dr. Dill presented the results of the 2005-2006 evaluation report on the Regional Travel Options Program. She explained they were looking at output, outcomes and evaluation methods of the program. She focused on some of the outcome results; not all of the programs were evaluating outcomes. They had a large data set from employers that were working with TriMet. The data represented about 50,000 employees. She noted trends in carpooling. Councilor Newman asked about the number of worksites and the split between urban and rural. Dr. Dill said they had about 700 worksites and about 50,000 employees. The vast majority of participants were outside of the downtown area. Councilor Liberty asked if this was the TriMet service area or the metropolitan area. Dr. Dill said it was those who had been working with TriMet. They also conducted comparison studies with other programs in the United States. They were able to compare this data with Department of Environmental Quality (DEQ). She summarized the outcomes that they were able to look at which were primarily worksites. There has been increased transit use. She provided program-wide recommendations for future years.

Councilor Burkholder talked about the value of the work that Portland State University had done for Metro. He noted some of the conclusions that had pertinence to the Regional Transportation Plan. Councilor Liberty talked about the results and costs of the program and wondered if there was additional information on investment in this type of program. Dr. Dill said in the report they tried to estimate per Vehicle Miles Traveled (VMT) reduced. She noted that the effects of the programs overlapped. They were hoping to break some of these overlaps out. Councilor Liberty asked if these results would lead to operational investments. Dr. Dill responded to his question. Councilor Park talked about costs of parking in the Lloyd District. He wandered about the on

street parking and site-specific parking such as Lloyd Center. Dr. Dill said most of her data came from people who worked in the area. Councilor Park asked if you were going to impose on-street parking, how did we make it more palatable? Dr. Dill talked about using the revenue from the parking to improve that area specifically.

4. MINORITY, WOMEN AND EMERGING SMALL BUSINESS CONTRACT UTILIZATION

Darin Matthews, Procurement Manager, provided a report on Minority, Women and Emergency Small Business (MWESB) Contract Utilization. He shared a PowerPoint presentation on the program. He asked Angela Watkins to introduce herself. She said she was responsible for the MWESB program at Metro and had come from the City of Vancouver. Mr. Matthews talked about their contracting rules for contacting MWESB contractors. He noted that 20% of our contracts went to MWESB owners. He noted areas they needed to do better in with the MWESBs. He provided a breakdown of the seven-year utilization history. He also noted what other local agencies were doing in this area. He spoke to program improvements. Councilor Burkholder asked about the division between the three groups and how he would define the ESBs. Mr. Matthews said ESB was based on volume of business. Councilors asked clarifying questions. Mr. Matthews responded to their questions. Councilor Burkholder encouraged Mr. Matthews to go forward on the Metro Code changes.

5. CONSENT AGENDA

- 5.1 Consideration of minutes of the August 2, 2007 Regular Council Meeting.
- 5.2 **Resolution No. 07-3832**, For the Purpose of Confirming the Appointment of Kathy Folsom to the Regional Solid Waste Advisory Committee (SWAC).
- 5.3 **Resolution No. 07-3826**, For the Purpose of Amending the 2006-09 Metropolitan Transportation Improvement Program (MTIP) to Reallocate \$1 Million of Regional Flexible Funds from the Construction Phase to the Preliminary Engineering Phase of the Eastside Street Car Loop Project.

Motion:	Councilor Burkholder moved to adopt the meeting minutes of the August 2, 2007 Regular Metro Council and Resolution Nos. 07-3832 and 07-3826.
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Vote:	Councilors Burkholder, Harrington, Liberty, Park, Newman, and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed.
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6. ORDINANCES – FIRST READING

- 6.1 **Ordinance No. 07-1160**, Amending the FY 2007-08 Budget and Appropriations Schedule to Implement Council Projects, and Declaring an Emergency.

Council President Bragdon assigned Ordinance No. 07-1160 to Council. Councilor Newman suggested having a full Council discussion on all budget amendments prior to action.

7. ORDINANCES – SECOND READING

- 7.1 **Ordinance No. 07-1147B**, Amending Metro Code Chapters 5.01, 5.02, 5.05, and 7.01 to Ensure that All of the Region's Non-Putrescible Waste Undergoes Material Recovery Prior to Disposal, to Eliminate the Regional System Fee and Excise Tax Credit Program, and to Make Related Changes.

Motion:	Councilor Harrington moved to adopt Ordinance No. 07-1147B.
Seconded:	Councilor Liberty seconded the motion

Councilor Harrington said our region needs to increase the rate of recovery for further waste reduction. Recovering useable and marketable dry waste was one program to help ensure that we meet the state-mandated 64% target for our three-county, 25-city metropolitan region. This program was called the Enhanced Dry Waste Recovery Program (EDWRP).

This spring, a draft ordinance for this EDWRP program was reviewed with the Metro Solid Waste Advisory Committee to the Metro Council, at the March 22nd SWAC meeting. The Metro Policy Advisory Committee (MPAC) provided input to the Council on this topic at both the April 11th and June 13th meetings. The Council held three public hearings in advance of this meeting today, on June 21st, July 12th and August 2nd. She said we have been collaboration with our regional partners to help ensure we have a regional program that works across our 25 cities and 3 counties, with the solid waste industry as well as for the residents and businesses of our region.

Council President Bragdon opened a public hearing on Ordinance No. 07-1147B.

Art Kamp, 14520 SW Pleasant Valley Rd Beaverton, OR 97007 provided his testimony for the record.

David Van Riper, 14800 SW Pleasant Valley Rd Beaverton, OR 97007 provided handouts for the Council. He said he lived close to the Lakeside dump. He noted information that he had provided to the Council. He talked about the Oregonian and Willamette Week articles on the Lakeside Landfill. The third article *Tomb with a View* about a dump outside of this area, in Ohio, was comparable to the situation at Lakeside Landfill. He noted the huge pollution problem, which would go on for generations. He wondered if Metro wanted to have an association with such a dump. He noted an email that he sent to DEQ, which is included in the record. He talked about DEQ's allowable set back at Lakeside Landfill.

John Frederick, 13622 SW Pleasant Valley Rd Beaverton OR 97007 provided his testimony for the record.

Larry Davidson, Attorney for Lakeside Reclamation Landfill, 1 SW Columbia #1850 Portland OR 97258 provided his testimony for the record.

Barry Peine, Director of Operations at AGG Enterprises, 5555 N Channel Bldg 3 Portland OR 97217 provided George Simons' (owner) testimony for the record as well as attachments for the record. He asked Councilor Liberty about putting businesses out of business. Councilor Park asked about a comment in the letter on costs. Mr. Peine responded to his question.

Council President Bragdon closed the public hearing.

Councilor Burkholder said he was supportive of this ordinance and its intent. Operations of the Lakeside Landfill were not germane today with the exception of Material Recovery Facilities (MRFs). He talked about leveling the playing field and the cost of closing the landfill. He felt there was no economic hardship on any of the operations. He supported the adoption of the ordinance before Council.

Councilor Park said they heard testimony today that there was willingness to close the landfill on July 1, 2012. He wondered about the legality and the standards for closure. He thought Metro's enforcement was to not approve a Designated Facility Agreement (DFA). Mike Hoglund, Solid Waste and Recycling Director, responded to his question. Councilor Park asked about our authority and was it limited to the DFA? Mr. Hoglund said yes, theoretically Metro had no real powers. Councilor Park said without passing the ordinance we would not have higher standards. Mr. Hoglund said there were two sets of standards, MRF standards and Enhanced Dry Waste Recovery Program (EDWRP) standards.

Councilor Liberty thanked staff and his colleagues for their work on this issue. This was an increasingly important responsibility. He would be supporting the ordinance.

Council President Bragdon thanked Councilor Harrington for her hard work.

Councilor Harrington said they had spent time exploring options for this program. She thanked all of those who had worked so hard on this issue. She would be supporting this ordinance. It provided for a straightforward program. She urged support.

Vote:

Councilors Park, Burkholder, Harrington, Newman, Liberty, and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed.
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- 7.2 **Ordinance No. 07-1159**, For the Purpose of Authorizing the Chief Operating Officer to Execute a Franchise Amendment to Extend the Term of the Forest Grove Transfer Station Franchise to December 31, 2008.

Motion:	Councilor Harrington moved to adopt Ordinance No. 07-1159.
Seconded:	Councilor Park seconded the motion

Councilor Harrington said transfer stations receive solid waste (garbage) from the local collection haulers for subsequent large load delivery to landfills. One of the three regional transfer stations was located in Forest Grove and was owned and operated by Waste Management of Oregon under a franchise agreement with Metro.

The franchise agreement was up for renewal (expiration of current expiration date of December 31, 2007.) Ordinarily the extension period was five years. However, with various goals that the Council has established over the last few years, with different major programs (such as the Waste Transport Contract and the System Improvement Planning project) the Council had previously directed staff to line up the various agreement and decision points in a coordinated fashion.

Extending the term of the Forest Grove Transfer Station franchise for one year to expire on December 31, 2008 would allow the Metro Council to consider and act on all four Metro transfer station franchise renewal applications (this regional and the three local transfer station franchises) concurrently, and prior to their expiration at the end of 2008.

Councilor Harrington said she believed that this action provided the Council and Metro staff with the further resources to execute our responsibilities on behalf of the public in a timely and cost effective manner. Mr. Hoglund was here should Council have any further questions.

Council President Bragdon opened a public hearing on Ordinance No. 07-1159. No one came forward. Council President Bragdon closed the public hearing.

Councilor Harrington urged an aye vote.

Vote:

Councilors Park, Burkholder, Harrington, Newman, Liberty, and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed.
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8. RESOLUTIONS

- 8.1 **Resolution No. 07-3802**, For the Purpose of Committing Metro South and Metro Central Transfer Stations to Achieve Dry Waste Materials Recovery Standards for Specified Loads.

Motion:	Councilor Harrington moved to adopt Resolution No. 07-3802.
Seconded:	Councilor Liberty seconded the motion

Councilor Harrington said Resolution 07-3802 was responsive to private sector facilities affected by the EDWRP ordinance and represented on SWAC. They requested that Metro transfer stations also be required to meet the EDWRP dry waste recovery performance standard upon the effective date of EDWRP of July 1, 2009. The applicable standard for Metro to meet was that no more than 15% wood, metal and cardboard contained in processed dry waste residual that was headed for the landfill. The resolution also clarified the loads to which that performance standard would apply. Dry waste loads delivered to Metro in loose drop boxes and self-tipping vehicles were most comparable to the loads accepted at private facilities. With this standard for applicable dry waste loads, Metro was confident that its contractor, Allied Waste Systems, could meet the EDWRP performance standard. This resolution was necessary since the EDWRP ordinance was not the appropriate vehicle to require that Metro facilities meet the 15 % recovery performance standard. The EDWRP ordinance identified Metro as the appropriate regulatory and over-sight body. This resolution recognized that Metro facilities were regulated by DEQ and were not subject to Metro's own Code.

In sum, this resolution responded to solid waste industry stakeholders' requests, and expressed Council's intent to ensure that the contract operator of Metro's transfer facilities consistently met or exceeded the EDWRP performance standard by or before the date EDWRP is enforced, July 1, 2009.

Councilor Park asked Mr. Hoglund about the self-haul issue. He felt it would be a policy question that Council would have to address in the future. Currently, those loads coming from commercial side we could decipher. Self-haul had a variety of mixtures. His concern was a safety issue. He was curious how we would address this in terms of getting more of the self-haul loads going to the commercial system where we had better recovery. Mr. Hoglund said there was a lot of recoverable from the self-hauls as well as safety issues. He said they had kicked off a study to try and identify the problems and were looking at other options as well as the costs of those options.

They hoped to have something by the end of the year. They still wanted to continue to provide service to self-haulers. Councilor Park talked about the high number of self-haulers. Council President Bragdon said there were a large proportion of self-haulers that were being paid by others. Councilor Harrington urged support of this resolution.

Vote:

Councilors Park, Burkholder, Newman, Harrington, Liberty, and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed.
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8.2 **Resolution No. 07-3824**, For the Purpose of Approving an Air Quality Conformity Determination for the 2008-2011 Metropolitan Transportation Improvement Program.

Motion:	Councilor Burkholder moved to adopt Resolution No. 07-3824.
Seconded:	Councilor Newman seconded the motion

Councilor Burkholder spoke to both Resolution No. 07-3824 and 3825. He explained that Metro had a responsibility to approve MTIP projects. The first resolution indicated that we were required to monitor carbon monoxide. We were also monitoring hydrocarbons and oxides of nitrogen. Even with additional transportation investments we were seeing a drop in all three noxious emissions. The good news was we had quality air for the next 20 years. Council was approving the air quality conformity determination. We were meeting our performance standards.

Vote:

Councilors Burkholder, Newman, Harrington, Liberty, and Council President Bragdon voted in support of the motion. The vote was 5 aye, the motion passed with Councilor Park absent from the vote.

8.3 **Resolution No. 07-3825**, For the Purpose of Approving the 2008-2011 Metropolitan Transportation Improvement Program for the Portland Metropolitan Area.

Motion:	Councilor Burkholder moved to adopt Resolution No. 07-3825.
Seconded:	Councilor Newman seconded the motion

Councilor Burkholder urged an aye vote.

Vote:

Councilors Burkholder, Newman, Harrington, Liberty, and Council President Bragdon voted in support of the motion. The vote was 5 aye, the motion passed with Councilor Park absent from the vote.

8.4 **Resolution No. 07-3860**, Designating Council Projects and Confirming Lead Councilors and Council Liaisons and Sunsetting Their Predecessors, August 2007.

Motion:	Councilor Burkholder moved to adopt Resolution No. 07-3860.
Seconded:	Councilor Newman seconded the motion

Councilor Burkholder explained the resolution, the approval of Council projects. He noted the performance-based management project and that Council had suggested defining the outcomes more thoroughly. He urged support. Councilor Liberty said he did not feel that the outcomes met his suggestions.

Motion to amend:	Councilor Burkholder moved to amend Resolution No. 07-3860 by substituting outcomes in the Performance Based growth management project attached in the record.
Seconded:	Councilor Newman seconded the motion

Council President Bragdon suggested outcomes were general.

Vote to amend:	Councilors Burkholder, Newman, Harrington, and Council President Bragdon voted in support of the motion. The vote was 4 aye/1 nay, the motion passed with Councilor Liberty voting no and Councilor Park absent from the vote.
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Councilor Newman noted a small error in the staff report. Councilor Harrington asked clarifying questions. Councilor Liberty asked about the assignments. Councilor Burkholder said the Council project system was a fairly organic process. They were trying to provide oversight and input so that the operations and thinking were complete and benefited from this. Metro Council was launching these projects. He expected transmutations on these projects but this had proven to be useful technique for calling out Council projects.

Vote:	Councilors Burkholder, Newman, Harrington and Council President Bragdon voted in support of the motion. The vote was 4 aye/1nay, the motion passed with Councilor Liberty voting no and Councilor Park absent from the vote.
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9. EXECUTIVE SESSION HELD PURSUANT TO ORS 192.660(1)(d), FOR THE PURPOSE OF DELIBERATING WITH PERSONS DESIGNATED TO CONDUCT LABOR NEGOTIATIONS.

Members Present: Kevin Dull, Rachel Bertoni, Libby Tucker (DJC)

Time Began: 3:42pm
Time Ended: 4:06pm

10. CHIEF OPERATING OFFICER COMMUNICATION

Michael Jordan, COO, said he had nothing, but to wish the Council a good time on their recess.

11. COUNCILOR COMMUNICATION

Councilor Burkholder said he would be going to a four-day conference on transportation and climate change in California.

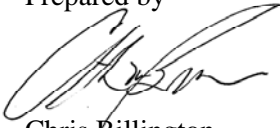
Councilor Newman said tomorrow morning Governor Kulongowski was having a bill signing for the Milwaukie Light rail project at River Place.

Councilor Liberty said on September 26 they would have a debate in this chamber on transit corridors and center strategies.

12. ADJOURN

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 4:11p.m.

Prepared by

A handwritten signature in black ink, appearing to read 'Chris Billington', written over the printed name.

Chris Billington
Clerk of the Council

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF
AUGUST 16, 2007**

Item	Topic	Doc. Date	Document Description	Doc. Number
3.0	Executive Summary	7/19/07	To: Metro Council From: Pam Peck and Caleb Winter, Planning Department Re: Regional Travel Options 2005-06 Program Evaluation	081607c-01
4.0	Annual Report	2005-06	To: Metro Council From: Darin Matthews, Procurement Manager Re: Utilization of Minority, Women and Emerging Small Businesses at Metro Annual Report	081607c-02
7.1	Letter	8/15/07	To: David Bragdon, Council President From: Larry Davidson, Attorney at Law Re: Ordinance No. 07-1147A	081607c-03
7.1	Email	8/7/07	To: Paul Phillips From: Councilor Liberty Re: Lakeside DFA	081607c-04
7.1	Email	8/8/07	To: Councilor Liberty From: Paul Phillips Re: Lakeside DFA	0816507c-05
7.1	Email	8/9/07	To: Metro Council From: Mike Hoglund Re: Ordinance No. 07-1147B	081607c-06
7.1	Letter	8/6/07	To: Kathryn Harrington From: Larry Davidson Re: Lakeside Reclamation Landfill	081607c-07
7.1	Email	8/2/07	To: Council President Bragdon From: Meeky Blizzard Re: Hearing on Ordinance No. 07-1147B	081607c-08
8.4	Amendment	8/16/07	To: Metro Council From: Councilor Hosticka and Chris Deffebach Re: Proposed amendment to Resolution No 07-3860	081607c-09
7.1	Testimony	8/16/07	To: Metro Council From: Art Kamp Re: Lakeside Reclamation Landfill	081607c-10
7.1	Testimony	8/16/07	To: Metro Council From: Larry Davidson, Attorney for Lakeside Landfill Re: Lakeside Landfill	081607c-11
7.1	Email	8/16/07	To: Councilor Harrington From: David Van Riper Re: DEQs proposed setback for Lakeside Landfill	081607c-12

7.1	Memo	8/13/07	To: Mike Hoglund, Solid Waste and Recycling Director From: John and Jane Frederick Re: reasons for Metro to remove Lakeside Landfill from its list of DFAs	081607c-13
7.1	Articles and attachments	8/16/07	To: Metro Council From: David Van Riper Re: articles about Lakeside Landfill	081607c-14
7.1	Written Testimony	8/16/07	To: Metro Council From: Larry Harvey Re: Lakeside Landfill	081607c-15
7.1	Letter and attachments	8/16/07	To: Mike Hoglund, Solid Waste and Recycling Director From: George Simons, AGG Enterprises President Re: Lakeside Landfill	081607c-16
3.0	PowerPoint Presentation	2005-06 Evaluation	To: Metro Council From: Pam Peck, RTO Manager Re: PowerPoint on Regional Travel Options	081607c-17
4.0	PowerPoint Presentation	2005-06	To: Metro Council From: Darin Matthews, Procurement Manager Re: Metro MWESB Program FY 2005-06 Utilization	081607c-18
7.1	Letter	8/15/07	To: Councilor Liberty From: Peggy Kern, Endicott Woods Enterprises Re: supporting Lakeside Reclamation Landfill	081607c-19

Agenda Item Number 5.1

Resolution No. 07-3862, Adopting the Hearings Officer's Proposed Order Regarding Metro Notice of Violation 162-06 Issued to USA General Contractors, LLC and Authorizing the Chief Operating Officer to Issue a Final Order

Metro Council Meeting
Thursday, September 6, 2007
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING THE)	RESOLUTION NO. 07-3862
HEARINGS OFFICER'S PROPOSED ORDER)	
REGARDING METRO'S NOTICE OF VIOLATION)	
162-06 ISSUED TO USA GENERAL)	Introduced by Chief Operating Officer
CONTRACTORS, LLC AND AUTHORIZING THE)	Michael J. Jordan, with the concurrence of
CHIEF OPERATING OFFICER TO ISSUE A)	Council President David Bragdon
FINAL ORDER)	

WHEREAS, the Metro Chief Operating Officer initiated an enforcement action against USA General Contractors, LLC ("the Respondent") alleging that from January 1, 2006, through August 31, 2006, the Respondent avoided paying Metro excise tax and regional system fees on solid waste generated within Metro's boundaries;

WHEREAS, the Metro Chief Operating Officer sought to collect the taxes that the Respondent owed to Metro and to impose a civil penalty for the Respondent's knowing use of the Riverbend Landfill, a non-system facility, without a non-system license and knowing avoidance of Metro fees and taxes;

WHEREAS, the Respondent requested a contested case hearing;

WHEREAS, a hearing on the matter was held on December 6, 2006, before Metro Hearings Officer Robert J. Harris;

WHEREAS, on July 20, 2007, the Hearings Officer issued a proposed order (attached as Exhibit A) requiring the Respondent to pay to Metro \$107,359.85 in excise taxes, penalties, and interest;

WHEREAS, pursuant to Metro Code 2.05.035(a), the Hearings Officer prepared and submitted a proposed order, together with the record compiled in the hearing, to the Metro Council;

WHEREAS, the Respondent filed written exceptions to the Hearings Officer's proposed order (attached as Exhibit B) and Metro filed written exceptions to the Hearings Officer's proposed order (attached as Exhibit C);

WHEREAS, Metro Code 2.05.045(b) provides that the Metro Council shall (1) adopt the Hearings Officer's proposed order; (2) revise or replace the findings of fact or conclusions of law in the order; or (3) remand the matter to the Hearings Officer; and

WHEREAS, the Metro Council has considered the proposed order and the parties' exceptions as required by the Metro Code; now therefore

BE IT RESOLVED that the Metro Council adopts the Proposed Order from Hearing issued by Hearings Officer Robert J. Harris in Metro Contested Case: Notice of Violation 162-06 in the Matter of Notice of Violation NOV 162-06 issued to USA General Contractors, LLC, as revised by the exceptions filed by Metro (Exhibit C), and directs the Chief Operating Officer to issue a final order substantially similar to the proposed order as so revised.

ADOPTED by the Metro Council this _____ day of _____ 2007.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

METRO ILLEGAL DUMPING ORDINANCE

BEFORE ROBERT J. HARRIS HEARINGS OFFICER

In The Matter of Notice of Violation NOV-162-06:)	PROPOSED AND FINAL ORDER FROM
)	HEARING
Issued to)	
Herme Rivas, dba USA General Contractors, LLC,)	
Respondent.)	

On September 29, 2006, Metro issued A Notice of Violation and Notice of Assessment of Civil Penalty as case number NOV-162-616 to Respondent Herme Rivas dba USA General Contractors, LLC (Respondents herein).

Respondent was given a notice of contested case allowing thirty (30) days from the date of mailing to Respondent to request a contested case hearing. Respondent filed a request for hearing in a timely manner on October 6, 2006, through his attorney C. David Hall.

Respondent also filed a Petition for Redemption and Refund.

On October 30, 2006, the Hearings Officer sent a notice of Hearing to Metro and to Respondent through his attorney Mr. Hall stating that a Contested Case Hearing would be held on December 6, 2006 at the Metro offices located at 600 Northeast Grand Avenue, Portland, Oregon 97232.

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1 Included in that Notice of Hearing were copies of:

- 2 1. Findings of Facts, regarding Metro Citation No NOV-162-6, dated September
3 29, 2006;
- 4 2. Finding of Violation and Notice of Imposition of Penalty, dated September 29,
5 2006; and
- 6 3. Explanation of Rights.

7 On December 6, 2006, at the Metro Offices in Portland, Oregon the hearing was held.
8 Present were: Representing Metro Paul Garrahan, Metro Assistant Counsel. Present for
9 Respondent were Herme Rivas and C. David Hall, attorney.

10 The Hearings Officer, Robert Harris, stated on the record that there had been no ex-parte
11 communications. The parties acknowledged on the record that they understood the rights and
12 procedures, and waived their reading.

13 Prior to taking testimony, all witnesses were put under oath.

14 **EVIDENTIARY RULINGS**

15 **Uncontested Exhibits:** The Hearings Officer accepted documents and photos
16 during the Hearing. Based on the evidence offered at the hearing and the records and evidence
17 admitted prior to the close of record, the Hearings Officer made the following a part of the
18 Record:

19 **METRO EXHIBITS:**

<u>Exhibit Number</u>	<u>Exhibit</u>
20 1	Metro Solid Waste Enforcement Unit Special Report 06-0380
21	dated August 30, 2006, authored by Detective Michael Gates
22 2	Metro Solid Waste Enforcement Unit Special Report 06-0380,
23	Undated
24 3	Map of Metro Jurisdiction
25 4	Waste Management Ticket #466420

1 5 Waste Management Ticket #472607
2 6 Waste Management Ticket #473472
3 7 Waste Management Ticket #473832
4 8 Photo dated April 26, 2006
5 9 Waste Management Ticket #475033
6 10 Waste Management Ticket #485419
7 11 Photo dated June 26, 2006

8
9 Licensee offered no exhibits.

10 The Hearings Officer made the following Exhibits a part of the record:

<u>Exhibit Number</u>	<u>Exhibit</u>
HO-1	Letter from Metro Dated December 11, 2006
HO-2	Letter from Respondents attorney dated December 12, 2006

13
14 **Contested Exhibits:** At the close of the Hearing, Respondent raised an objection to
15 making the following Exhibits a part of the Record.

12	Finding of Violation and Notice of Assessment of Penalties by Metro dated December 27, 2005
13	Application for Non System License, dated March 10, 2006
14	Letter from Metro to Riverbend Landfill regarding Transaction Records for USA General Contractors and Avila Drywall, dated August 29, 2006
15	Spreadsheet Prepared by Metro

21
22 Respondent argues that Metro never formally offered exhibits 12 through 15 to the
23 Hearings officer as part of the record. Metro argues that it solicited testimony about these
24 exhibits, that they are reliable and therefore admissible under Metro Code Section 2.05.030(a)
25 and that there are no magic words necessary to make exhibits a part of the record.

1 Respondent argued that he did not cross examine Metro witnesses on these exhibits
2 because they were never offered into evidence. He also argues that there is a formality
3 necessary to offer exhibits and make them a part of the record.

4 The Hearings Officer took the objection under advisement. Subsequently, the Hearings
5 Officer received written arguments related to the admissibility of Exhibits 12 through 15
6 (letters now marked and made a part of the Record as HO-1 and HO-2).

7 I find that as a matter of law, absent some other rule, an exhibit must be formally
8 offered into evidence before it can be made a part of the record. It is at that point that an
9 adverse party can raise objections to foundation or reliability of the proffered evidence.
10 Therefore, absent some other substantive or procedural rule, Exhibits 12 through 15 cannot be
11 made a part of the record.

12 Exhibits 12 and 13: Mr. Kraten and Herme Rivas both testified that Exhibits 12 and
13 13 were sent, received and are accurate, so the contents of these two documents is part of the
14 record. However I find no alternative substantive or procedural rule that would allow me to
15 make these documents themselves exhibits absent them being offered at the time of the
16 hearing. Therefore Exhibits 12 and 13 are excluded (It is possible that these documents, being
17 public records of action taken By Metro, could arguable be admissible through a form of
18 Judicial Notice, which is also recognized in the Oregon Administrative Procedures Act,
19 however, I find no need to make that decision as the material facts set forth in Exhibits 12 and
20 13 were testified to by Mr. Kraten and confirmed by Respondent in his own testimony).

21 Exhibit 14: Again Mr. Kraten testified about the contents, and testified about the
22 number of loads and tons Riverbend reported Respondent brought to their facility each month
23 from January to August 2006. However, the actual email exchanges were not offered into
24 evidence and I find no alternative legal or procedural rule that would allow Metro to offer this
25 document after the hearing was closed. Therefore Exhibit 14 is excluded. To the extent the

1 Communications in Exhibit 14 contain anything that Mr. Kraten did not testify about, that
2 information is not a part of the record and will not be considered.

3 I want to point out that while exhibits 12, 13 and 14 are excluded, Mr. Kraten's
4 testimony is still a part of the record. Metro Code 2.05.030(c) provides that "*All offered*
5 *evidence not objected to will be received by the Hearings Officer ...*". Respondent did not
6 object to Mr. Kraten's verbal testimony. If Respondent wished to challenge that testimony
7 based on hearsay or foundation, he could have done so. He did not. It is admitted. There was
8 no requirement that Metro even offer exhibits buttressing Mr. Kraten's testimony and the fact
9 that they tried, yet failed to admit exhibits that may have supported Mr. Kraten's testimony,
10 does not mean that the testimony itself should be stricken.

11 Exhibit 15: I see this Exhibit as being different in kind and it is admissible.

12 After Mr. Kraten testified about the amount of loads and tons that Riverbend reported
13 that Respondent took to their landfill from January to August 2006, he testified about how
14 much excise tax and system fees would have been paid if all these loads were subject to those
15 assessments, and what the regulatory penalty and applicable interest would have been.

16 Exhibit 15 is a detailed calculation of these assessments and was used by the
17 Respondent, the Hearings Officer and Mr. Kraten to follow Metro's calculation of these
18 amounts, which calculations were testified to in detail. These calculations were not challenged
19 by Respondent.

20 I find that Exhibit 15 is a written summary of the potential damages that Respondent
21 may be liable for should the fact finder find in favor of Metro's theory. It presents no new
22 evidence. It is taken to a Jury deliberation form that would be produced by a party in a civil
23 damages action. Therefore it is admissible and made a part of the record for the purpose of
24 calculation of any Taxes, Fees, Penalties or Interest that Respondent would have owed under
25 Metro's theory of the case.

1 **ISSUES**

2 Did Respondent take solid waste originating within the jurisdiction of Metro and
3 dispose of it outside the Metro jurisdiction at a non system facility without paying applicable
4 Fees and Taxes, in violation of Metro Code Section 5.02.045 and 7.01.020?

5 If there is a violation, on how many occasions did the Respondent violate the applicable
6 code sections and what was the total tonnage of Metro waste disposed of at a non-licensed
7 facility?

8 For each violation of violations proved, what is the appropriate recovery of unpaid fees
9 and taxes, should there be a penalty imposed, Should interest be imposed, and what should be the
10 appropriate penalty for the violation or violations?

11 **APPLICABLE LAW**

- 12 1. Metro Code, Section 5.05.025: Regarding Disposal of Metro Generated Solid
13 Waste
14 2. Metro Code Section 5.05.070(a) and (b): Civil Penalties
15 3. Metro Code Section 7.01.020: Tax Imposed
16 4. Metro Code Section 7.01.080(a): Penalties
17 5. Metro Code Section 7.01.080(b): Finance Charges
18 6. Metro Code Section 7.01.090(b): Taxes due and payable

19 **FINDINGS OF FACT**

20 1. Herme Rivas is the owner of USA General Contractors, LLC (Herme Rivas and
21 the LLC are hereinafter referred to as Respondent), which is in the business of cleaning up the
22 construction debris, mainly drywall, from home and small residential construction sites and
23 disposing of it. Construction companies hire Respondent as an independent contractor and pay it
24 based on the total square feet of the structure cleaned.

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1 2. Some of Respondent's job sites are within the jurisdiction of Metro, and some are
2 outside Metro jurisdiction.

3 3. In late 2005 Metro received information that Respondent was taking waste from
4 within Metro jurisdiction and disposing of it at Riverbend Landfill, in McMinnville, Oregon,
5 which is a non system landfill. When solid waste is disposed of at Riverbend, the driver of the
6 truck is supposed to give the origin of the solid waste so that any applicable fees and taxes can be
7 assessed.

8 4. Shortly after December 7, 2005, Metro contacted Mr. Rivas after one of his trucks
9 was observed disposing of Metro generated solid waste, consisting of drywall, at the Riverbend
10 Landfill. Respondent was cited for violation of Metro Code Sections 5.02.025 and 7.01.020. A
11 \$300 penalty was imposed and Mr. Rivas was informed of his obligation to pay excise tax and
12 system fees on Metro generated solid waste. The penalty imposed by Metro was in a reduced
13 amount because Metro felt that Respondent was acting out of ignorance of the rules. Mr. Rivas
14 was also informed that he could apply for a Non-System License so that Respondent could take
15 Metro generated solid waste to a non-license facility such as Riverbend.

16 5. In early 2006 Respondent applied for a non-system license. In March of 2006, Mr.
17 Rivas was informed that no non-system licenses were being issued and that he would have to
18 take Metro generated waste to a Metro disposal facility. Mr. Rivas was also reminded that any
19 mixed loads, that is loads of solid waste that were generated partially within and partially without
20 Metro jurisdiction, would be treated as all being generated within Metro Jurisdiction and subject
21 to the Excise tax and system fees absent some documentation supporting a pro rata imposition of
22 the tax and fee.

23 6. Metro continued to investigate Respondent due to concern that it was continuing
24 to violate Metro flow control codes. On March 15, 2006, Detectives Jon Gaddis and Michael
25 Gates found a truck belonging to Respondent within the Metro region at Morgan Meadows in

1 Troutdale, Oregon where it was loading drywall. The vehicle then drove to 206th and
2 Amberwood, in Hillsboro, Oregon, also within Metro jurisdiction, and loaded more drywall. The
3 truck then left at 1:06 p.m. and drove to the Riverbend Landfill in McMinnville, Oregon. The
4 truck disposed of the waste at Riverbend and the driver gave the origin of the debris as Yamhill,
5 which is not located in Metro Jurisdiction (See Exhibit 4). Respondent paid no Metro taxes or
6 system fees.

7 7. On April 19, 2006, Detective Gaddis located one of Respondent's trucks at the
8 Arbor Rose Development in Hillsboro, Oregon, a location within the jurisdiction of Metro,
9 where the truck was loaded with drywall. The truck then went to Waterhouse Street and Blue
10 Ridge Street in Beaverton, also a location within the jurisdiction of Metro, where it was loaded
11 with more drywall. Detective Gaddis followed the truck to North Plains, Oregon, but it was
12 already 6:30 p.m. by then and as Riverbend closes at 5:00 p.m., Detective Gaddis discontinued
13 his tracking. On the following day, April 20, 2006, Detective Gates arrived at the Riverbend
14 Landfill at 7:45 a.m. At 8:50 a.m. Detective Gates observed the same truck as they had observed
15 the day before at the Riverbend facility and dispose of its load of drywall. The receipt for the
16 drywall from Riverbend showed the driver gave the place of origin as Yamhill (see exhibit 5).
17 Respondent paid no Metro taxes or system fees.

18 8. On April 24, 2006, Detectives Gaddis and Gates located one of Respondent's
19 trucks at Morgan Meadows in Troutdale loading drywall. The truck then drove to NE 250th and
20 Halsey, also in Metro Jurisdiction, where it loaded some more drywall. From there the truck
21 went to Newberg where it loaded some more drywall. Newberg is not within Metro Jurisdiction.
22 The truck then drove to Riverbend landfill where it disposed of the drywall. The receipt stated
23 the origin of the solid waste as Washington County (See Exhibit 6). Respondent paid no Metro
24 taxes or system fees.

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1 9. On April 26, 2006, Detective Gaddis located one of Respondent's trucks near Bull
2 Mountain Road and SW 164th in Washington County. This is within the jurisdiction of Metro
3 where it was loading drywall. Detective Gates followed the truck to Riverbend Landfill where
4 the drywall was deposited. The receipt showed 4.75 tons and the origin as Yamhill (See Exhibit
5 7). Respondent paid no Metro taxes or system fees.

6 10. On May 2, 2006, Detective Gates located one of Respondent's trucks at Bull
7 Mountain Road and SW 164th in Washington County once again. The truck was loaded with
8 drywall and it proceeded to "The Greens" in Newberg, Oregon where more drywall was loaded
9 on the truck. The truck then went to another location in Newberg where more drywall was
10 loaded. The truck then went to Riverbend and disposed of the drywall. The receipt showed 5.55
11 tons was disposed of and the reported origin as Yamhill County (See Exhibit 9). Respondent
12 paid no Metro taxes or system fees.

13 11. On June 26, 2006, a witness reported to Detective Gates that he was following a
14 truck from the Arbor Rose Home Development in Hillsboro, a location within Metro's
15 Jurisdiction. The witness had observed the truck loading drywall at that location. The witness
16 followed the truck to a development near Beef Bend Road. Detective Gates went to that location
17 and contacted the witness. The Witness stated that the truck was loading drywall from a
18 residence at SW Davinci Lane and SW Greenfield. This location is in Washington County and
19 within Metro Jurisdiction. Detective Gates observed the truck as it left the neighborhood.
20 Detective Gates ran the plate number and determined that it was registered to Respondent. The
21 truck went to the Riverbend Landfill where it disposed of the drywall. The receipt for disposal
22 showed the driver gave an origin of Yamhill County. The weight of the load was 4.53 tons (See
23 Exhibit 10). Respondent paid no Metro taxes or system fees.

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1 12. On July 20, 2006, Detectives Gaddis and Gates met with Herme Rivas, owner of
2 USA General Contractors, LLC. Mr. Rivas stated that he was the owner of USA General
3 Contractors, LLC. Mr. Rivas stated that his company does work for Westside Drywall, Tri
4 County Drywall and PNR Drywall. Mr. Rivas stated that his company works at many job sites in
5 the area. The company has eight trucks but four trucks currently in operation. He has three
6 drivers. Mr. Rivas stated that he took almost no loads to Riverbend and that 40% of his loads
7 come from inside the region.

8 13. Mr. Rivas stated that he had applied for a non system license, however he was
9 unclear if he had even been issued that license, though he did state for some reason he had
10 received his license fee back.

11 14. Mr. Rivas stated that he did most of his work in the Hillsboro-Beaverton area.

12 15. Mr. Rivas stated that he couldn't make enough money if he disposed of the
13 drywall at the Hillsboro landfill. Mr. Rivas also stated that the other companies are doing the
14 same thing as he is doing. That recycling the drywall is too expensive and that he is a small
15 company trying to grow.

16 16. On August 29, 2006, Detectives Gaddis and Gates met with the owner of Tri
17 County Drywall, Odus Lambert. Mr. Lambert stated that USA General Contractors, LLC had
18 cleaned up approximately the following number of homes within the Metro area: 80 homes at
19 Morgan Meadows; 15 homes at the Trolley barn development in Sellwood; 30-40 homes at the
20 Bull mountain development; 6 homes at Riverside homes on Beef Bend Road; 30 homes at the
21 Grant Development off of 207th and Sandy Blvd. Mr. Lambert estimated that it would take 4-5
22 homes to create a truckload of drywall.

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1 17. On August 29, 2006, Detectives Gates and Gaddis met with the General Manager
2 of Westside Dry Wall, Doug Bennett. Mr. Bennett reported that Respondents had cleaned up the
3 following number of homes for them within Metro jurisdiction. 200-300 at Arbor Homes in
4 Hillsboro; 200 homes at Arbor Homes in Sunnyside; 100 or more homes at Arbor Homes in
5 Happy Valley; 80 or more homes at Centex Development in Fairview; 70-80 homes ion Centex
6 in Hillsboro. Mr. Bennett also stated that it would take 4-5 houses to fill a truck that Respondents
7 used.

8 18. The total number of homes that Westside Drywall and Tri-County reported
9 Respondents cleaning within the Metro area, that they could remember, was approximately 900.

10 19. Detective Gates requested on numerous occasions that Respondent get him his
11 records on the homes he cleaned so that Metro could determine how many of the homes were
12 within the jurisdiction of Metro. Respondent promised on numerous occasions to get Detective
13 Gates that information but never did. At one point Mr. Rivas stated he had the information.
14 When he met with Detective Gates to give it to him however, he stated he didn't have it but
15 could, from memory tell him that there were a total of 210 homes within Metro jurisdiction that
16 he worked at.

17 20. At the Hearing, Mr. Rivas admitted that Respondents did take some drywall
18 debris from within the Metro area and dispose of it at Riverbend Landfill without paying the
19 applicable tax and fees. Mr. Rivas, testifying solely from his own memory, testified that he
20 cleaned the following number of homes in the following areas outside the Metro area:

<u>Location</u>	<u>Number of Residences</u>
Corvallis	10
Eugene	10
Dayton	10
Sheridan	14-16

1	Dallas	12
2	Salem	15
3	Dundee	5
4	Camas	10
5	Washougal	10
6	Longview	5
7	Kalama	5
8	LaCenter	5
9	Battle Ground	5
10	Vancouver	70
11	Sandy	30
12	McMinnville	20
13	St. Helens	20
14	Columbia City	5
15	Scappoose	5
16	TOTAL	266-268

17 21. Herme Rivas' testimony is not credible in that he estimated only approximately
18 266-268 homes that he cleaned were within Metro Jurisdiction, while his two main customers,
19 Westside Drywall and Tri-County Drywall, estimated at least 900 homes cleaned by Respondent
20 were within the Metro area.

21 22. Mr. Rivas testified that if he had to pay the fees and taxes he could not compete
22 with other businesses. Mr. Rivas also testified that after Metro cited him for this instant offense,
23 he went to his customers and was able to negotiate a higher price for his work to cover the added
24 cost of fees and taxes that he is now paying for disposal.

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1 23. Mr. Rivas testified that when Respondent worked in Washington, it used a landfill
2 in that state.

3 24. From January 1, 2006 thorough August 31, 2006 Respondent delivered
4 approximately 605 truck loads of solid waste to Riverbend Landfill a non license facility. Those
5 loads totaled approximately 2,979 tons of solid waste.

6 25. If all of the loads delivered to Riverbend by Respondent consisted, in total or in
7 part, of Metro generated solid waste, the total excise tax avoided would be approximately
8 \$24,815. A 25% penalty, plus cumulative interest, would bring the Excise Tax total owed to
9 approximately \$33,017.81.

10 26. If all of the loads delivered to Riverbend by Respondents consisted, in total or in
11 part, of Metro generated solid waste, the total Systems Fees avoided plus a 25% penalty, plus
12 cumulative interest, would bring the Excise Tax total owed to approximately \$54,450.

13 27. At 900 Metro area homes cleaned and 4.5 homes per load, Respondent delivered
14 at least 200 full loads to Riverbend Landfill. At 4.92 tons per load that means that Respondents
15 delivered at a minimum 984 tons of Metro generated solid waste to Riverbend Landfill.

16 28. Some of Respondent' loads were mixed loads of solid waste consisting of Metro
17 generated and non Metro generated Waste. Therefore, it is reasonable to conclude that the total
18 number of loads delivered to Riverbend Landfill that contained Metro Generated Waste was
19 greater than 200 loads. Based on the facts of this case, including the Detectives observations that
20 Respondents trucks would often pick up solid waste within Metro are, then drive towards
21 Riverbend Landfill and make other stops along the way outside the Metro Area, I find that at a
22 minimum, a fair inference is that at least 300 of the loads delivered to Riverbend contained, in
23 whole of in part, Metro generated Solid Waste. At 4.92 tons per load, I conclude that
24 Respondents avoided fees and taxes on 1,476 tons of materials.

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1. Herme Rivas is the owner of USA General Contractors, LLC (Herme Rivas and the LLC are hereinafter referred to as Respondent) which is in the business of cleaning up the construction debris, mainly drywall, from home and small residential construction sites and disposing of it. Construction companies hire Respondent as an independent contractor and pay it based on the total square feet of the structure that they are cleaning.

3. On at least 300 separate and distinct occasions between January 1, 2006 and August 31, 2006 Respondent unlawfully disposed of Solid Waste that was generated wholly or in part, within Metro's jurisdiction, to Riverbend Landfill, a non license facility with the intent to avoid paying applicable Excise tax and System Fees. Each occasion is a separate violation.

5. Respondent committed these violations with intent and knowledge and in order to gain a competitive advantage over competitors.

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6. The total Excise Tax avoided by Respondents is \$12,295.08. A 25% penalty is \$3,073.77. The interest from January 1, 2006 until October 31, 2006 is approximately \$991. Total Excise tax, penalty and interest due as of October 31, 2006 is \$16,395.85.

7. Total System Fees avoided by Respondents is \$33,135.73. a 25% penalty is \$8,283.93 and interest is \$1,730.64 as of October 31, 2006.

DISCUSSION

It is clear that Respondent in this case has taken the calculated risk of avoiding taxes and fees in order to gain a business advantage over its competitors. It is clear that Respondent has acted with intent, forethought and shows no remorse over its actions. Respondent, when given a chance to produce records that would have shown how many of their jobs were inside versus outside the Metro region, failed to produce any documents. The best that they could do was verbal testimony of Mr. Rivas, which testimony was contradicted not only by the evidence of his customers, but also his prior statement to Metro, and frankly simply made no sense from the standpoint of where his business was generated. For instance, if Mr. Rivas were to be believed, in regards to how many houses he cleaned within the Metro jurisdiction; it would mean that over two thirds of his business was coming outside the Metro Jurisdiction. Yet Mr. Rivas himself stated that the majority of his business was from the two customers cited in this Order, who did most of their business within Metro jurisdiction.

Mr. Rivas was under oath and chose to not tell the truth. His self serving testimony regarding the number of houses Respondent cleaned was ignored by the finder of fact.

Nevertheless, it is still up to Metro to prove the number of violations and the penalties that should be imposed. Using the evidence presented by Metro, the fact finder drew the following reasonable conclusions in crafting this order.

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1 Respondent's own customers gave evidence that Respondent cleaned approximately
2 900 homes in the Metro jurisdiction and that the average load for Respondent consisted of 4-5
3 homes. That means that of the work done just for these two customers, Respondent would have
4 disposed of 200 full loads.

5 The evidence from Metro Enforcement agents was that they followed Respondent's
6 trucks and several times the trucks loaded solid waste from locations within Metro boundaries
7 and without the boundaries. Therefore we know that Respondent did not only bring Metro only
8 solid waste to Riverbend, so that means that the number of violations had to have been in
9 excess of the 200 loads.

10 Given Mr. Rivas' description of his business and his customers, it is reasonable to infer
11 that at least half of Respondent's business is within the Metro Jurisdiction.

12 Riverbend reported to Metro that Respondent's trucks delivered 605 loads to its facility
13 for a total tonnage of 2,979. There were no reports from any other landfill presented by
14 Respondent that would show that Mr. Rivas used any other landfill. While Mr. Rivas testified
15 that some of his trucks used a landfill in Washington, he produced no documentation of that
16 fact, his testimony on that point was not consistent with other facts, and frankly, Mr. Rivas is
17 not a trustworthy witness and cannot be believed.

18 As to the penalties imposed; the Excise tax and penalty and interest under Chapter 7 is
19 all pursuant to the Metro Code. The 25% penalty is appropriate because Respondent acted with
20 the intent to evade the tax.

21 A penalty of \$1000 for failing to have a non system license is also according to Metro
22 Code.

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1 I am also imposing a \$250 penalty for each of the 300 violations of Metro Code Section
2 5.05.070(1); the Hearings Officer used the following logic: Metro imposed a \$300 penalty for
3 Respondent's prior violation in December 2005. I realize that a portion of that penalty was for
4 a prospective non license fee application; however, Respondent still should have realized that
5 such a violation could impose such a penalty. In spite of that knowledge, and in spite of a \$300
6 fine, Respondent continued to commit the exact same violation for the next several months. He
7 did so for selfish and greedy reasons. I had seriously considered making the fine per violation
8 more than the prior fine, which is what most courts or judges would consider fair for a second
9 time offender. However a fine of \$250 per violation when multiplied by the total number of
10 violations is appropriate when considering the system fees avoided.

11 This is a steep fine. But the hearings officer has no sympathy for Respondent or its
12 ability to continue its business if it has to pay these penalties. Respondent has been able to
13 undercut all of its competitors and make a profit precisely because it avoided excise taxes and
14 system fees possibly well in excess of what is being imposed by this Order. It is as if he did not
15 have to pay minimum wage, or FICA or any other normal business expense that his
16 competitors were paying.

17 And it is not only Metro that has been damaged by Respondent's calculated behavior. It
18 is also all of Respondent's competitors and their employees who lost jobs and work due to
19 Respondent's ability to undercut their prices. I would expect that these people would feel that
20 justice may not have been done unless there was some penalty, other than a mere re-coupment
21 of money lawfully due, imposed on Respondent.

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ORDER

Based upon the above findings of fact, ultimate findings of fact, reasoning and conclusions of law, it is hereby ORDERED THAT:

Pursuant to Metro Code Section 5.05.070(a)(1) a fine of \$300 is imposed for each of the 300 loads delivered to Riverbend Landfill, for a total penalty of \$90,000.

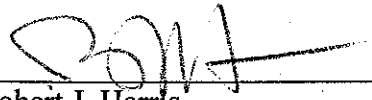
Pursuant to Metro Code Section 5.05.070(b)(2) for Respondent's failure to obtain a non system license prior to disposing of Metro generated waste at a non license facility a fine of \$1000 is imposed.

Pursuant to Metro Code Section 7.01.020 and 7.01.080(b) Respondent is ordered to pay excises taxes as follows:

Excise Taxes Due	\$12,295.08
Penalty of 25%	\$ 3,073.77
Interest as of October 31, 2006	\$ 991.00
TOTAL	\$16,359.85

SUMMARY OF FINANCIAL PENALITIES

5.05.070(a)(1) Violation	\$90,000.00
5.05.070(b)(2) Violation	\$1,000.00
7.010.020 / 7.01.080(b) Violation	\$16,359.85
TOTAL	\$107,359.85


Robert J. Harris
Hearing Officer

Dated: July 20, 2007

1 **PROPOSED ORDER AS FINAL ORDER:**

2 ANY MOTION TO RECONSIDER THE ORDER MUST BE FILED WITHIN TEN DAYS
3 OF THE ORIGINAL ORDER. IF YOU FAIL TO OBJECT OR FILE A MOTION FOR
4 RECONSIDERATION, THEN THE ORDER BECOMES THE FINAL ORDER. THE
5 HEARINGS OFFICER MAY RECONSIDER THE FINAL ORDER WITH OR WITHOUT
6 FURTHER BRIEFING OR HEARINGS. IF ALLOWED, RECONSIDERATION SHALL
7 RESULT IN REAFFIRMANCE, MODIFICATION OR REVERSAL. FILING A MOTION
8 FOR RECONSIDERATION DOES NOT TOLL THE PERIOD FOR FILING AN APPEAL IN
9 COURT.

10 **RIGHT OF APPEAL:**

11 A PERSON MAY APPEAL A FINAL ADVERSE RULING BY WRIT OF REVIEW AS
12 PROVIDED FOR IN ORS 34.010 THROUGH 34.100
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METRO SOLID WASTE ENFORCEMENT UNIT
SPECIAL REPORT

06-0380

SUMMARY:

In December 2005, the Metro Solid Waste Enforcement Unit assigned me to investigate USA General Contractors for violations of Metro code. An investigation was conducted and it was determined that USA General Contractors was violating Metro code by falsely claiming loads originated outside them Metro region when they, in fact, originated inside the Metro region.

MENTIONED:

Violating company: USA General Contractors, LLC
(Address: same as company owner)

Company Owner: Herme Hernaide Rivas, HMA, DOB: 02/23/75
Address: 730 ST. Mary circle Mtan
PO box 1146
Mt. Angel, Or. 97362
Phone: 503-910-1937 Cell: 503-910-1937
Fax: 503-845-2645

Drywall Company Tri-County Drywall Inc.
Owner Odus Lambert
Address 15815 S Pope Ln
Oregon City, Or. 97045
Phone: 503-624-2006 Cell: 503-849-0540

Drywall Company Westside Drywall
General Manager Doug Bennett
Owner Mohsn Salem
2755 Pacific Hwy
Hubbard, Or. 97032
P.O. box 99
Phone: 503-620-7036

Detective: Jon Gaddis, DPSST #23618

Detective: Michael Gates, DPSST #14652, writer.

METRO REQUIREMENTS:

Waste that originates within the Metro Region is subject to Metro fees and taxes (see Metro code 7.01.020 and 5.02.045, which is attached). Landfills and transfer stations in and around the Metro regional boundary, such as Riverbend landfill and Lakeside reclamation, receive waste from both inside and outside the region. Landfills that are system facilities, such as Lakeside reclamation, provide individuals or companies with a Metro-provided form (Certification form for out-of-Metro load) to complete if their load originated outside the Metro region. If the load originated inside the region, the hauler would be responsible to pay Metro fees and taxes. Companies can avoid paying approximately \$23.67 a ton in Metro fees and taxes by claiming their load originated outside the Metro region, when in fact, they originated inside the region.

Riverbend landfill, which is not a system facility, is located on Hwy 18 in McMinnville, Oregon. Riverbend landfill is not required to provide individuals or companies with a certification form for out of Metro loads. However, the scale house workers asks the drivers what County their loads came from, which is then documented on the receipt. Companies can avoid paying approximately \$23.67 a ton in Metro fees and taxes by taking a load from inside the Metro regional boundary to the Riverbend landfill.

NARRATIVE:

On November 29, 2005, Metro received information from a complainant that several companies were transporting drywall remnants from inside the Metro region to landfills outside the region and claiming the debris originated outside the region. I subsequently contacted the complainant and he explained the situation to me.

The complainant said that he has learned that many companies, including Avila Drywall and USA General Contractors, are landfilling drywall instead of recycling the material. The informant said that he knows that Avila Estrada, of Avila Drywall, and Herme Rivas, of USA Contractors had several meetings with a recycler but a clear cut agreement as per price per ton was not reached on the price of disposal. The informant told me that he learned that both companies were asked to recycle their drywall instead of disposing the waste at a Landfill. The informant said that USA and Avila temporarily took their drywall to Resource Recovery but discontinued after a short time.

Based on the information provided by the informant, Detective Gaddis and I began searching new home development sites for Avila Drywall or USA General Contractors. On March 15, 2006, Detective Gaddis found a USA truck (t553992) within the Metro region in Multnomah County at Morgan Meadows in Troutdale (257th) loading drywall. At 10:25am the vehicle left the site and stopped at SW 206/Amberwood in Hillsboro where they loaded more drywall. At 1:06pm the truck left Hillsboro and arrived at the Riverbend landfill at 2:45pm. The origin of the debris on the Riverbend landfill receipt was listed as Yamhill County and the weight was 4.08 tons.

On April 19, 2006 at 1:45pm, I located a USA General Contractors truck (t555117) in Washington County at the Arbor Rose development in Hillsboro, which is inside the Metro region. The workers loaded drywall until 1:15pm at which time they left the site. I followed the truck to Waterhouse Street and Blue Ridge Street in Beaverton, which is in the Metro Region. The workers loaded drywall until 3:57pm at which time they left. Detective Gaddis then followed the truck westbound on hwy 26 to a site in North Plains. At 6:30 the truck left North Plains and traveled eastbound on hwy 26.

Based on the time of day and the fact that that the Riverbend landfill closes at 5:00pm, Detective Gaddis did not continue following the truck. On the following day, I arrived at the Riverbend landfill at 0745 to wait for the listed truck to arrive. At 0850, I saw the same truck arrive at the Riverbend landfill fully loaded with drywall. The origin of the drywall on the receipt was Yamhill and the weight was 5.25 tons.

On April 24, 2006 at 9:31am, Detective Gaddis found a USA General Contractors truck (t553992) in Multnomah County at the Morgan Meadows development in Troutdale (257th) loading drywall. The truck was partially full when Detective Gaddis located the truck. The workers loaded the truck until 11:08am at which time truck left the site. We followed the truck to the flying J truck stop where the workers got some food. At 11:45am we followed the truck to a site on NE 250th and Halsey at Edgefield Meadows lane, inside the Metro region. The workers began loading drywall until 1:16pm at which time they left the site. We followed the truck to Newberg (Chehalem/Mountain view drive) where the workers began loading drywall. At 2:55pm, the truck left the site and arrived at the Riverbend landfill at 3:20pm. The origin of the drywall on the receipt was Washington County and the weight was 6.1 tons.

On April 26, 2006 at 1140am, I located a USA General Contractors truck (t553992) in Washington County at a development on SW Bull Mountain road and SW 164th, which is in the Metro region. I watched the worker briefly load drywall into the truck. At 11:46am, the truck left the site. I followed the truck to the Riverbend Landfill, arriving at 12:34pm. The origin of the load on the receipt was from Yamhill and the weight was 4.75 tons.

On May 2, 2006 at 0942, I located a USA General Contractors truck (t553992) in Washington County at the Bull Mountain site, which is in the Metro region. I watched the workers load drywall until 10:14am at which time they left the site. I followed the truck to hwy 99 where detective Gaddis met up with me. We then followed the truck to the Greens (by the golf course) in Newberg, arriving at about 10:40am. The workers loaded drywall until 11:55am at which time they left the site. We followed the truck to Chehalem/Mountain View Drive in Newberg where the workers began loading drywall at 12:15pm. At 3:09pm we followed the truck from the site and to the Riverbend landfill, arriving at 3:42pm. The origin of the drywall on the receipt was Yamhill County and the weight was 5.55 tons.

On June 26, 2006 at about 9:30am, Metro received a phone call from a complainant who was following a drywall truck from the Arbor Rose home development in Hillsboro. The complainant said that he found the truck at the Arbor Rose development at about 8:00am. He said he observed workers loading drywall into their truck until about 9:30am. At that time the truck left the development and the complainant said he was presently following the truck into a development off SW Beef Bend road. I

told the complainant that I was enroute and that I would call him when I arrived in the area.

At about 10:00 I called the complainant and informed him I was in the area. The complainant told me that he was watching the workers load sheet rock into the truck and that he had taken several pictures. The complainant further stated that the house the workers were removing the sheet rock from was lot # 16 at SW Davinci Ln and SW Greenfield, which is in Washington County and the Metro region.

At about 10:30am, the complainant told me that the workers were getting ready to leave. I informed him that I would wait for them at the bottom of Beef Bend Road. We maintained phone contact for about four minutes at which time I observed the truck crest the hill on SW Beef bend road and drive to SW Roy Rogers's road. I pulled behind the truck as it turned westbound on Roy Rogers. I ran the license plate (t558666) and determined the registered owner is USA General Contractor. I subsequently followed the truck to the Riverbend Landfill, arriving at 11:16am. The origin of the load on the receipt was Yamhill County and the weight was 4.53 tons.

On July 19, 2006, Detective Gaddis and I drove to Herme Rivas' residence at 730 St. Mary Circle in Mt. Angel to talk with him concerning his company, USA General Contractors. A about 2:00pm we knocked on the door of the residence and a man answered. We asked him if Herme was home at which time he said he was not and didn't know when he would be back. I supplied him with my business card and asked him to have Herme call me when he returned home.

About ten minutes later, I received a call from Herme on my cell phone. I explained the situation to him and asked if we could meet to discuss his business. We subsequently agreed to meet with us at Metro the following morning at 10:00am.

On July 20, 2006 at about 10:20am, Herme met me at the Metro building located at 600 NE Grand avenue. Upon meeting Herme, I noted that he looked exactly like the man that answered the door at Hermes residence in Mt. Angel. I asked him if he had a brother at which time he told me he was the person that answered the door at his residence. He said he had received threats of kidnapping and doesn't tell people who he is if he doesn't know them.

We subsequently went to room 370A and sat down. I explained to Herme that I was a Detective with the Multnomah County Sheriff's Office and that I am contracted to Metro to conduct investigations. I explained to Herme that I wanted to talk with him about his business and asked him if I could record our conversation. He agreed to the recording at which time I turned the tape recorder on at 10:30am.

Herme said that he was the owner of USA General Contractors. He said he started the company on July 5, 2005. He said his company does drywall cleanup and final cleanup, which consists of taking paper down and sweeping the floors. He said he is not contracted with drywall companies but does the cleanup for: Westside Drywall, Tri County drywall and PNR drywall.

Herme said that he works at different locations during the day. He said he never knows from one day to the next where he is going to clean. He said he receives a call from the drywall companies who tell him what house needs to be cleaned up on a certain day. He said one day he could be in Eugene, the next day he could be in Hood River. The farthest away he thinks he's been is Eugene and Longview, WA.

Herme said he owns eight trucks but only four trucks are operating at the present time. He currently has three employees working for him. He said the USA receives about 2 cents per sq foot to dispose of sheet rock from a house. The employees are also paid by the foot, which Herme said averages out to be more than minimum wage.

I asked Herme if he knew what the Metro Region was. He told me it was Multnomah County, Washington County and Clackamas County. I explained to Herme that the Metro region was not the three Counties as a whole. I told him that the Metro region consisted of parts of the three Counties, but that some of the three Counties were not in the region. (I provided him with a Metro map) Herme told me that he thought that the Region consisted of all three counties. Herme said that every time his loads are from Washington, Multnomah or Clackamas County, his workers tell the scale house worker at Riverbend which County the load came from so that County will receive the taxes. He said that if the load were from Multnomah County, his workers would claim the load came from Multnomah County, etc.

Herme said that he is not the only company that works for the drywallers. He said there are many other subcontractors that do drywall cleanup for Westside. But, he believes he is the only company that does cleanup for Tri-County. He said Westside also have two of their own trucks that do drywall cleanup. He said he doesn't know the name of the other subcontractors except for Avila who contracts with Westside. He said Avila has been in business for about 8 years. He said that Avila does not have an office but they work out of a home.

I asked Herme how many full truckloads of drywall he thinks he picks up a day. He said that sometimes he gets one full load. He said he might have a house today and he may not be called back to that house; it may be given to another cleanup company. He said that he might go to a house and find that all he has to clean up is paper from the walls. He said he then may have to go to another house in Forest Grove and from there he may have to go to Cornelius and after that he may go to Newberg.

I asked Herme how much he thinks his average full loads weighs. He thought that they might weigh about 2 ½ tons. I asked Herme what disposal facilities he had an account with. He said that the only account he has is with Riverbend landfill in McMinnville. I asked him if he could estimate how many loads a week he takes to the Riverbend landfill. He told me he takes almost nothing to Riverbend. He estimated that 40 % of his loads come from inside the region. I again asked Herme how many of his loads a week goes to McMinnville from inside the region. He said "one or two, three at the most".

I asked Herme if he had accounts with other disposal facilities. He said he tried to get accounts with Grabhorn but they asked for too many references. He then went to Oregon City (Metro south) and discovered that they charge three times what Riverbend landfill charge for the same load. We discussed the loads again at which time Herme said that he probably takes, on the average, twelve tons a week from inside the Metro region to the Riverbend landfill.

Herme said that since he talked with Steve (Kraton), he paid some money to Metro to get a non-system license. He said he paid a partial payment to Metro for the license and then sent the remaining balance. I asked him if he, in fact, had a non-system license. He said he didn't know because for some reason he received the money back from Metro and he didn't know what his situation was.

I asked Herme if he has cleaned any house on Sunnyside. He said he rarely goes up there; he said he might do 1 or 2 houses a week. He said Westside does a lot on Sunnyside. He said he does most of his work in Beaverton or Hillsboro area.

He said he started working at Arbor Rose in Hillsboro last year. He claimed that he cleaned up about 3,4 or five houses a week at that location. Herme said that he also cleaned up houses at Centex development located on River Road in Hillsboro. He claimed that he cleaned about one house a week, which amounts to about a ¼ truckload a house. He said he also cleaned about 10 houses at Arbor on Bull Mountain, inside the Metro region. Herme said that he does mostly single house that are not in new developments.

I asked him why he didn't take his loads to the Hillsboro landfill when he was picking up loads a short distance away. He said that he might start a load in Hillsboro but then finish the load in Newberg. He said that Hillsboro also charges \$55.00 or \$65.00 a ton. He said he has used Hillsboro landfill before and that he can't make any money by using them.

I asked Herme why he doesn't recycle his drywall. He told me that he went to Knez recycling and their rates are "really, really high and they don't want to take us". He said they charged \$15.00 a yard. He said that would amount to way more than he can afford. He said that he also worked with a recycle company by the name of Resource Recovery. He said they agreed upon an amount of \$35.00 a ton for the drywall for about a month. Resource recovery then told them that his company wasn't worth it and that if they wanted to keep going to them they would have to pay \$65.00 a ton.

I asked Herme if he was willing to supply Metro with the records of the houses that he has cleaned inside the region. He told me that he has records but he wouldn't be able to tell us if the house was inside the Metro region or out. I asked him if he had address of the houses he has cleaned. He said he had some records but most of the addresses were given to him by phone. He said sometimes they would give him an address; other times they would give him lot numbers. Herme said that he believes "nobody has specific records for everything".

Herme said he is a small company trying to grow. He said that the bigger companies are doing the same thing as he is doing; going from inside the region to landfills outside the region. I asked Herme if he knew he wasn't suppose to operate that way. He said that he talked to Steve about a non-system license. He thought that if he claimed the County where the debris originated from, he would be paying the taxes. I explained to Herme that his workers were not claiming the County the debris originally came from. He said the workers are supposed to know what County the loads came from and tell Riverbend.

I explained to Herme that Riverbend doesn't care where the loads come from. Herme told me he knew that. He said that if you don't have a full load, what are you going to do? He said the landfills charge you a minimum fee for a load, \$35.00-\$40.00. Herme said that if you have one house that makes you a profit of \$50.00 and have to pay a minimum charge, you couldn't make a profit. I told Herme I understand his concerns but I explained to him that if half his load was inside the region and the other half was outside the region, he must claim the whole load as being inside the region.

I explained to Herme that his workers were loading debris inside the Metro region and claiming the loads were coming from outside the region. I asked him if he knew that? He said he didn't know that was taking place. He asked me if it would be alright if he had a Non system license and the receipts show the load was coming from Washington County, Clackamas County... I explained to Herme that he didn't have a non-system license. I told him that his money was sent back to him with a letter explaining that he didn't have a non-system license. Herme claimed that he didn't know he didn't have a non-system license. Herme told me that he pays taxes when he takes a load to the Riverbend landfill. I explained to him that the taxes he pays at Riverbend are probably County taxes, not Metro taxes.

I asked Herme to supply me with the companies he has worked for inside the region and the amount of homes he has cleaned for each company inside the region. I also requested that he provide me with all the subdivisions he has worked in of which he said he would do that.

On August 29, 2006 at 0830, detective Gaddis and I met Odus Lambert at Tri County Drywall located in Oregon City. I advised Odus that we were detectives with the Multnomah County Sheriff's Office and we that were working under contract for Metro. I told Odus that we were currently investigating several small companies, including USA Contractors, that were violating Metro code by taking debris from inside the Metro region to the Riverbend landfill, avoiding Metro fees and taxes.

Odus told us that he had recently talked with Herme from USA Contractors and that Herme told him that we had spoke to him concerning taking debris from inside the region to Riverbend landfill. He said based on their conversation, he raised Herme's income from 2 ½ cents a square foot to 3 cents a square foot. Odus also said that he pays Herme 1 ¼ cents a square foot to do cleanup of each house, which consists of picking up paper, mud boxes, cleaning tubes, etc.

Odus said that he is the owner of Tri-County drywall. He said he has been in business for about 6 years. He said that USA Contractors has been subcontracting for him as a drywall cleanup company for about a year and a half.

Odus said that USA has done the drywall clean up for him at the following locations: 80 houses at Morgan meadows located at NE 257th and Glisan, 15 houses at the Trolley barn development in Sellwood, 30-40 houses at arbor point on Bull mountain, 6 houses at Riverside homes on Beef bend road, 30 houses a the Grant development off 207th and Sandy, all of which are inside the Metro boundary.

We asked Odus if he could estimate how many houses of drywall scrap it would take to complete a truck-load full enough to take to the landfill. Odus said that it would be difficult to estimate because every house is different. But, he said that if he had to guess, he would estimate that it would take about 3-4 houses to fill a truck.

On August 29, 2006 at 2:00pm, detective Gaddis traveled to Westside dry wall in Hubbard, Oregon to meet with Mohsn Salem for a prearranged meeting. Upon our arrival, we were informed that Mohsn was unavailable but we could meet with the general manager, Doug Bennett.

I advised Doug that we were Detectives with the Multnomah County Sheriff's Office and that we were working under contract for Metro to conduct investigations. I told Doug that we were currently investigating several small companies, including USA Contractors and Avila Drywall, that were violating Metro code by taking debris from inside the Metro region to the Riverbend landfill, thus avoiding Metro fees and taxes.

Doug informed us that about six weeks ago he heard that we had spoken to Herme Hernaide Rivas, of USA Contractors, and Juventino Avila Estrada, of Avila Drywall. Based on what Herme and Juventino told him about the additional costs and the Metro code, Westside Drywall raised their rates by ½ cent a square foot. Doug said that the scrappers are now getting 2 ½ cents a square foot and the cleaners are getting 1 ¼ cent a square foot. He said that Avila Drywall normally does the scrapping, which accounts to about 70% of the new construction and USA Contractors normally do about 30% of the scrapping and most of the cleanup.

Doug told us that the two listed companies have scrapped and cleaned up the following developments in the Metro region: 200-300 homes in Arbor home development in Hillsboro, 200 houses at the Arbor home development at 156th and Sunnyside, 100 homes (or better) at the Arbor homes and Buena Vista developments in Happy valley, 80 (plus) homes in the Centex development in Fairview, Or., and 70-80 homes in the Centex development in Hillsboro.

Doug informed me that the average house they drywall is about a 2100 square foot home, which amounts to about 10,000 square feet of drywall. Doug said that the drywall cleanup amounts to about \$250.00 a house. He said that Avila told him that he could scrap about four houses a day. Doug went on to say that he thought it would take about 4 to 5 houses of drywall scrap to fill an average truck that the scrappers use.

During the interview of Herme Rivas on July 20, 2006, I requested that he provide me with an estimate of how many houses he has been contracted to clean inside the Metro region in the last year. I also requested he provide me with the companies he has cleaned homes for and the subdivisions he has worked in. I also requested he provide me with the average square foot of the houses he cleans. Herme said, "sure, no problem."

During the last five weeks, I have called Herme four times and again requested he provide me with the information. Each time, Herme said he would get me the information that day or the next day, which he never did. On August 29, 2006, Detective Gaddis and I ran into Herme at Westside Drywall in Hubbard, Oregon. I again asked him to provide me with the listed information. Herme assured me he would call me later in the afternoon with all the information I needed. As of the writing of this report, Herme has not provided me with the information I requested from him.

On September 1, 2006, I received a message from Herme on my cell phone. He indicated to me that he had the information I needed and requested I call him back. On September 6th I returned the call to Herme. I again requested that he provide me with the information I needed in regards to the homes that he has taken drywall out of inside the region and transported to Riverbend landfill. Herme said he was in Oregon City, but that he would call and meet with me later in the day. Herme never contacted me.

On September 6, 2006 at about 9:00am, I again called Herme on his cell phone. I asked him if he had the information at which time he said he did and that he would meet me at the Metro office. At about 10:00am, Herme arrived at the Metro office carrying a notebook holder with paperwork inside. I asked Herme if he had the information I needed. He said he did and opened his notebook up like he was looking for something. Herme then closed the notebook and said that he didn't have the paper work with him but he could tell me what I needed by memory

Herme subsequently told me that since July 5, 2005, he has cleaned the following number of homes at the listed developments: 80 homes at Morgan meadows (DR Horton) NE 257th and Glisan, 15 homes at Bull Mountain, 80 homes at Arbor rose located on Tualatin Valley highway in Hillsboro, 25 homes at Centex located on River road in Hillsboro and 10 homes at the Trolley barn development in Sellwood, of which all locations are within the Metro regional boundary.

PRIOR VIOLATIONS:

On December 6, 2005, detective Gaddis and I began an investigation of USA General Contractors. As a result of a two-day surveillance, we concluded that the Company was violating Metro code sections: 7.01.20 (failure to pay Metro solid waste tax) and 5.05.025 (utilization of an unauthorized disposal site). Metro imposed a total penalty of only \$300.00. The minimal penalty was based on several mitigating circumstances. It appeared, at the time, that the actions of USA Contractors "may have been the result of lack of knowledge about the Metro system rather than a deliberate attempt to illegally avoid the payment of Metro fees and taxes". It also appeared, at the time, that "since you have only recently started up your business and that you are based well outside the Metro regional boundary make it reasonable to believe that you were not fully aware of the requirement to deliver solid waste only to system facilities when such solid waste is generated from within the Metro boundary".

On December 27, 2005, Metro sent a certified letter to USA General Contractors and Herme Rivas advising him that Metro found him in violation of Metro code. Metro imposed a penalty of \$300.00. The finding of violation letter explained in specific detail that debris generated inside the Metro regional boundary cannot be disposed of in any solid waste facility or disposal site without an appropriate license from Metro. The letter also informed USA General contractors and Herme Rivas that Metro code requires payment of Metro excise taxes on each ton of solid waste generated within the Metro region. (See original attached report)

It is apparent that after conducting a lengthy investigation of USA general Contractors, USA general contractors continued to (knowingly) violate Metro code by transporting debris from inside the Metro region to the Riverbend landfill, a non-system disposal site, without having obtained the required non-system license and without having paid Metro excise taxes on such waste.

REPORTING DEPUTY:

Detective, Michael Gates, #14652.

Date: August 30, 2006



**METRO SOLID WASTE ENFORCEMENT UNIT
SPECIAL REPORT 06-0380**

SUMMARY

During the course of Detective Gates and my investigation, we interviewed representatives from D R Horton and Arbor Homes (West Hills Development). The information we received from the interviews was mainly a confirmation of facts known and numbers of homes possibly done by USA General Contractors and Avila Drywall.

MENTIONED

D R Horton
4386 SW Macadam Avenue Suite 102
Portland, OR 97239
Angie Grajewski
Phone 503.222.4151 ext. 1114
Heather Steele
Phone 503.222.4151 ext. 1127

Arbor Homes (West Hills Development)
15500 SW Jay Street
Beaverton, OR 97006
Gary Wong
Phone 503.641.7342 ext. 256

NARRATIVE

We interviewed Heather Steele and later spoke with Angie Grajewski. According to D R Horton's records, homes built inside the Metro Region (totaling 776 units as of July 2006) are listed as follows:

Brookwood Crossing in Hillsboro, 150 completed out of 304 planned.

Trolley Barn in Sellwood/Portland, 4 completed out of 69 planned.

Burgundy Rose in Happy Valley, 40 completed out of 146 planned.

Morgan Meadows in Troutdale, 257 almost all completed as of 08/29/06.

We also interviewed Gary Wong of Arbor Homes who said that they (Arbor Homes) use Westside Drywall for 90-95% of their work. He said that they do use Tri County and, in the very near future (late August 2006) will be using Pyramid Drywall from Vancouver, Washington. Gary Wong estimated that they built 600 homes in the past year and the average is 2,000 - 2,200 square feet - not to be confused with total sheet rock square feet, which was explained to me as approximately 10,000 square feet of sheet rock for a 2,100 square foot home.

EXHIBIT 3

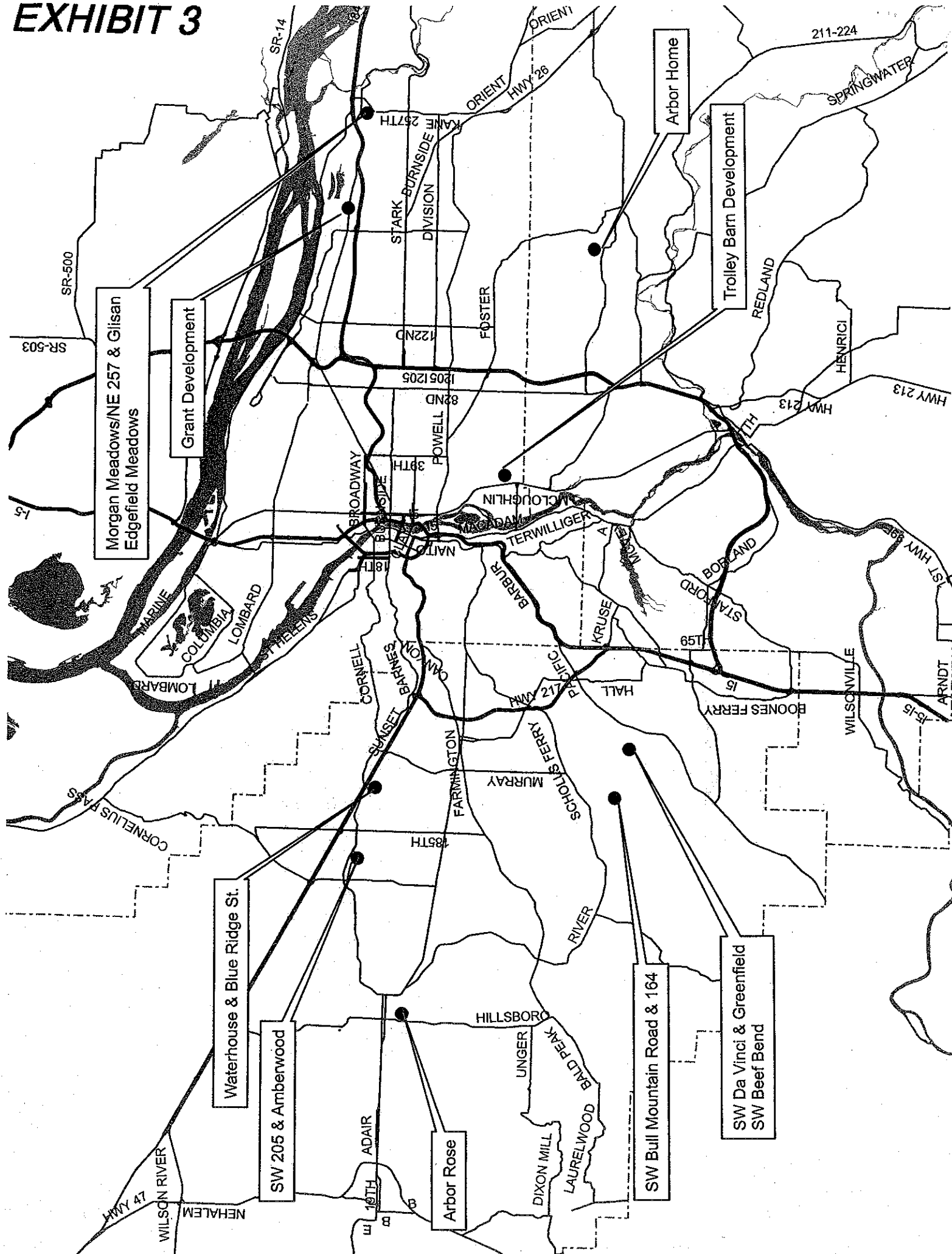


EXHIBIT 4



Riverb' Landfill
13469 Sw Highway 18
McMinnville, OR, 97128
Ph: (503) 472-8788

Reprint
Ticket# 466420

Customer Name USAGENERAL USA General Constr Carrier USAGEN USA GENERAL CONTRACTORS
Ticket Date 03/15/2006 Vehicle# WHITE Volume
Payment Type Credit Account Container
Manual Ticket# Driver
Hauling Ticket# Check#
Route Billing # 00000693
State Waste Code Gen EPA ID
Manifest
Destination
PO
Profile ()
Generator

Time Scale Operator Gross
In 03/15/2006 14:45:14 Scale CAROLJ 21220 LBS
Out 03/15/2006 15:04:59 Scale CAROLJ 13060 LBS
Comments Tons 8160 LBS
4.08

Product	LDX	Qty	UOM	Rate	Tax	Amount	Origin
1 CDT-C&D Tons	100	4.08	Tons	25.16	14.12	\$102.65	YAM

Total Tax \$14.12
Total Ticket \$116.77

Driver's Signature

402WM



Riverb Landfill
13469 Sw Highway 18
McMinnville, OR, 97128
Ph: (503) 472-8788

Reprint
Ticket# 472607

Customer Name USAGENERAL USA General Constr Carrier USAGEN USA GENERAL CONTRACTORS
 Ticket Date 04/20/2006 Vehicle# ORANGE Volume
 Payment Type Credit Account
 Manual Ticket#
 Hauling Ticket#
 Route
 State Waste Code
 Manifest
 Destination
 PO
 Profile ()
 Generator

Time Scale Operator Inbound Gross
 In 04/20/2006 08:53:17 Scale EMM 22760 1b
 Out 04/20/2006 09:18:15 Scale EMM 12260 1b
 Net 10500 1b
 Tons 5.25

Comments

Product	LDX	Qty	UDM	Rate	Tax	Amount	Origin
1 CDT-C&D Tons	100	5.25	Tons	25.16	18.17	\$132.09	YAM

Total Tax \$18.17
 Total Ticket \$150.26

Driver's Signature
 402WM

EXHIBIT 6



Riverbend Landfill
13469 S. Highway 18
McMinnville, OR, 97128
Ph: (503) 472-8788

Reprint
Ticket# 473472

Customer Name USRGENERAL USA General Constr Carrier USAGEN USA GENERAL CONTRACTORS
Ticket Date 04/24/2006 Vehicle# WHITE Volume
Payment Type Credit Account Container
Manual Ticket# Driver
Hauling Ticket# Check# 0000693
Route Billing #
State Waste Code Gen EPA ID
Manifest
Destination
PO
Profile ()
Generator

Time Scale Operator Inbound Gross
In 04/24/2006 15:20:02 Scale shelleyf Tare 24700 1b
Out 04/24/2006 15:36:27 Scale shelleyf Net 12680 1b
Tons 12020 1b
5.01

Comments

Product	LD%	Qty	UDM	Rate	Tax	Amount	Origin
1 CDT-C&D Tons	100	6.01	Tons	25.16	20.80	\$151.21	WAS

Total Tax \$20.80
Total Ticket \$172.01

Driver's Signature

402WMM

EXHIBIT 7

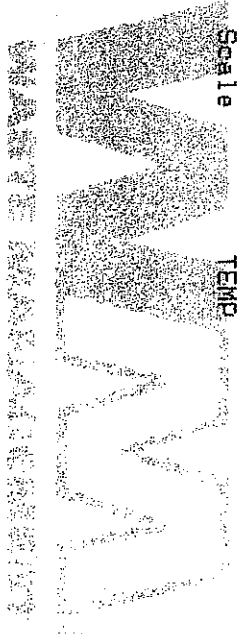


Riverbe Landfill
13469 Sw Highway 18
McMinnville, OR, 97128
Ph: (503) 472-8788

Reprint
Ticket# 473832

Customer Name USAGENERAL USA General Constr Carrier USAGEN USA GENERAL CONTRACTORS
Ticket Date 04/26/2006 Vehicle# WHITE Volume
Payment Type Credit Account
Manual Ticket#
Hauling Ticket#
Route
State Waste Code
Manifest
Destination
PO
Profile ()
Generator

Time In 04/26/2006 12:34:52 Scale Operator TEMP Inbound Gross 22220 1b
Out 04/26/2006 12:50:16 Scale TEMP Driver Container 12720 1b
Comments Scale TEMP Billing # 00000693 Net 9500 1b
Tons 4.75



Product	LD%	Qty	UDM	Rate	Tax	Amount	Origin
1 CDT-C&D Tons	100	4.75	Tons	25.16	16.43	\$119.51	YAM

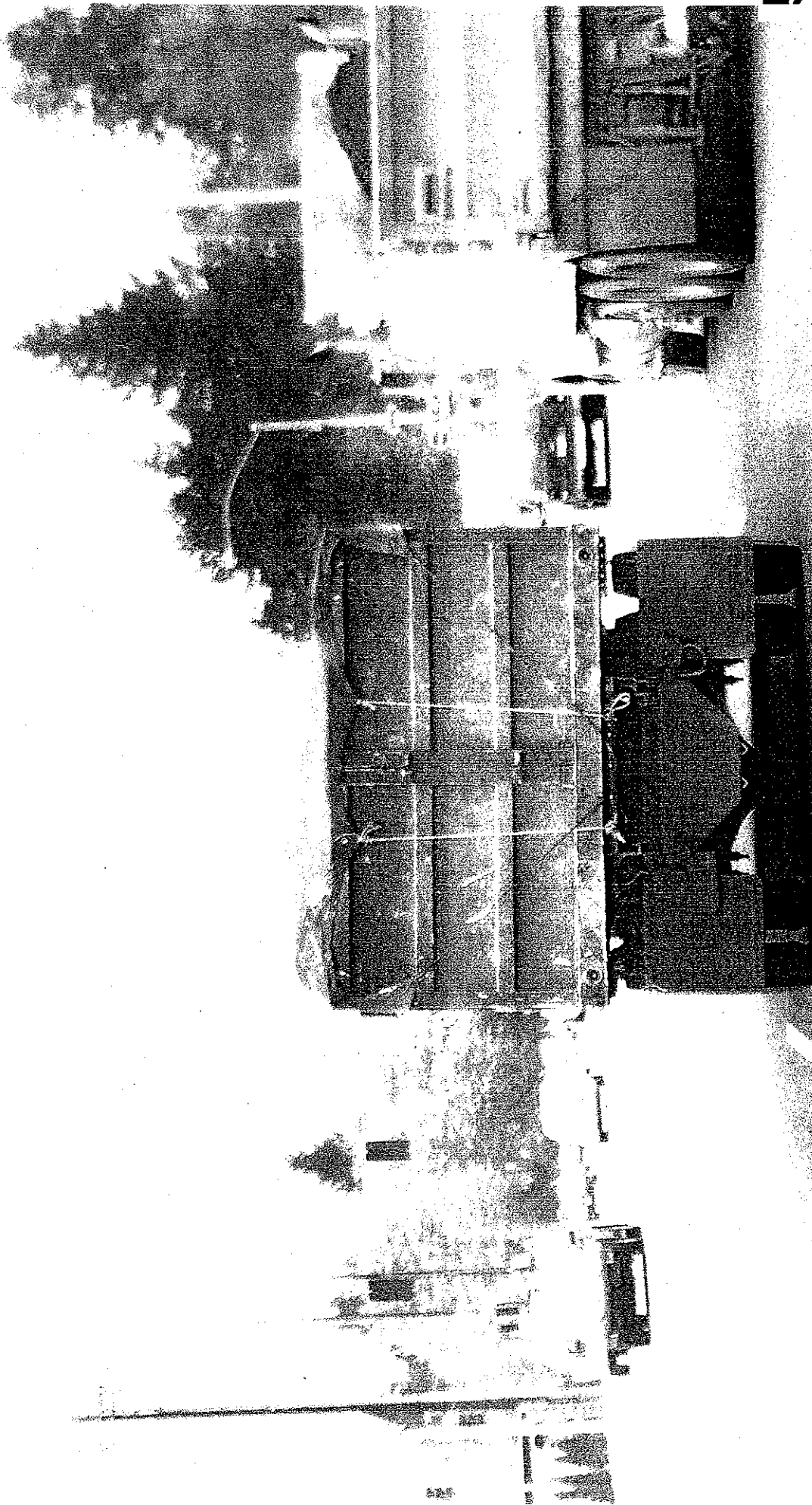
Total Tax \$16.43
Total Ticket \$135.94

Driver's Signature
402WMM

EXHIBIT 8

04-207-05

USA General Bull Mountain-Riverbend.JPG





Riverb ' Landfill
13469 S.W. Highway 18
McMinnville, OR, 97128
Ph: (503) 472-8788

Reprint
Ticket# 475033

Customer Name USAGENERAL USA General Constr Carrier USAGEN USA GENERAL CONTRACTORS
Ticket Date 05/02/2006 Vehicle# WHITE Volume
Payment Type Credit Account
Manual Ticket#
Hauling Ticket#
Route
State Waste Code
Manifest
Destination
PO
Profile ()
Generator

Time Scale Operator Inbound Gross
In 05/02/2006 15:42:10 Scale TEMP 24540 1b
Out 05/02/2006 16:08:06 Scale TEMP 13440 1b
Net 11100 1b
Tons 5.55

Comments

Product	LD%	Qty	UDM	Rate	Tax	Amount	Origin
1 EDT-EGD Tons	100	5.55	Tons	25.16	19.20	\$139.64	YAM

Total Tax \$19.20
Total Ticket \$158.84

Driver's Signature

402WM



River 3rd Landfill
13469 3rd Highway 18
McMinnville, OR, 97128
Ph: (503) 472-8708

Reprint
Ticket# 403419

Customer Name USAGENERAL USA General Constr Carrier USAGEN USA GENERAL CONTRACTORS
Ticket Date 06/26/2006 Vehicle# WHITE RED Volume
Payment Type Credit Account Container
Manual Ticket# Driver
Hauling Ticket# Check#
Route Billing # 00000693
State Waste Code Gen EPA ID
Manifest
Destination
PO
Profile ()
Generator

Time	Scale	Operator	Inbound	Gross	17620	16
In 06/26/2006 11:20:24	Scale	EMM		Tare	8560	16
Out 06/26/2006 11:39:22	Scale	EMM		Net	9060	16
				Tons		4.53

Comments

Product	LDX	Qty	UDM	Rate	Tax	Amount	Origin
1 CDT-C&D Tons	100	4.53	Tons	25.16	15.68	\$113.97	YAM

Total Tax \$15.68
Total Ticket \$129.65

Driver's Signature

402WM

EXHIBIT 11

05-26-05

USA General_Arbor Rose-Beefbend-DaVinci.JPG





METRO

Exhibit HO-1
Paul A. Garrahan
Tele: (503) 797-1661
FAX: (503) 797-1792

RECEIVED

DEC 12 2006

HARRIS LAW FIRM, PC

December 11, 2006

Mr. Robert J. Harris
Harris Law Firm PC
165 SE 26th Avenue
Hillsboro, OR 97123

Re: Contested Case Hearing on NOV-162-06—Status of Exhibits 12 through 15 as
Part of the Hearing Record

Dear Mr. Harris:

At the close of the hearing held on Wednesday, December 6, 2006, C. David Hall, counsel for respondent USA General Contractors, LLC, asserted that Exhibits 12 through 15 should not be considered as part of the record in this matter. This letter is to rebut Mr. Hall's assertion and to ask you to rule that these exhibits are part of the record in this matter.

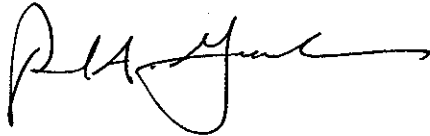
The sole source of authority providing rules for the conduct of Metro hearings is Metro Code Chapter 2.05. Metro Code Section 2.05.030(a) provides that "evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible," and Metro Code Section 2.05.030(c) provides that "all offered evidence, not objected to, will be received by the hearings officer subject to his/her power to exclude irrelevant, immaterial or unduly repetitious matter."

These requirements have been satisfied with respect to Exhibits 12 through 15, and you, therefore, should rule that they are part of the record. Specifically, first, the exhibits contain information that a reasonably prudent person would rely on "in conduct of their serious affairs." Second, adequate foundation for the admissibility and authenticity of the exhibits was provided by the testimony of Metro employee Steve Kraten. Third, Metro offered these exhibits at the hearing. Metro Code Chapter 2.05 does not require the recitation of pro forma words for evidence to be considered "offered" at a hearing. At the hearing, Exhibits 12 through 15 were clearly marked and were provided to the hearings officer and to Mr. Hall prior to the start of the hearing. Each of these exhibits was introduced and discussed in detail by Mr. Kraten. By these steps, these exhibits were offered by Metro at the hearing. Fourth, Mr. Hall did not ask Mr. Kraten any questions challenging the authenticity of the exhibits, nor did he object to their admission into the

record on substantive grounds. (To the extent that Mr. Hall feels he did not have adequate opportunity to object to the admission of these exhibits into the record on the grounds that Metro did not lay proper foundation for their admittance or that they do not meet the prerequisites for the admissibility of evidence under Metro Code Section 2.05.030(a), Metro does not object to him raising any such objections to the hearings officer in writing within a reasonable period of time.)

For these reasons, Metro asserts that Exhibits 12 through 15 are part of the record in this matter and that you are fully within your discretionary authority as hearings officer to so order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul A. Garrahan", with a long horizontal flourish extending to the right.

Paul A. Garrahan
Senior Assistant Metro Attorney

pag:sa

cc: C. David Hall, Esq., Attorney for Respondent USA General Contractors, LLC
Roy Brower, Metro Regulatory Affairs Division Manager

Exhibit 140-2

C. David Hall
Attorney at Law

Telephone: 503-234-3245
Fax: 503-234-2992
E-mail: CDHlawoffice@aol.com



Mailing address:

P.O. Box 14546
Portland, OR 97293

Office address:

1432 E. Burnside
Portland, OR 97214

December 12, 2006

Mr. Robert Harris
Attorney at Law
165 SE 26th Avenue
Hillsboro, OR 97123

RE: *USA General Contractors, LLC*

Dear Mr. Harris:

I have received Mr. Garrahan's letter dated December 11, 2006 proposing that Exhibits 12 through 15 should be made part of the record because they are admissible and they were offered into evidence. I strongly object to Mr. Garrahan's assertion that these items were offered into evidence.

I would ask the hearings officer to review the transcript of the proceedings. It is clear that Mr. Garrahan never offered these documents into evidence. I did not cross-examine the witness with regards to these documents because they not been offered into evidence. Mr. Garrahan did not lay any foundation as to the admissibility of these documents nor did he properly authenticate the documents. Had he offered them into evidence, I would have objected to their admissibility. He did not, however, offer them into evidence and they are not part of the record. I request that the hearings officer exclude them from any consideration in determining the outcome of this case.

Very truly yours,

A handwritten signature in dark ink, appearing to read "C. David Hall".

C. David Hall

CDH:lh

cc: client
Paul Garrahan



METRO

December 27, 2005

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Herme Rivas
USA General Contractor, LLC
PO Box 1146
St. Mary's Circle
Mount Angel, OR 97362

RE: Finding of Violation and Notice of Assessment of Penalties

Dear Mr. Rivas:

On December 7, 2005, one of your company's employees, under your direction, delivered solid waste generated from within the boundaries of Metro to the Riverbend Landfill. The Riverbend Landfill is a non-system disposal site and your company delivered the solid waste without having applied for or been granted the required Metro non-system license. Metro staff investigated your handling of this load by conducting surveillance to determine the origin of waste load, interviewing the driver and the manager of the landfill, and by reviewing the landfill-issued weight ticket for the load. Based on that review, as set forth below, I find that you violated the provisions of Metro Code Sections 5.05.025 and 7.01.020 and are subject to the assessment of civil penalties. You are hereby notified of my findings and of my assessment of penalties pursuant to Metro Code Sections 5.05.070 and 7.01.150.

FACTS AND APPLICABLE METRO CODE PROVISIONS

On December 6, 2005, Multnomah County Sheriff Detectives Jon Gaddis and Mike Gates, the investigators in this case, observed employees of USA General Contractors, LLC, load a substantial quantity of waste drywall into one of your company's trucks at a new housing development in the City of Troutdale near NE 257th and Glisan, a location within the Metro Regional boundary. The waste from that location filled the truck approximately half full. The detectives then followed the truck to additional locations outside the Metro boundary where more drywall scrap was loaded onto the truck until the

truck was full. At the end of the day, the truck was parked, still full, at an apartment building located at 19839 S. Hwy 213, in Oregon City.

On the morning of December 7, 2005, the detectives arrived at the apartment building before the truck was moved and followed the truck again as it was driven by one of your employees, Gregorio Perez-Perez, from the apartment building to the Riverbend Landfill in McMinnville, Oregon, where the waste was delivered for disposal. The Riverbend Landfill is a disposal site that is not designated as part of the Metro solid waste system. Detective Gates documented these facts in a written report (case # 05-1273).

Section 5.05.025 of the Metro Code prohibits any person from transporting solid waste generated within Metro to any solid waste facility or disposal site without an appropriate license from Metro. Metro Code Section 5.05.070 provides for a fine in an amount equal to the \$1,000 non-system license application and issuance fee plus an amount equal to the Regional System Fee multiplied by the number of tons (or fractions thereof) of solid waste generated within Metro that is disposed at the non-system facility. The weight slip provided to the detectives by the landfill show that the load weighed 5.39 tons.

Section 7.01.020(c) of the Metro Code requires payment of Metro excise taxes on each ton of solid waste generated within the Metro region. Metro Code Section 7.01.080 provides for penalties and finance charges to be assessed on unpaid excise taxes, and Code Section 7.01.150 provides for a civil penalty of up to \$500 for each violation of Code Chapter 7.01.

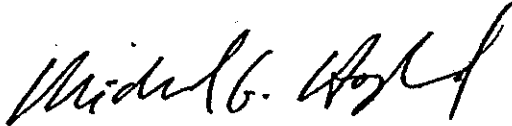
FINDINGS AND ASSESSMENT OF PENALTIES

Based on the foregoing investigation, I find that you have violated Metro Code Sections 5.05.025 and 7.01.020(c) by delivering solid waste to the Riverbend Landfill, a non-system disposal site, without having obtained the required non-system license and without having paid Metro excise taxes on such waste. However, I also find that there are possible mitigating circumstances in this case, most notably that it appears your actions may have been the result of a lack of knowledge about the Metro system rather than a deliberate attempt to illegally avoid the payment of Metro fees and taxes. The fact that you have only recently started up your business and that you are based well outside the Metro regional boundary make it reasonable to believe that you were not fully aware of the requirement to deliver solid waste only to system facilities when such solid waste is generated from within the Metro boundary. Therefore, I am imposing a total penalty of only \$300.00. This is an amount just slightly greater than the combined total of the excise tax that would have otherwise been due on the load (\$8.33 per ton x 5.39 tons) plus an amount equal to a limited-duration non-system license (\$250.00). An invoice for that amount is included with this letter. Some information to assist you in staying in compliance will be provided under separate cover.

Pursuant to Metro Code Section 2.05.005, you have a right to request a hearing regarding this enforcement action. Formal contested case notice is enclosed with this letter. You may be represented by legal counsel at any requested hearing, if you so desire. Should

you have any questions regarding this matter please contact Steve Kraten, Principal Solid Waste Planner, at (503) 797-1678, or have your attorney contact Paul Garrahan, Metro Assistant Counsel, at (503) 797-1661.

Sincerely,



Michael G. Hoglund
Solid Waste & Recycling Director
SK/mtt

cc: Michael Jordan, Metro Chief Operating Officer
Roy Brower, Regulatory Affairs Manager
Steve Kraten, Principal Solid Waste Planner
Paul Garrahan, Metro Assistant Counsel
George Duvendack, Riverbend Landfill

S:\REM\enr\enr\enr\Flow Control\USA_Gen_Contractors\Dec2005\Dec2005Lr.DOC
Qacac

BEFORE THE METRO REGIONAL GOVERNMENT

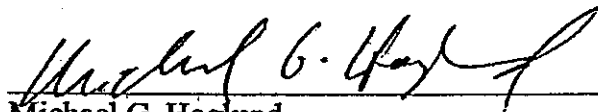
IN THE MATTER OF THE VIOLATION OF)
SECTION 7.01.020 OF THE METRO CODE BY)
HERME RIVAS dba USA GENERAL)
CONTRACTORS, LLC) CONTESTED CASE HEARING
)

TO HERME RIVAS dba USA GENERAL CONTRACTORS, LLC, PO Box 1146
St. Mary's Circle, Mount Angel, OR 97362

Pursuant to Metro Code § 2.05.005(c), Metro hereby provides Herme Rivas dba USA General Contractors, LLC with contested case notice in the matter of the Executive Officer's citation and findings regarding violations of the Metro Code. Specifically, Mr. Rivas violated section 5.05.025 of the Metro Code which prohibits any person from transporting solid waste generated within Metro to any solid waste facility or disposal site without an appropriate license from Metro. A statement of the Chief Operating Officer's determination and a copy of the citation letter directed to the company are included with this notice.

A contested case arises in this matter pursuant to Metro's authority under Article XI, Section 14 of the Oregon Constitution, the 1992 Metro Charter, ORS Chapter 268, including ORS 268.317, and Metro Code Chapters 2.05 and 5.05. Pursuant to Metro Code Chapter 2.05, Mr. Rivas has a right to request a hearing within 30 days of the date of the mailing of this notice. A hearing, if requested, would concern the findings of the Chief Operating Officer with regard to Mr. Rivas' delivery of solid waste generated from within the Metro boundary to the Riverbend Landfill on December 7, 2005, without having obtained the required non-system license. Mr. Rivas can be represented by legal counsel at the hearing, if he so desires.

DATED the 27th day of December, 2005.


Michael G. Hoglund
Metro, Solid Waste & Recycling Director

Mr. Rivas
December 27, 2005

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing NOTICE OF CONTESTED CASE on the following:

Herme Rivas dba USA General Contractor, LLC
PO Box 1146
St. Mary's Circle
Mount Angel, OR 97362

On December 27, 2005, by mailing to said individual a complete and correct copy thereof via certified mail, return receipt requested, contained in a sealed envelope, with postage prepaid, and deposited in the U.S. post office at Portland, Oregon.



Roy W. Brower
Regulatory Affairs Manager
Metro

SK-bjl

SAREM/strat/enforcement/Flow Control/USA_Gen_Contractors/Dec-2005/Dec-2005LA.DOC
Quoc



METRO

March 10, 2006

Mr. Herme Rivas, President
USA General Contractors LLC
730 St. Mary's Circle
P.O. Box 1146
Mt. Angel, OR 97362

RE: Application for a Non-System License

Dear Mr. Rivas:

On March 9, 2006 we received your application for a Metro non-system license to deliver to the Riverbend Landfill loads of construction cleanup waste partly originating from within the Metro boundary. However, on February 2, 2006, the Metro Council adopted Ordinance Number 06-1098B that put in place a temporary moratorium on the acceptance of applications for new non-system licenses. The purpose of the moratorium is to hold in abeyance any further changes to the regional solid waste system until Metro has completed a Disposal System Planning project presently underway. This project will help to determine the shape that the disposal system will take after the moratorium is lifted. The moratorium will remain in place until December 31, 2007 but may be lifted earlier if sufficient progress is made in setting system policy on solid waste disposal and recovery. For this reason, we are returning your application form and check for the \$250 application fee.

Until such time as the moratorium is lifted and you are granted a non-system license, any solid waste that you haul from within the Metro boundary must be delivered only to a Metro-designated facility. On February 2, 2006 the Council adopted Ordinance Number 06-1103. This ordinance amended the Code to clarify the status of loads containing waste from both inside and outside the boundary such as the ones you have described in your application. Though the ordinance will not become effective until 90 days after passage, this particular ordinance constitutes a clarification of Metro's long-standing position on the issue and not a change in policy. The new language is found in section 5.02.045(d) of the Code and reads as follows:

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

Mr. Herme Rivas
March 10, 2006
Page 2

such documentation to Metro, or unless Metro has agreed in writing to another method of reporting.

In other words, if you mix waste from inside the Metro region with outside waste in the same load, then you must identify all of the waste as having been generated inside the Metro region unless you can distinguish and document the weight of waste from inside the district from that outside the district, or unless Metro has pre-approved a method for you to use to distinguish such waste.

If you have questions about this, you can call me at (503) 797-1678

Sincerely,



Steve Kraten
Principal Solid Waste Planner

SK:mb
Enclosure
S:\REM\kraten\Gen Corresp\Rivas030906-NSLapp.doc
Queue

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



METRO

August 29, 2006

George Duvendack, District Manager
Riverbend Landfill
13469 SW Highway 18
McMinnville, OR 97128

RE: Transaction records for USA General Contractors and Avila Drywall

Dear Mr. Duvendack:

An investigation conducted by Metro has revealed that the Herme Rivas, dba USA General Contractors, and Juventino Estrada dba Avila Drywall have repeatedly violated provisions of the Metro Code by delivering solid waste generated from within the Metro boundary to the Riverbend Landfill, a non-system facility, without benefit of a non-system license and without paying appropriate Metro fees and taxes on such waste.

In order to assess the appropriate fees and taxes on these companies for this tonnage, Metro requests that you provide us with the tonnage that USA General Contractors and Avila Drywall have delivered to the Riverbend Landfill each month from January 1, 2006 to the present. If you have any questions about this matter, please call me at (503) 797-1678. Thank you.

Sincerely,

Steven Kraten
Principal Solid Waste Planner

SK:bjl

cc: Roy Brower, Regulatory Affairs Manager
Michael Hoglund, Solid Waste & Recycling Director
Dean Kampfer, Waste Management

S:\REM\kraten\Facilities\Riverbend LF\DUvendack-kr082906.doc
Queue

From: "Duvendack, George" <GDuvendack@wm.com>
To: <kralens@metro.dst.or.us>
Date: Thu, Sep 7, 2006 9:53 AM
Subject: FW: USA General & Juventino Reports

Steve,
Please find the attached information that you requested in your letter dated August 29, 2006.

If you require any additional data please contact me.

Thank you,
George

> -----Original Message-----

> **From:** Fultz, Shelley
> **Sent:** Tuesday, September 05, 2006 4:12 PM
> **To:** Duvendack, George
> **Subject:** USA General & Juventino Reports
> **Importance:** High

>

> George,

>

> Per your request here are the two spreadsheets that show the tonnages for these two customers from January 2006 through August 2006.

>

> Thank you,

>

> Shelley Fultz
> Operations Specialist
> Riverbend Landfill
> 13469 SW Hwy 18
> McMinnville, OR 97128
> 503-472-8788 ext 25

>

>> <<USA General-Metro Rpt.xls>> >> <<Juventino-Metro Rpt.xls>>

CC: "Winston, Adam" <Awinston@wm.com>, "Kampfer, Dean" <dkampfer@wm.com>,
"Kenefick, Andrew M" <AKenefick@wm.com>

Material Summary Report**Criteria:** 01/01/2006 12:00 AM to 01/31/2006 11:59 PM**Business Unit Name:** Riverbend Landfill**Customer Name:** USAGENERAL(USA General Constructors LLC)**User:** shelleyf**Operation Type:** All**Date:** Sep 05 2006, 2:57:55 PM

Material	Material D	Rate Unit	Loads	Tons	Yards
CDT	C&D Tons	TON	58.0	260.9	0.0
CDY	C&D Yards	CYD	3.0	0.0	15.0
Total			61.0	260.9	15.0

Material Summary Report**Criteria: 02/01/2006 12:00 AM to 02/28/2006 11:59 PM****Business Unit Name: Riverbend Landfill****Customer Name: USAGENERAL(USA General Constructors LLC)****User: shelleyf****Operation Type: All****Date: Sep 05 2006, 3:01:09 PM**

Material	Material Description	Unit	Loads	Tons	Yards
CDT	C&D Tons	TON	55.0	242.4	0.0
CDY	C&D Yards	CYD	2.0	0.0	10.0
MST	MSW Tons	TON	1.0	3.6	0.0
YRY	Yard Debris	CYD	1.0	0.0	5.0
Total			59.0	246.0	15.0

Material Summary Report**Criteria: 03/01/2006 12:00 AM to 03/31/2006 11:59 PM****Business Unit Name: Riverbend Landfill****Customer Name: USAGENERAL(USA General Constructors LLC)****User: shelleyf****Operation Type: All****Date: Sep 05 2006, 3:13:54 PM**

Material	Material D	Rate Unit	Loads	Tons	Yards
CDT	C&D Tons	TON	80.0	371.2	0.0
CDY	C&D Yards	CYD	1.0	0.8	5.0
Total			81.0	371.9	5.0

Material Summary Report**Criteria:** 04/01/2006 12:00 AM to 04/30/2006 11:59 PM**Business Unit Name:** Riverbend Landfill**Customer Name:** USAGENERAL(USA General Constructors LLC)**User:** shelleyf**Operation Type:** All**Date:** Sep 05 2006, 3:16:30 PM

Material	Material D	Rate Unit	Loads	Tons	Yards
CDT	C&D Tons	TON	77.0	415.1	0.0
CDY	C&D Yards	CYD	1.0	0.8	5.0
Total			78.0	415.9	5.0

Material Summary Report**Criteria:** 05/01/2006 12:00 AM to 05/31/2006 11:59 PM**Business Unit Name:** Riverbend Landfill**Customer Name:** USAGENERAL(USA General Constructors LLC)**User:** shelleyf**Operation Type:** All**Date:** Sep 05 2006, 3:17:00 PM

Material	Material Description	Unit	Loads	Tons	Yards
CDT	C&D Tons	TON	96.0	513.4	0.0
MST	MSW Tons	TON	1.0	6.8	0.0
Total			97.0	520.2	0.0

Material Summary Report**Criteria:** 06/01/2006 12:00 AM to 06/30/2006 11:59 PM**Business Unit Name:** Riverbend Landfill**Customer Name:** USAGENERAL(USA General Constructors LLC)**User:** shelleyf**Operation Type:** All**Date:** Sep 05 2006, 3:17:47 PM

Material	Material Description	Rate Unit	Loads	Tons	Yards
CDT	C&D Tons	TON	100.0	504.4	0.0
Total			100.0	504.4	0.0

Material Summary Report**Criteria: 07/01/2006 12:00 AM to 07/31/2006 11:59 PM****Business Unit Name: Riverbend Landfill****Customer Name: USAGENERAL(USA General Constructors LLC)****User: shelleyf****Operation Type: All****Date: Sep 05 2006, 3:18:19 PM**

Material	Material D:Rate Unit	Loads	Tons	Yards
CDT	C&D Tons TON	88.0	446.3	0.0
Total		88.0	446.3	0.0

Material Summary Report**Criteria: 08/01/2006 12:00 AM to 08/31/2006 11:59 PM****Business Unit Name: Riverbend Landfill****Customer Name: USAGENERAL(USA General Constructors LLC)****User: shelleyf****Operation Type: All****Date: Sep 05 2006, 3:19:08 PM**

Material	Material D	Rate Unit	Loads	Tons	Yards
CDT	C&D Tons	TON	46.0	217.0	0.0
Total			46.0	217.0	0.0

EXHIBIT 15

Hermie Rivas
dba USA General Contractor, LLC

Penalty Interest on Excise Tax

Number of Loads
Tons

	Jan-06	Feb-06	Mar-06	Apr-06	May-06	Jun-06	Jul-06	Aug-06	Sep-06	Oct-06	Total
61	61	55	81	78	96	100	88	46	0	0	605
260.9	242.4	371.9	415.9	520.2	504.4	446.3	217.0	0.0	0.0	2,979.0	

Excise Tax

Excise Tax Rate

Excise Tax Due

Cumulative Tax Due

25% Penalty Due

Cumulative Penalty

Tax & penalty due
Cumulative tax & penalty due

1.5% monthly interest on delinquent
taxes & penalty (assessed on the 15th of the
month following the month taxes were due)

Cumulative Interest

Cumulative tax, penalty, & interest due

\$8.33	\$8.33	\$8.33	\$8.33	\$8.33	\$8.33	\$8.33	\$8.33	\$8.33	\$8.35	\$8.35	
\$2,173.30	\$2,019.19	\$3,097.93	\$3,464.45	\$4,333.27	\$4,201.65	\$3,771.68	\$1,807.61	\$0.00	\$0.00	\$24,815.08	
\$2,173.30	\$4,192.49	\$7,290.42	\$10,754.87	\$15,088.14	\$19,289.79	\$23,007.47	\$24,815.08	\$24,815.08	\$24,815.08	\$24,815.08	
\$543.33	\$504.80	\$774.48	\$866.11	\$1,083.32	\$1,050.41	\$929.42	\$451.90	\$0.00	\$0.00	\$6,203.77	
\$543.33	\$1,048.13	\$1,822.61	\$2,688.72	\$3,772.04	\$4,822.45	\$5,851.87	\$6,203.77	\$6,203.77	\$6,203.77	\$6,203.77	
\$2,716.63	\$2,523.99	\$3,872.41	\$4,330.56	\$5,416.59	\$5,252.06	\$4,647.10	\$2,259.51	\$0.00	\$0.00	\$31,018.85	
\$2,716.63	\$5,240.62	\$9,113.03	\$13,443.59	\$18,860.18	\$24,112.24	\$28,759.34	\$31,018.85	\$31,018.85	\$31,018.85	\$31,018.85	
		\$40.75	\$78.61	\$136.70	\$201.65	\$282.90	\$361.68	\$431.39	\$465.28	\$1,998.96	
		\$40.75	\$119.36	\$256.06	\$457.71	\$740.61	\$1,102.29	\$1,583.68	\$1,998.96	\$1,998.96	
\$2,716.63	\$5,240.62	\$9,153.78	\$13,562.95	\$19,116.24	\$24,569.95	\$29,499.95	\$32,121.14	\$32,552.53	\$33,017.81	\$33,017.81	

Regional System Fee

System Fee Rate

Regional System Fee Due

Cumulative Tax

25% Penalty Due

Cumulative Penalty

Fee & penalty due
Cumulative tax & penalty due

1.5% monthly interest on delinquent fee
& penalty (assessed on the 15th of the month
following the month taxes were due)

Cumulative Interest

Cumulative fee, penalty, & interest due

Average Regional System Fee avoided per load

\$14.54	\$14.54	\$14.54	\$14.54	\$14.54	\$14.54	\$14.54	\$14.54	\$14.54	\$13.57	\$13.57	
\$3,793.49	\$3,524.50	\$5,407.43	\$6,047.19	\$7,563.71	\$7,333.98	\$6,489.20	\$3,155.18	\$0.00	\$0.00	\$43,314.68	
\$3,793.49	\$7,317.99	\$12,725.42	\$18,772.61	\$26,336.32	\$33,670.30	\$40,159.50	\$43,314.68	\$43,314.68	\$43,314.68	\$43,314.68	
\$948.37	\$881.13	\$1,351.86	\$1,511.80	\$1,890.93	\$1,833.50	\$1,622.30	\$788.80	\$0.00	\$0.00	\$10,828.69	
\$948.37	\$1,829.50	\$3,181.36	\$4,693.16	\$6,584.09	\$8,417.59	\$10,039.89	\$10,828.69	\$10,828.69	\$10,828.69	\$10,828.69	
\$4,741.86	\$4,405.63	\$6,759.29	\$7,558.99	\$9,454.64	\$9,167.48	\$8,111.50	\$3,943.98	\$0.00	\$0.00	\$54,143.37	
\$4,741.86	\$9,147.49	\$15,906.78	\$23,465.77	\$32,920.41	\$42,087.89	\$50,199.39	\$54,143.37	\$54,143.37	\$54,143.37	\$54,143.37	
		\$71.13	\$137.21	\$238.60	\$351.99	\$493.81	\$631.32	\$752.99	\$812.15	\$3,489.20	
		\$71.13	\$208.34	\$446.94	\$798.93	\$1,292.74	\$1,924.06	\$2,677.05	\$3,489.20	\$3,489.20	
\$4,741.86	\$9,147.49	\$15,977.91	\$23,674.11	\$33,367.35	\$42,886.82	\$51,492.13	\$56,067.43	\$56,820.42	\$57,632.57	\$57,632.57	

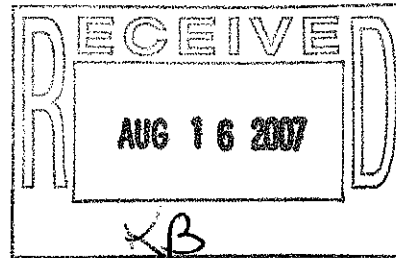
Average Regional System Fee avoided per load

\$ 71.59

Average RSF + Penalty + Int per load (as of 9/15)

\$ 93.92

Per load rate	\$75	\$80	\$85	\$90	\$95	\$100	\$105	\$110	\$115
Total fine	\$45,375	\$48,400	\$51,425	\$54,450	\$57,475	\$60,500	\$63,525	\$66,550	\$69,575



BEFORE THE METRO REGIONAL GOVERNMENT

IN THE MATTER OF NOV-162-06)
ISSUED TO) RESPONDENT'S EXCEPTIONS
HERME RIVAS dba USA GENERAL) TO PROPOSED ORDER
CONTRACTORS, LLC)
RESPONDENTS.)

COMES NOW, HERME RIVAS, dba USA GENERAL CONTRACTORS, LLC.,
P.O. Box 1146, St. Mary's Circle, Mt. Angel, OR 97362, by and through his attorney, C.
David Hall, and hereby takes exceptions to proposed Order of Hearings Officer, Robert J.
Harris, dated July 20, 2007 and requests oral argument before the Metro Council on
Thursday, September 6, 2007. Respondent's specific objections are as follows:

1. Respondent objects to the proposed Order as not timely filed and therefore
invalid. The hearing was on December 6, 2006. A proposed Order was not
issued until July 20, 2007, 7 ½ months after the hearing, without any delay on
the part of the participants. The extended delay of the Hearings Officer
prejudices the Respondent's case.

2. Respondent takes exception to the Hearings Officer's Admission of Exhibit 15.

This Exhibit was not offered into evidence during the course of the hearing and

1 - RESPONDENT'S EXCEPTIONS TO PROPOSED ORDER

C. David Hall
Attorney at Law
P.O. Box 14546
1432 E. Burnside
Portland, OR 97293
(503) 234-3245

Exhibit B to Resolution No. 07-3862
Respondent's Exceptions to
Proposed Order

1 its admissibility without Respondent's right to object violates Respondent's
2 right to confront evidence against him.

- 3
- 4 3. Respondent takes exception to Findings 16 and 17 on the grounds that these
5 findings are based on the statements of Odus Lambert and Doug Bennett as
6 conveyed to Detectives Gaddis and Gates. The statements are not reliable and
7 are based on guesswork and speculation and not based on any evidence in the
8 record. The statements do not warrant the Hearing Officer's Conclusions of
9 Law.
- 10
- 11 4. Respondent takes exception to Finding 21 that the Respondent is not credible.
12 The Finding is based on the speculative statements of Lambert and Bennett to
13 Detectives Gaddis and Gates as opposed to Respondent's direct testimony.
- 14
- 15 5. Respondent takes exception to Finding 25, as being speculative in nature and not
16 supported by the evidence. The Hearings Officer begins the Finding with the
17 words "If..." The actual violations total six in number and are set forth in
18 Findings 6, 7, 8, 9, 10 and 11.
- 19
- 20 6. Respondent takes exception to Finding 26 for the same reasons set forth in
21 Exception 5 above.
- 22
- 23 7. Respondent takes exception to Finding 27 for the reason that it is based on the
24 speculative reasoning set forth in Findings 26 and 27 and the unsupported
25 statements of Lambert and Bennett in Findings 16 and 17.
- 26

2 – RESPONDENT'S EXCEPTIONS TO PROPOSED ORDER

Page

C. David Hall
Attorney at Law
P.O. Box 14546
1432 E. Burnside
Portland, OR 97293
(503) 234-3245

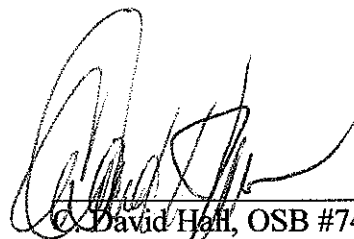
1 8. Respondent takes exception to Finding 28 on the grounds that it is based on
2 speculation and inference not support by evidence in the record. The Hearings
3 Officer's conclusions are neither reasonable nor fair and are based on matters
4 not contained in the evidentiary record.
5

6 9. Based on Respondent's exceptions to Findings #16, 17, 21, 25, 26, 27 and 28
7 and for the reasons set forth above, Respondent takes exception to Conclusions
8 of Law #3, 4, 5, 6 and 7.
9

10 10. Respondent takes exception to the Order of the Hearings Officer on page 18
11 after concluding that a fine of \$250 per load is appropriate (Respondent
12 concedes 6 loads). The Hearings Officer has assessed a \$300 fine per load in the
13 Order.
14

15 Respondent having fully taken exceptions to the Findings of Fact, Conclusions of
16 Law and Proposed Order, request the fine be reduced to \$250 per load for 6 loads as set
17 forth in the evidence.

18 DATED this 11th day of August, 2007.
19



20 C. David Hall, OSB #74122
21 Attorney for Respondent Herme Rivas
22 dba USA General Contractors, LLC
23
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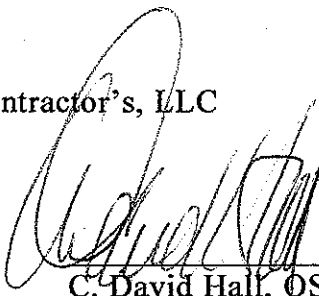
CERTIFICATE OF MAILING

The undersigned certifies that as the attorney for Respondent, he served the foregoing Exceptions to Proposed Order on the parties on the date hereinafter mentioned, by depositing a copy of said notice in a sealed envelope in the United States Post office on said day at Portland, Oregon with postage thereon fully prepaid, and addressed to the said parties at their last known place of business or residence on this 16 day of August, 2007.

Paul Garrahan
Attorney for Metro
600 NE Grand Ave.
Portland, OR 97232-2736

Robert J. Harris
Metro Hearings Officer
Harris Law Firm PC
165 SE 26th Ave.
Hillsboro, OR 97123

Herme Rivas, dba USA General Contractor's, LLC
PO Box 1146
Mt. Angel, OR 97362


C. David Hall, OSB #74122
Attorney for Respondents

1
2
3
4 BEFORE THE METRO REGIONAL GOVERNMENT
5

6 IN THE MATTER OF NOV 162-06)

7 ISSUED TO)

8 HERME RIVAS, DBA USA GENERAL)
9 CONTRACTORS, LLC)

10 RESPONDENT.)
11

METRO'S EXCEPTIONS FILED
PURSUANT TO METRO CODE
§ 2.05.035(b)

12 TO: Michael Jordan, Metro Chief Operating Officer

13 Pursuant to Metro Code § 2.05.035(b), Metro submits exceptions to the proposed order of the
14 Hearings Officer in the above-referenced matter.

15 Attached is Exhibit A, which contains Metro's proposed exceptions in redline format. Metro's
16 proposed changes are, for the most part, technical amendments that do not change the substance of the
17 proposed order. Metro does not expect the Respondent or the Hearings Officer to object to the proposed
18 technical amendments. Exhibit A also contains substantive changes, noted in bold in the document, as
19 described below:

- 20 1. Page 7, lines 18-24: Metro modified this language to contain an accurate statement of the
21 Metro Code.
22 2. Page 7, line 24: Metro added language to reflect accurately the evidence presented that
23 Respondent did not have a non-system license.
24 3. Page 8, lines 16-18: Metro added language to clarify the title and duties of the detectives
25 who worked on this matter.
26

Exhibit C to Resolution No. 07-3862
Metro's Exceptions Filed Pursuant to
Metro Code § 2.05.035(b)

EXHIBIT A – PROPOSED ORDER FROM HEARING
METRO’S EXCEPTIONS FILED PURSUANT TO METRO CODE § 2.05.035(b)

METRO CONTESTED CASE: ILLEGAL DUMPING ORDINANCE NOTICE OF
VIOLATION 162-06

BEFORE ROBERT J. HARRIS HEARINGS OFFICER

In The Matter of Notice of Violation NOV-) PROPOSED AND FINAL ORDER FROM
162-06:) HEARING

Issued to)
Herme Rivas, dba-USA General Contractors,)
LLC,)

Respondent.)

On September 29, 2006, Metro issued A Notice of Violation and Notice of Assessment
of Civil Penalty as case number NOV-162-6106 to Respondent Herme Rivas dba-USA General
Contractors, LLC (“Respondent”s herein).

Respondent was given a notice of contested case allowing thirty (30) days from the date
of mailing to Respondent to request a contested case hearing. Respondent filed a request for
hearing in a timely manner on October 6, 2006, through hisits attorney C. David Hall.

Respondent also filed a Petition for Redemption and Refund.

On October 30, 2006, the Hearings Officer sent a notice of Hearing to Metro and to
Respondent through hisits attorney Mr. Hall stating that a Contested Case Hearing would be
held on December 6, 2006 at the Metro offices located at 600 Northeast Grand Avenue,
Portland, Oregon 97232.

////

**EXHIBIT A – PROPOSED ORDER FROM HEARING
METRO’S EXCEPTIONS FILED PURSUANT TO METRO CODE § 2.05.035(b)**

1 ////

2 ////

3 Included in that Notice of Hearing were copies of:

- 4 1. Findings of Facts, regarding Metro Citation No NOV-162-06, dated September
- 5 29, 2006;
- 6 2. Finding of Violation and Notice of Imposition of Penalty, dated September 29,
- 7 2006; and
- 8 3. Explanation of Rights.

9 On December 6, 2006, at the Metro Offices in Portland, Oregon the hearing was held.
10 Present were: Representing Metro Paul Garrahan, Metro Assistant Counsel. Present for
11 Respondent were Herme Rivas and C. David Hall, attorney.

12 The Hearings Officer, Robert Harris, stated on the record that there had been no ex-parte
13 communications. The parties acknowledged on the record that they understood the rights and
14 procedures, and waived their reading.

15 Prior to taking testimony, all witnesses were put under oath.

EVIDENTIARY RULINGS

17 **Uncontested Exhibits:** The Hearings Officer accepted documents and photos
18 during the Hearing. Based on the evidence offered at the hearing and the records and evidence
19 admitted prior to the close of record, the Hearings Officer made the following a part of the
20 Record:

METRO EXHIBITS:

<u>Exhibit Number</u>	<u>Exhibit</u>
1	Metro Solid Waste Enforcement Unit Special Report 06-0380 dated August 30, 2006, authored by Detective Michael Gates
2	Metro Solid Waste Enforcement Unit Special Report 06-0380,

**EXHIBIT A – PROPOSED ORDER FROM HEARING
METRO’S EXCEPTIONS FILED PURSUANT TO METRO CODE § 2.05.035(b)**

Undated

Map of Metro Jurisdiction

Waste Management Ticket #466420

Waste Management Ticket #472607

Waste Management Ticket #473472

Waste Management Ticket #473832

Photo dated April 26, 2006

Waste Management Ticket #475033

Waste Management Ticket #485419

Photo dated June 26, 2006

LicenseeRespondent offered no exhibits.

The Hearings Officer made the following Exhibits a part of the record:

Exhibit Number

Exhibit

HO-1

Letter from Metro Dated December 11, 2006

HO-2

Letter from Respondents attorney dated December 12, 2006

Contested Exhibits: At the close of the Hearing, Respondent raised an objection to making the following Exhibits a part of the Record.

12

Finding of Violation and Notice of Assessment of Penalties by Metro dated December 27, 2005

13

Application for Non System License, dated March 10, 2006

14

Letter from Metro to Riverbend Landfill regarding Transaction Records for USA General Contractors and Avila Drywall, dated August 29, 2006

15

Spreadsheet Prepared by Metro

**EXHIBIT A – PROPOSED ORDER FROM HEARING
METRO’S EXCEPTIONS FILED PURSUANT TO METRO CODE § 2.05.035(b)**

Respondent argues that Metro never formally offered exhibits 12 through 15 to the Hearings Officer as part of the record. Metro argues that it solicited testimony about these exhibits, that they are reliable and therefore admissible under Metro Code Section 2.05.030(a) and that there are no magic words necessary to make exhibits a part of the record.

Respondent argued that he did not cross examine Metro witnesses on these exhibits because they were never offered into evidence. He also argues that there is a formality necessary to offer exhibits and make them a part of the record.

The Hearings Officer took the objection under advisement. Subsequently, the Hearings Officer received written arguments related to the admissibility of Exhibits 12 through 15 (letters now marked and made a part of the Record as HO-1 and HO-2).

I find that as a matter of law, absent some other rule, an exhibit must be formally offered into evidence before it can be made a part of the record. It is at that point that an adverse party can raise objections to foundation or reliability of the proffered evidence. Therefore, absent some other substantive or procedural rule, Exhibits 12 through 15 cannot be made a part of the record.

Exhibits 12 and 13: Mr. Kraten and Herme Rivas both testified that Exhibits 12 and 13 were sent, received and are accurate, so the contents of these two documents is part of the record. ~~However~~ I find no alternative substantive or procedural rule, however, that would allow me to make these documents themselves exhibits absent them being offered at the time of the hearing. Therefore Exhibits 12 and 13 are ~~excluded~~ excluded. (It is possible that these documents, being public records of action taken By Metro, could arguable be admissible through a form of Judicial Notice, which is also recognized in the Oregon Administrative Procedures Act, however, I find no need to make that decision as the material facts set forth in

**EXHIBIT A – PROPOSED ORDER FROM HEARING
METRO’S EXCEPTIONS FILED PURSUANT TO METRO CODE § 2.05.035(b)**

1 Exhibits 12 and 13 were testified to by Mr. Kraten and confirmed by Respondent in his own
2 testimony).

3 Exhibit 14: Again Mr. Kraten testified about the contents, and testified about the
4 number of loads and tons Riverbend reported Respondent brought to their facility each month
5 from January to August 2006. However, the actual email exchanges were not offered into
6 evidence and I find no alternative legal or procedural rule that would allow Metro to offer this
7 document after the hearing was closed. Therefore Exhibit 14 is excluded. To the extent the
8 Communications in Exhibit 14 contain anything that Mr. Kraten did not testify about, that
9 information is not a part of the record and will not be considered.

10 I want to point out that while exhibits 12, 13 and 14 are excluded, Mr. Kraten’s
11 testimony is still a part of the record. Metro Code 2.05.030(c) provides that “*All offered*
12 *evidence not objected to will be received by the Hearings Officer ...*”. Respondent did not
13 object to Mr. Kraten’s verbal testimony. If Respondent wished to challenge that testimony
14 based on hearsay or foundation, he could have done so. He did not. It is admitted. There was
15 no requirement that Metro even offer exhibits buttressing Mr. Kraten’s testimony and the fact
16 that they tried, yet failed to admit exhibits that may have supported Mr. Kraten’s testimony,
17 does not mean that the testimony itself should be stricken.

18 Exhibit 15: I see this Exhibit as being different in kind and it is admissible.

19 After Mr. Kraten testified about the amount of loads and tons that Riverbend reported
20 that Respondent took to their landfill from January to August 2006, he testified about how
21 much excise tax and system fees would have been paid if all these loads were subject to those
22 assessments, and what the regulatory penalty and applicable interest would have been.

23 Exhibit 15 is a detailed calculation of these assessments and was used by the
24 Respondent, the Hearings Officer and Mr. Kraten to follow Metro’s calculation of these
25

**EXHIBIT A – PROPOSED ORDER FROM HEARING
METRO’S EXCEPTIONS FILED PURSUANT TO METRO CODE § 2.05.035(b)**

1 amounts, which calculations were testified to in detail. These calculations were not challenged
2 by Respondent.

3 I find that Exhibit 15 is a written summary of the potential damages that Respondent
4 may be liable for should the fact finder find in favor of Metro’s theory. It presents no new
5 evidence. It is analogous ~~taken~~ to a Jury deliberation form that would be produced by a party in
6 a civil damages action. Therefore it is admissible and made a part of the record for the purpose
7 of calculation of any Taxes, Fees, Penalties or Interest that Respondent would have owed under
8 Metro’s theory of the case.

9 ////

10 ////

ISSUES

12 Did Respondent take solid waste originating within the jurisdiction of Metro and
13 dispose of it outside the Metro jurisdiction at a non-system facility without paying applicable
14 Fees and Taxes, in violation of Metro Code Sections 5.02.045 and 7.01.020?

15 If there is a violation, on how many occasions did the Respondent violate the applicable
16 code sections and what was the total tonnage of Metro waste disposed of at a non-licensed
17 system facility?

18 For each violation of violations proved, what is the appropriate recovery of unpaid fees
19 and taxes, should there be a penalty imposed, Should interest be imposed, and what should be the
20 appropriate penalty for the violation or violations?

APPLICABLE LAW

- 22 1. Metro Code, Section 5.05.025: Regarding Disposal of Metro Generated Solid
23 Waste
- 24 2. Metro Code Section 5.05.070(a) and (b): Civil Penalties

**EXHIBIT A – PROPOSED ORDER FROM HEARING
METRO’S EXCEPTIONS FILED PURSUANT TO METRO CODE § 2.05.035(b)**

3. Metro Code Section 7.01.020: Tax Imposed
4. Metro Code Section 7.01.080(a): Penalties
5. Metro Code Section 7.01.080(b): Finance Charges
6. Metro Code Section 7.01.090(b): Taxes due and payable

FINDINGS OF FACT

1. Herme Rivas is the owner of USA General Contractors, LLC (~~Herme Rivas and the LLC are hereinafter referred to as Respondent~~), which is in the business of cleaning up the construction debris, mainly drywall, from home and small residential construction sites and disposing of it. Construction companies hire Respondent as an independent contractor and pay it based on the total square feet of the drywall hung inside the structure cleaned.

++++

2. Some of Respondent’s job sites are within Metro’s the jurisdictional boundary (“Metro’s jurisdiction”) of Metro, and some are outside Metro’s jurisdiction.

3. In late 2005 Metro received information that Respondent was taking waste from within Metro’s jurisdiction and disposing of it at Riverbend Landfill, in McMinnville, Oregon, which is a non-system landfill. ~~When solid waste is disposed of at Riverbend, the driver of the truck is supposed to give the origin of the solid waste so that any applicable fees and taxes can be assessed.~~ Under the Metro Code, waste generated or originating within Metro’s jurisdiction may be delivered to a non-system facility only under the authority of a non-system license issued to the waste generator or hauler. Metro Code requires holders of such a license to pay Metro system fees and excise taxes on the waste delivered to such a facility.

4. Shortly after December 7, 2005, Metro contacted Mr. Rivas after one of his trucks was observed disposing of Metro generated solid waste, consisting of drywall, at the Riverbend Landfill. ~~Respondent did not have a non-system license authorizing such a delivery.~~ Respondent

**EXHIBIT A – PROPOSED ORDER FROM HEARING
METRO’S EXCEPTIONS FILED PURSUANT TO METRO CODE § 2.05.035(b)**

1 was cited for violation of Metro Code Sections 5.02.025 and 7.01.020. A \$300 penalty was
2 imposed and Mr. Rivas was informed of his obligation to pay excise tax and system fees on
3 Metro generated solid waste. The penalty imposed by Metro was in a reduced amount because
4 Metro felt that Respondent was acting out of ignorance of the rules. Mr. Rivas was also informed
5 that he could apply for a Non-System License so that Respondent could take Metro generated
6 solid waste to a non-license facility such as Riverbend.

7 5. In early 2006 Respondent applied for a non-system license. In March of 2006, Mr.
8 Rivas was informed that no non-system licenses were being issued and that he would have to
9 take Metro generated waste to a Metro system disposal facility. Mr. Rivas was also reminded
10 that any mixed loads, that is loads of solid waste that were generated partially within and
11 partially without Metro jurisdiction, would be treated as all being generated within Metro’s
12 jurisdiction ~~Jurisdiction~~ and would be subject to the ~~E~~excise taxes and non-system fees absent
13 some documentation of the amount of out-of-region waste in each load supporting a pro rata
14 imposition of the taxes and fees.

15 6. Metro continued to investigate Respondent due to concern that it was continuing
16 to violate Metro flow control codes. On March 15, 2006, Multnomah County Sheriff Detectives
17 Jon Gaddis and Michael Gates, who are assigned to Metro for solid waste code enforcement
18 purposes, found a truck belonging to Respondent within the Metro region at Morgan Meadows in
19 Troutdale, Oregon where it was loading drywall. The vehicle then drove to 206th and
20 Amberwood, in Hillsboro, Oregon, also within Metro’s -jurisdiction, and loaded more drywall.
21 The truck then left at 1:06 p.m. and drove to the Riverbend Landfill in McMinnville, Oregon.
22 The truck disposed of the waste at Riverbend and the driver gave the origin of the debris as
23 Yamhill, which is not located in ~~M~~Metro’s jurisdiction ~~Jurisdiction~~. (See Exhibit 4). Respondent
24 paid no Metro taxes or system fees.

**EXHIBIT A – PROPOSED ORDER FROM HEARING
METRO’S EXCEPTIONS FILED PURSUANT TO METRO CODE § 2.05.035(b)**

1 7. On April 19, 2006, Detective Gaddis located one of Respondent’s trucks at the
2 Arbor Rose Development in Hillsboro, Oregon, a location within the jurisdiction of Metro,
3 where the truck was loaded with drywall. The truck then went to Waterhouse Street and Blue
4 Ridge Street in Beaverton, also a location within ~~the~~Metro’s jurisdiction of Metro, where it was
5 loaded with more drywall. Detective Gaddis followed the truck to North Plains, Oregon, outside
6 Metro’s jurisdiction, but it was already 6:30 p.m. by then and as Riverbend closes at 5:00 p.m.,
7 Detective Gaddis discontinued his tracking. On the following day, April 20, 2006, Detective
8 Gates arrived at the Riverbend Landfill at 7:45 a.m. At 8:50 a.m. Detective Gates observed the
9 same truck as ~~they~~he had observed the day before ~~at the Riverbend facility and dispose of its~~
10 ~~load of drywall~~ at the Riverbend facility. The receipt for the drywall from Riverbend showed the
11 driver gave the place of origin as Yamhill (see exhibit 5). Respondent paid no Metro taxes or
12 system fees.

13 8. On April 24, 2006, Detectives Gaddis and Gates located one of Respondent’s
14 trucks at Morgan Meadows in Troutdale loading drywall. The truck then drove to NE 250th and
15 Halsey, also in Metro’s jurisdiction, where it loaded some more drywall. From there the truck
16 went to Newberg where it loaded some more drywall. Newberg is not within Metro’s
17 jurisdiction.

18 The truck then drove to Riverbend landfill where it disposed of the drywall. The receipt stated
19 the origin of the solid waste as Washington County (See Exhibit 6). Respondent paid no Metro
20 taxes or system fees.

21 ~~////~~

22 9. On April 26, 2006, Detective Gaddis located one of Respondent’s trucks near Bull
23 Mountain Road and SW 164th in Washington County, ~~This is within the~~ Metro’s jurisdiction,
24 The truck ~~of Metro where it was loading drywall~~. Detective Gates followed the truck to
25

**EXHIBIT A – PROPOSED ORDER FROM HEARING
METRO’S EXCEPTIONS FILED PURSUANT TO METRO CODE § 2.05.035(b)**

1 Riverbend Landfill where the drywall was deposited. The receipt showed 4.75 tons and the
2 origin as Yamhill (See Exhibit 7). Respondent paid no Metro taxes or system fees.

3 10. On May 2, 2006, Detective Gates located one of Respondent’s trucks at Bull
4 Mountain Road and SW 164th in Washington County once again within Metro’s jurisdiction. The
5 truck was loaded with drywall and it proceeded to “The Greens” in Newberg, Oregon, outside
6 Metro’s jurisdiction, -where more drywall was loaded on the truck. The truck then went to
7 another location in Newberg where more drywall was loaded. The truck then went to Riverbend
8 and disposed of the drywall. The receipt showed 5.55 tons was disposed of and the reported
9 origin as Yamhill County (See Exhibit 9). Respondent paid no Metro taxes or system fees.

10 11. On June 26, 2006, a witness reported to Detective Gates that he was following a
11 truck from the Arbor Rose Home Development in Hillsboro, a location within Metro’s
12 Jurisdiction. The witness had observed the truck loading drywall at that location. The witness
13 followed the truck to a development near Beef Bend Road. Detective Gates went to that location
14 and contacted the witness. The ~~W~~witness stated that the truck was loading drywall from a
15 residence at SW Davinci Lane and SW Greenfield. This location is in Washington County and
16 within Metro’s Jurisdiction. Detective Gates observed the truck as it left the neighborhood.
17 Detective Gates ran the plate number and determined that it was registered to Respondent. The
18 truck went to the Riverbend Landfill where it disposed of the drywall. The receipt for disposal
19 showed the driver gave an origin of Yamhill County. The weight of the load was 4.53 tons (See
20 Exhibit 10). Respondent paid no Metro taxes or system fees.

21 ////

22 ////

23 12. On July 20, 2006, Detectives Gaddis and Gates met with Herme Rivas, owner of
24 USA General Contractors, LLC. Mr. Rivas stated that he was the owner of USA General

**EXHIBIT A – PROPOSED ORDER FROM HEARING
METRO’S EXCEPTIONS FILED PURSUANT TO METRO CODE § 2.05.035(b)**

1 Contractors, LLC. Mr. Rivas stated that his company does work for Westside Drywall, Tri
2 County Drywall and PNR Drywall. Mr. Rivas stated that his company works at many job sites in
3 the area. The company has eight trucks but four trucks currently in operation. He has three
4 drivers. Mr. Rivas stated that he took almost no loads to Riverbend and that 40% of his loads
5 come from inside the region.

6 13. Mr. Rivas stated that he had applied for a non system license, however he was
7 unclear if he had ever been issued that license, though he did state for some reason he had
8 received his license fee back.

9 14. Mr. Rivas stated that he did most of his work in the Hillsboro-Beaverton area.

10 15. Mr. Rivas stated that he couldn't make enough money if he disposed of the
11 drywall at the Hillsboro landfill. Mr. Rivas also stated that the other companies are doing the
12 same thing as he is doing. That recycling the drywall is too expensive, and that he is a small
13 company trying to grow.

14 16. On August 29, 2006, Detectives Gaddis and Gates met with the owner of Tri
15 County Drywall, Odus Lambert. Mr. Lambert stated that USA General Contractors, LLC had
16 cleaned up approximately the following number of homes within the Metro area: 80 homes at
17 Morgan Meadows; 15 homes at the Trolley barn development in Sellwood; 30-40 homes at the
18 Bull mountain development; 6 homes at Riverside homes on Beef Bend Road; and 30 homes at
19 the Grant Development off of 207th and Sandy Blvd. Mr. Lambert estimated that it would take 4-
20 5 homes to create a truckload of drywall waste.

21 +++++

22 +++++

23 +++++

**EXHIBIT A – PROPOSED ORDER FROM HEARING
METRO’S EXCEPTIONS FILED PURSUANT TO METRO CODE § 2.05.035(b)**

1 17. On August 29, 2006, Detectives Gates and Gaddis met with the General Manager
2 of Westside Dry Wall, Doug Bennett. Mr. Bennett reported that Respondents had cleaned up the
3 following number of homes for them within Metro’s jurisdiction: 200-300 at Arbor Homes in
4 Hillsboro; 200 homes at Arbor Homes in Sunnyside; 100 or more homes at Arbor Homes in
5 Happy Valley; 80 or more homes at Centex Development in Fairview; and 70-80 homes ~~ienat~~
6 Centex in Hillsboro. Mr. Bennett also stated that it would take 4-5 houses of drywall waste to fill
7 a truck that Respondents used.

8 18. The total number of homes that Westside Drywall and Tri-County reported
9 Respondents cleaned within the Metro area, that they could remember, was approximately
10 900.

11 19. Detective Gates requested on numerous occasions that Respondent Mr. Rivas get
12 him ~~his~~ records on the homes ~~he~~ that Respondent cleaned so that Metro could determine how
13 many of the homes were within ~~the jurisdiction of Metro’s jurisdiction.~~ Respondent Mr. Rivas
14 promised on numerous occasions to get Detective Gates that information but never did. At one
15 point Mr. Rivas stated he had the information. When he met with Detective Gates to give it to
16 him, however, he stated he didn’t have it but could, from memory tell him that there were a total
17 of 210 homes within Metro’s jurisdiction ~~that~~ where he had worked-at.

18 20. At the Hearing, Mr. Rivas admitted that Respondents did take some drywall
19 debris from within the Metro area and dispose of it at Riverbend Landfill without paying the
20 applicable taxes and fees. Mr. Rivas, testifying solely from his own memory, testified that he
21 cleaned the following number of homes in the following areas outside the Metro area:

<u>Location</u>	<u>Number of Residences</u>
Corvallis	10
Eugene	10

**EXHIBIT A – PROPOSED ORDER FROM HEARING
METRO’S EXCEPTIONS FILED PURSUANT TO METRO CODE § 2.05.035(b)**

1	Dayton	10
2	Sheridan	14-16
3	Dallas	12
4	Salem	15
5	Dundee	5
6	Camas	10
7	Washougal	10
8	Longview	5
9	Kalama	5
10	LaCenter	5
11	Battle Ground	5
12	Vancouver	70
13	Sandy	30
14	McMinnville	20
15	St. Helens	20
16	Columbia City	5
17	Scappoose	5
18	TOTAL	266-268

21. Herme Rivas’ testimony is not credible in that he estimated only approximately 266-268 homes that he cleaned were ~~within~~ outside Metro’s jurisdiction, while his two main customers, Westside Drywall and Tri-County Drywall, estimated at least 900 homes cleaned by Respondent were within the Metro’s jurisdiction area.

22. Mr. Rivas testified that if he had to pay the fees and taxes he could not compete with other businesses. Mr. Rivas also testified that after Metro cited him for this instant offense,

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1 he went to his customers and was able to negotiate a higher price for his work to cover the added
2 cost of fees and taxes that he is now paying for disposal.

3 /////

4 23. Mr. Rivas testified that when Respondent worked in Washington, it used a landfill
5 in that state.

6 24. From January 1, 2006 thorough August 31, 2006 Respondent delivered
7 approximately 605 truck loads of solid waste to Riverbend Landfill, a non-system-license
8 facility. Those loads totaled approximately 2,979 tons of solid waste.

9 25. If all of the loads delivered to Riverbend by Respondent consisted, in total or in
10 part, of ~~Metro-generated~~ solid waste generated in Metro’s jurisdiction, the total excise tax
11 avoided would be approximately \$24,815. A 25% penalty, plus cumulative interest, would bring
12 the ~~Excise T~~ax total owed to approximately \$33,017.81.

13 26. If all of the loads delivered to Riverbend by Respondents consisted, in total or in
14 part, of ~~Metro-generated~~ solid waste generated in Metro’s jurisdiction, the total ~~S~~ystems ~~F~~ees
15 avoided plus a 25% penalty, plus cumulative interest, would bring the total sExcise Tax -ystem
16 fees total owed to approximately \$54,450.

17 27. At 900 Metro area homes cleaned and 4.5 homes per load, Respondent delivered
18 at least 200 full loads to Riverbend Landfill. At 4.92 tons per load that means that Respondents
19 delivered at a minimum 984 tons of ~~Metro-generated~~ solid waste generated in Metro’s
20 jurisdiction to Riverbend Landfill.

21 28. Some of Respondent’s loads were mixed loads of solid waste consisting of ~~Metro~~
22 ~~generated and non Metro-generated~~ Waste waste generated in Metro’s jurisdiction and waste
23 generated outside Metro’s jurisdiction. Therefore, it is reasonable to conclude that the total
24 number of loads delivered to Riverbend Landfill that contained ~~Metro-Generated Waste~~ contained

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1 waste generated in Metro’s jurisdiction was greater than 200 loads. Based on the facts of this
2 case, including the Detectives’ observations that Respondent’s trucks would often pick up solid
3 waste within Metro’s jurisdiction are, then drive towards Riverbend Landfill and make other
4 stops along the way outside the Metro’s jurisdiction Area, I find that, at a minimum, a fair
5 inference is that at least 300 of the loads delivered to Riverbend Landfill contained, in whole or
6 in part, waste generated in Metro’s jurisdiction Metro-generated Solid Waste. At 4.92 tons per
7 load, I conclude that Respondents avoided fees and taxes on 1,476 tons of materials.

8 ////

CONCLUSIONS OF LAW

9
10 Based on the Findings of Fact, I make the following Conclusions of Law:

11 1. Herme Rivas is the owner of USA General Contractors, LLC, (~~Herme Rivas and~~
12 ~~the LLC are hereinafter referred to as Respondent~~) which is in the business of cleaning up the
13 construction debris, mainly drywall, from home and small residential construction sites and
14 disposing of it. Construction companies hire Respondent as an independent contractor and pay
15 it based on the total square feet of drywall hung within each the structure that they are
16 cleaning.

17 2. Some of Respondent’s job sites are within the ~~jurisdiction of Metro’s~~
18 jurisdiction, and some are outside Metro’s jurisdiction.

19 3. On at least 300 separate and distinct occasions between January 1, 2006 and
20 August 31, 2006 Respondent unlawfully disposed of ~~Ssolid Wwaste that was generated wholly~~
21 ~~or in part, within Metro’s jurisdiction, to at~~ Riverbend Landfill, a non-system-license facility,
22 with the intent to avoid paying applicable Metro ~~E~~excise tax and ~~S~~system ~~F~~ees. Each occasion
23 is a separate violation.

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4. On each occasion Respondent violated Metro Code Sections 5.02.025, by disposing of ~~Metro Generated~~ solid waste generated within Metro's jurisdiction at a non-system ~~licensed~~ facility, and Metro Code Section 7.01.020, by failing to pay the Metro excise taxes on ~~Metro generated~~ solid waste generated within Metro's jurisdiction. More specifically, I find that it is more likely than not that Respondent committed at least the following number of violations in the following months: January 2006, 30 violations ~~and 148 tons~~; February 2006, 28 violations ~~and 138 tons~~; March 2006, 40 violations ~~and 197 tons~~; April 2006, 39 violations ~~and 191 tons~~; May 2006, 48 violations; ~~and 236 tons~~; June 2006, 49 violations ~~and 241 tons~~; July 2006, 43 violations ~~and 212 tons~~; and August 2006, 23 violations ~~and 113 tons~~. Respondent delivered at a minimum 984 tons of solid waste generated in Metro's jurisdiction to Riverbend Landfill.

5. Respondent committed these violations with intent and knowledge and in order to gain a competitive advantage over competitors.

////

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6. The Metro excise tax during this time period was \$8.33 per ton. The total Metro
Excise Tax avoided by Respondents is ~~\$12,295.08~~ \$8,196.72 (984 x \$8.33). A 25% penalty is ~~\$3,073.77~~ \$2,049.18. The interest from January 1, 2006 until October 31, 2006 is approximately ~~\$991~~. Total Excise tax and, penalty and interest due as of October 31, 2006 is ~~\$10,245.90~~ \$16,395.85.

7. The Metro regional system fee during this time was \$14.54 per ton. The total
Metro Total Ssystem Ffees avoided by Respondents is ~~\$33,135.73~~ \$14,307.36 (984 x \$14.54)
a 25% penalty is ~~\$8,283.93~~ and interest is \$1,730.64 as of October 31, 2006.

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DISCUSSION

It is clear that Respondent in this case has taken the calculated risk of avoiding taxes and fees in order to gain a business advantage over its competitors. It is clear that Respondent has acted with intent, forethought and shows no remorse over its actions. Respondent, when given a chance to produce records that would have shown how many of ~~their~~its jobs were inside versus outside the Metro region, failed to produce any documents. The best that ~~they~~it could do was verbal testimony of Mr. Rivas, which testimony was contradicted not only by the evidence of his customers, but also his prior statement to Metro, and frankly simply made no sense from the standpoint of where his business was generated. For instance, if Mr. Rivas were to be believed, in regards to how many houses he cleaned within the Metro jurisdiction; it would mean that over two thirds of his business was coming from outside the Metro’s jurisdiction. ~~Jurisdiction.~~ Yet Mr. Rivas himself stated that the majority of his business was from the two customers cited in this Order, who did most of their business within Metro’s jurisdiction.

Mr. Rivas was under oath and chose to not tell the truth. The Hearings Officer ignored Mr. Rivas’ ~~His self-~~serving testimony regarding the number of houses Respondent cleaned ~~was ignored by the finder of fact.~~

Nevertheless, it is still up to Metro to prove the number of violations and the penalties that should be imposed. Using the evidence presented by Metro, the fact finder drew the following reasonable conclusions in crafting this order.

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Respondent’s own customers gave evidence that Respondent cleaned approximately 900 homes in ~~the Metro’s~~ jurisdiction and that the average load for Respondent consisted of

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1 waste from 4-5 homes. That means that of the work done just for these two customers,
2 Respondent would have disposed of 200 full loads.

3 The evidence from Metro ~~enforcement d~~enforcement agents~~etectives~~ was that they
4 followed Respondent's trucks and several times the trucks loaded solid waste from locations
5 within ~~Metro boundaries and without Metro's jurisdiction~~the boundaries. Therefore ~~w~~We know
6 that many of Respondent's deliveries to Riverbend Landfill contained waste from both inside
7 and outside Metro's jurisdiction. Therefore, ~~did not only bring Metro only solid waste to~~
8 ~~Riverbend, so that means that the number of violations had to have been in excess of the 200~~
9 loads.

10 Given Mr. Rivas' description of his business and his customers, it is reasonable to infer
11 that at least half of Respondent's business is from within the Metro's Jurisdiction.

12 Riverbend Landfill reported to Metro that Respondent's trucks delivered 605 loads to
13 its facility for a total ~~tonnage~~weight of 2,979 tons. There were no reports from any other
14 landfill presented by Respondent that would show that Mr. Rivas used any other landfill.
15 While Mr. Rivas testified that some of his trucks used a landfill in Washington, he produced no
16 documentation of that fact, his testimony on that point was not consistent with other facts, and
17 frankly, Mr. Rivas is not a trustworthy witness and cannot be believed.

18 As to the penalties imposed; the Excise tax and penalty and interest under Chapter 7 is
19 all pursuant to the Metro Code. The 25% penalty is appropriate because Respondent acted with
20 the intent to evade the tax.

21 A penalty of \$1000 for failing to have a non system license is also according to Metro
22 Code. See Metro Code Section 5.05.070(b).

23 ////

24 ////

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1 ////

2 I am also imposing a \$250 penalty for each of the 300 violations of Metro Code Section
3 5.05.070(1); the Hearings Officer used the following logic: Metro imposed a \$300 penalty for
4 Respondent’s prior violation in December 2005. I realize that a portion of that penalty was for
5 a prospective non-system license fee application; however, Respondent still should have
6 realized that such a violation could result in the imposition of such a penalty. In spite of that
7 knowledge, and in spite of a \$300 fine, Respondent continued to commit the exact same
8 violation for the next several months. He did so for selfish and greedy reasons. I had seriously
9 considered making the fine per violation more than the prior fine, which is what most courts or
10 judges would consider fair for a second time offender. However a fine of \$250 per violation
11 when multiplied by the total number of violations is appropriate when considering the system
12 fees avoided.

13 This is a steep fine. But the hearings officer has no sympathy for Respondent or its
14 ability to continue its business if it has to pay these penalties. Respondent has been able to
15 undercut all of its competitors and make a profit precisely because it avoided excise taxes and
16 system fees possibly well in excess of what is being imposed by this Order. It is as if he did not
17 have to pay minimum wage, or FICA or any other normal business expense that his
18 competitors were paying.

19 And it is not only Metro that has been damaged by Respondent’s calculated behavior. It
20 is also all of Respondent’s competitors and their employees who lost jobs and work due to
21 Respondent’s ability to undercut their prices. I would expect that these people would feel that
22 justice may not have been done unless there was some penalty, other than a mere re-coupment
23 of money lawfully due, imposed on Respondent.

24 ////

**EXHIBIT A – PROPOSED ORDER FROM HEARING
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1 ////

2 ////

3 ////

ORDER

Based upon the above findings of fact, ultimate findings of fact, reasoning and conclusions of law, it is hereby ORDERED THAT:

Pursuant to Metro Code Section 5.05.070(a)(1) a fine of \$30250 is imposed for each of the 300 loads delivered to Riverbend Landfill, for a total penalty of \$9075,000.

Pursuant to Metro Code Section 5.05.070(b)(2) for Respondent’s failure to obtain a non system license prior to disposing of Metro generated waste at a non license facility a fine of \$1000 is imposed.

Pursuant to Metro Code Section 7.01.020 and 7.01.080(b) Respondent is ordered to pay excises taxes as follows:

Excise Taxes Due	\$12,295.08 8,196.72
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Penalty of 25%	\$ 3,073,772,049.18
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Interest as of October 31, 2006	\$ 991.00
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TOTAL	\$16,359,850,245.90
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SUMMARY OF FINANCIAL PENALITES

5.05.070(a)(1) Violation	\$9075,000.00
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5.05.070(b)(2) Violation	\$1,000.00
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7.01.020 / 7.01.080(b) Violation	\$16,359,850,245.90
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TOTAL	\$ 86,245,90107,359.85
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EXHIBIT A – PROPOSED ORDER FROM HEARING
METRO'S EXCEPTIONS FILED PURSUANT TO METRO CODE § 2.05.035(b)

Robert J. Harris
Hearing Officer

Dated: July 20, 2007

THIS ORDER MAY BE REVIEWED PURSUANT TO THOSE PROVISIONS AS SET FORTH IN METRO CODE SECTION 2.05

PROPOSED ORDER AS FINAL ORDER:

~~ANY MOTION TO RECONSIDER THE ORDER MUST BE FILED WITHIN TEN DAYS OF THE ORIGINAL ORDER. IF YOU FAIL TO OBJECT OR FILE A MOTION FOR RECONSIDERATION, THEN THE ORDER BECOMES THE FINAL ORDER. THE HEARINGS OFFICER MAY RECONSIDER THE FINAL ORDER WITH OR WITHOUT FURTHER BRIEFING OR HEARINGS. IF ALLOWED, RECONSIDERATION SHALL RESULT IN REAFFIRMANCE, MODIFICATION OR REVERSAL. FILING A MOTION FOR RECONSIDERATION DOES NOT TOLL THE PERIOD FOR FILING AN APPEAL IN COURT.~~

RIGHT OF APPEAL:

~~A PERSON MAY APPEAL A FINAL ADVERSE RULING BY WRIT OF REVIEW AS PROVIDED FOR IN ORS 34.010 THROUGH 34.100~~

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CERTIFICATE OF SERVICE

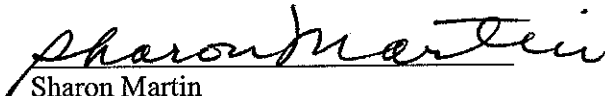
I hereby certify that I served the foregoing METRO'S EXCEPTIONS FILED PURSUANT TO METRO
CODE § 2.05.035(b) to the following:

C. David Hall
Attorney at Law
P.O. Box 14546
Portland, Oregon 97293
Attorney for Respondent Herme Rivas, dba USA General Contractors, LLC

Herme Rivas, dba USA General Contractors, LLC
P.O. Box 1146
St. Mary's Circle
Mount Angel, Oregon 97362

Robert J. Harris
Metro Hearings Officer
HARRIS LAW FIRM PC
165 SE 26th Avenue
Hillsboro, Oregon 97123

by mailing by regular mail to those persons a true and correct copy thereof, certified by me as such, placed in a
sealed envelope addressed to them at the addresses set forth, and deposited in the United States Post Office at
Portland, Oregon, on August 17, 2007, with the postage prepaid.


Sharon Martin
Legal Secretary

Agenda Item Number 5.2

Resolution No. 07-3833, Approving the Natural Areas Acquisition
Refinement Plan for the Forest Park Connections Target Area

Metro Council Meeting
Thursday, September 6, 2007
Metro Council Chamber

BEFORE THE METRO COUNCIL

APPROVING THE NATURAL AREAS ACQUISITION
REFINEMENT PLAN FOR THE FOREST PARK
CONNECTIONS TARGET AREA

RESOLUTION NO. 07-3833

Introduced by Chief Operating Officer
Michael J. Jordan, with the
concurrence of Council President
David Bragdon

WHEREAS, on March 9, 2006, the Metro Council adopted Resolution No. 06-3672B “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” recommending submission for voter approval a general obligation bond to preserve and protect natural areas, clean water, and fish and wildlife (the “2006 Natural Areas Bond Measure” or “Measure”); and

WHEREAS, at the election held on November 7, 2006, the voters approved Ballot Measure 26-80, the 2006 Natural Areas Bond Measure; and

WHEREAS, the Forest Park Connections Target Area was identified in the Measure as one of 27 regional target areas for land acquisition, building on the success of land acquisitions in the Forest Park Target Area pursuant to Metro’s 1995 Open Spaces Bond Measure Program; and

WHEREAS, as provided in the 2006 Natural Areas Bond Measure, Metro has undertaken a public refinement process to establish specific acquisition strategies, goals, objectives, and a confidential tax-lot specific acquisition target area map for each of the 27 target areas; and

WHEREAS, Metro’s refinement process included the compilation of available information about each target area; biological field visits and expert analysis of maps; interviews with key stakeholders including natural resource experts, property owners, representatives from state and local government agencies, and advocates from water quality, fish, and wildlife preservation interest groups; and eight public open houses at sites throughout the region and a “virtual” open house available via the internet, at which draft refinement plans were made available for public review and participants could share their target area priorities either in-person or electronically; and

WHEREAS, on March 1, 2007, the Council approved Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” authorizing the Metro Chief Operating Officer to acquire properties identified on a Council-approved target area “confidential refinement map;” and

WHEREAS, the Council has reviewed the draft refinement plans and considered information it has received from citizens, scientists, advocates, and state and local governments; now, therefore

BE IT RESOLVED that the Metro Council adopts the Forest Park Connections Refinement Plan attached hereto as Exhibit A, including the confidential tax-lot specific map reviewed by the Council in Executive Session on September 4, 2007, and signed by Council President David Bragdon on that date, and hereby authorizes the Chief Operating Officer to acquire properties in the Forest Park Connections Target Area consistent with the Council-approved Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan.

ADOPTED by the Metro Council this _____ day of _____ 2007.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

**2006 NATURAL AREAS ACQUISITION PROGRAM
FOREST PARK CONNECTIONS TARGET AREA REFINEMENT PLAN**

Background

The 1995 refinement plan goals for Forest Park included acquisition of 320 acres adjacent to and within the park to protect, maintain and expand habitat. To date more than 865 acres have been protected by Metro's program including inholdings, pinch points, and potential future trailhead sites. More than 600 of these acres are located near the northern end of the existing park boundaries including the Ancient Forest and lands along Agency and Ennis creeks.

The 2006 Natural Areas bond measure stated:

Connecting Forest Park to Rock Creek and the Westside Trail will keep important wildlife corridors intact and provide trail connections between the region's largest urban park and Washington County. Acquiring key properties will capitalize on recent successful acquisitions of land adjacent to and beyond Forest Park, connecting the park with the larger Pacific Greenway.

Target Area Description

Forest Park stretches for nearly eight miles along the northeast slope of the Tualatin Mountains within the City of Portland and unincorporated Multnomah County. At more than 5,000 acres of mostly second-growth forest, it is the largest natural urban forest reserve in the United States and is considered by many to be the "crown jewel" of the region's network of natural areas. The park contains significant wildlife corridors and more than 70 miles of recreational trails, including the well-used Wildwood Trail (a segment of the 40-Mile Loop Trail). Its massive tree canopy and substantial undergrowth support an abundance of wildlife, including the 112 bird and 62 mammal species that have been recorded there.

Refinement Process

During the refinement process, Metro staff compiled available information about the Forest Park target area, analyzed maps and conducted biological field visits. Individuals were interviewed representing various government agencies, property owners, interested friends groups and natural resource experts. The key concerns expressed during the interviews are summarized in Attachment 1.

Public open houses to discuss the proposed Refinement Plan were held on June 12, 2007 at the Portland Community College Rock Creek Event Center and on June 20, 2007 at the St. Johns Community Center, two of eight such open houses held throughout the region. Notices of the open houses were mailed to area residents and other interested citizens. Metro also conducted a "virtual" open house by making target area materials, including maps, available "online" via the internet and allowing participants to share their target area priorities electronically. A total of 527 people attended the regional open houses, and the online open house had 6,363 visits from 3,419 unique visitors. More than 700 target area surveys were submitted either in person or online. Fifty-six people completed the Forest Park survey. A copy of the survey questionnaire is included as Attachment 2. The map associated with the questionnaire for this target area is included as Attachment 3, and complete survey results are included as Attachment 4.

Findings

- The Forest Park Connections target area is a regionally significant natural area due to its fish, wildlife, regional recreation and water quality values.
- The Forest Park Connections target area is the largest and most ecologically intact natural area in public ownership in the metropolitan region.

- The City of Portland's Forest Park is the predominate feature within the Forest Park Connections target area with a size over 5,000 acres.
- The western boundary (southwest) of the target area is the Skyline Ridge that includes important connections to the neighboring Rock Creek target area.
- The eastern boundary (northeast) of the target area is the Willamette River – an important migration route for endangered fish species.
- Several large and ecologically important publicly owned parcels extend northwest of Forest Park out to Burlington Bottoms and the Multnomah Channel. These parcels are currently not contiguous with other publicly owned natural areas.
- Key tributary streams for water quality, wildlife habitat and fish habitat include Balch Creek, Doane Creek, Saltzman Creek and Miller Creek.
- Established science continues to show the key importance of intact headwaters for water quality and quantity protection, habitat and maintenance of overall watershed health.
- Recent studies on the Willamette have shown the importance of tributary creek confluence areas for listed fish species using the Willamette River. Many of the tributary creeks provide valuable sources of clean and cold water, nutrients and refuge areas off the main channel for refuge and rearing.
- Fifty-six people responded to the Forest Park questionnaire. Additional commentary was provided orally at the open house, most of which was consistent with the written responses. In rank order, the public priorities were:
 1. *Map area A* – Protecting lands in the large natural corridor northwest of today's Forest Park connecting to other protected natural areas northwest of Newberry Road.
 2. *Map area B* – Protecting lands or purchasing development rights in the headwater areas of Balch Creek, Saltzman Creek, Doane Creek and Miller Creek on the east side of the ridgeline.
 3. *Map area D* – Securing connections between Forest Park and Rock Creek headwaters areas on the west side of the ridgeline.
 4. *Map area C* – Protecting lands around key creek confluence areas on the Willamette River at Saltzman Creek, Doane Creek and Miller Creek.

Goals

- Acquire key properties to connect Forest Park to other public lands.
- Connect Forest Park to Rock Creek and the Westside Trail to keep important wildlife corridors intact and provide trail connections between the region's largest urban park and Washington County.
- Protect important headwater areas on the eastside of the ridgeline.

Objectives

A target area map showing the tiered objectives described below is included as Attachment 5.

Tier I Objective

- Acquire and protect additional lands along the corridor at the north end of the park to link Forest Park with other publicly owned parcels northwest of Newberry Road.

Tier II Objectives

- Secure key locations for trailheads in areas of the park that lack suitable access.
- Acquire important habitat links and connections with Rock Creek headwater streams on the west side of the ridgeline.
- Using conservation easements as the primary tool, acquire important headwater areas within the Balch, Saltzman, Doane, and Miller Creek watersheds, on the east side of the ridgeline.

Partnership Objectives

- Pursue partnership opportunities with the City of Portland Parks and Bureau of Environmental Services, Washington and Multnomah Counties, and Clean Water Services to coordinate protection efforts and to leverage regional bond dollars.
- Pursue partnership opportunities with Friends of Forest Park, Trust for Public Land, The Three Rivers Land Conservancy, and other local land trusts to leverage regional bond dollars targeted to the Forest Park Connections area.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 07-3833, APPROVING THE NATURAL AREAS ACQUISITION REFINEMENT PLAN FOR THE FOREST PARK CONNECTIONS TARGET AREA

Date: September 6, 2007

Prepared by: Jim Desmond
Kathleen Brennan-Hunter

BACKGROUND—REFINEMENT PROCESS

The Natural Areas Bond Measure (Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” adopted by the Metro Council March 9, 2006) provided that Metro would undertake a “Refinement Process” to “gather additional information about each individual target area and begin zeroing in on particular parcels that would be valuable to acquire” (Exhibit A to Resolution No. 06-3672B). In addition, the Natural Areas Implementation Work Plan (Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” adopted by the Metro Council on March 1, 2007) authorized the Metro Chief Operating Officer to acquire properties without further Council approval if they have been identified on a Council-approved target area “confidential refinement map.” To implement those directives, the Refinement Plans for each target area contain overall target area objectives and confidential tax-lot specific target area maps identifying priority properties for acquisition, enabling Metro staff to begin the acquisition of property and property rights as detailed in the Natural Areas Implementation Work Plan.

Additional background information, target area information, a description of the specifics of the refinement process regarding this target area, and the refinement plan’s findings, goals, and objectives are described in further detail in Exhibit A to this resolution, the Forest Park Connections Target Area Refinement Plan.

ANALYSIS/INFORMATION

1. **Known Opposition**

None.

2. **Legal Antecedents**

Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” adopted on March 9, 2006.

The voters’ approval of Metro’s 2006 Natural Areas Bond Measure at the general election held on November 6, 2006.

Resolution No. 07-3766A “Authorizing the Chief Operating Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” adopted by the Metro Council on March 1, 2007, established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

3. **Anticipated Effects**

Acquisition of natural area properties in the Forest Park Connections target area to achieve the goals and purposes of the 2006 Natural Areas Bond Measure.

4. **Budget Impacts**

The FY 2007-08 budget includes budgetary authority to purchase \$35 million in natural area lands, with an additional \$15.4 million in contingency, if necessary. It is estimated, based on historical spending patterns, that this authority will be sufficient to cover the anticipated acquisition activity for this fiscal year. Additional unappropriated fund balance (\$64 million) exists for land acquisition in future years, along with the authority to issue up to an additional \$102 million in General Obligation bonds in support of this program.

RECOMMENDED ACTION

Staff recommends adoption of Resolution No. 07-3833.

Summary of Comments from Stakeholder Interviews for Forest Park Connections Target Area

Stakeholder(s) Interviewed

Paul Ketcham, City of Portland Bureau of Environmental Services
Jim Labbe, Portland Audubon
Bob Sallinger, Portland Audubon
Kendra Smith, Clean Water Services
Gail Snyder, Friends of Forest Park
Fred Nilsen, Portland Parks and Recreation
Debora Lev, Portland Parks and Recreation
Jim Emerson, Forest Park Neighborhood Association

Key Themes Discussed

Water Quality/Wildlife Habitat

- The opportunities for connections to the northwest of existing Forest Park were mentioned in every stakeholder interview. Everyone interviewed indicated the importance of extending the park and providing maximum habitat and water quality protection for the scattered parcels previously purchased in this area.
- A major emphasis was placed on maintaining the key habitats and preserving water quality in the Balch Creek watershed and other key watersheds in the park. Particularly, the headwaters outside and uphill from the park. Ecological changes within the Balch Creek watershed are apparent in the last few years even at the low density development level. Forest fragmentation is affecting species diversity, becoming more suitable for open/fragmented canopy species and losing interior habitat characteristics. Negative impacts to headwaters affect the entire watershed.
- Multiple stakeholders have mentioned the important bottomland forest and wetland confluence habitat on the Willamette River where tributary streams enter the Willamette River. Habitat for pond turtles, bottomland forest, and Willamette wetlands are a diminishing resource. Restoration potential and mitigation bank potential. Very important habitat for Willamette River listed fish species
- The connections with the Rock Creek watershed and its tributaries are important linkages for wildlife and humans. Possible connections in this area for the Westside Trail and the Pacific Greenway trail were mentioned. Abbey Creek headwaters, Rock Creek headwaters
- Balch Creek and Forest Park in-holdings and edge properties are important targets for maintaining forest and habitat health and for protecting water quality in key watersheds. However, they are likely to be very expensive and difficult to acquire.
- Northwest corridor and Rock Creek connection properties are also important for maintaining habitat connections to adjacent natural areas and ecosystems, headwaters, and for buffering unique habitats. Important local elk habitat shared with Rock Creek. Elk use creek corridors for movement, feed in open fields, and use forested areas for cover/rest

Miscellaneous Comments

Paul Ketcham

- Forest Park headwaters for west side and east side streams
 - cool water sources
 - reduce/control sedimentation
 - moderate flows (forested headwaters)
 - headwaters on west side very vulnerable
 - Acquiring headwaters, highest gradient and damage
- Connectivity with intact canopy patches that prevent fragmentation and maintain connections for Forest Park
- High priority areas:
 - Wetlands
 - Bottomland hardwood
 - White oak
 - Known rare plants/species
 - Old growth patches
- Opportunities for connections
 - Doane Lake connection across Willamette River to Smith/Bybee (rail corridor)
 - BES enhancement projects planned for Doane Lake remnant floodplain, Willamette Shores

Jim Labbe, Bob Salinger, Kendra Smith, Gail Snyder

- Linking up big chunks of publicly owned property at NW end
- McNamee road area has potential
- Provide buffering for the Old Growth area
- Balch Creek Watershed in-holdings
- Ecological changes to Audubon Sanctuary because of land use changes above and below
- Bones Creek important for scientific study in cooperation with Portland Audubon
- Conservation easements/partitions
- Creeping development in Balch
- Cutthroat population in Balch – genetic conservation
- Infill Skyline Blvd. residences, conservation easements for edges
- Willamette floodplains/bottomland forest restoration potential/mitigation bank
- Elk migrating through creek corridors, feeding in open fields, moving into forested areas for cover; herds moving from Rock Creek to Forest Park and back

Fred Nilsen, Deborah Lev

- Key water quality issues and opportunities
 - Creek connections to Willamette River
 - Balch Creek and especially upper Balch Creek in-holdings top priority
 - Large acreages in Balch and at edges could use Conservation Easement
- Important water quality areas/streams
 - Balch
 - Saltzman
 - Doane
 - Miller
- The most important existing wildlife corridors in this area:
 - Northwest corridor connection
 - Bottom of Saltman Creek also trail/access
 - Rock Creek
 - Doane/Peninsula crossing
 - Miller floodplain to Smith/Bybee

Jim Emerson

- A lot of property was acquired around Forest Park through the 1995 bond measure, but not much up on Skyline Drive area. Would like to see more emphasis on the Tualatin side.
- On the Westside, there are limited opportunities for public access. Metro needs to figure out a way to fund maintenance.

QUESTIONNAIRE

TARGET AREA: FOREST PARK CONNECTIONS

In November 2006 voters directed the Metro Council to extend a regionwide program and acquire between 3,500 and 4,500 acres of additional natural areas to protect water quality and fish and wildlife habitat and to provide future generations opportunities for greater access to nature. Now it's time for the Metro Council to refine priorities in the 27 regional natural areas and trail corridors targeted for acquisition. The 1995 acreage goal for this target area was 320 and Metro has acquired 866 acres to date. The 2006 program will provide additional funding for protection goals in this target area.

The Metro Council wants your ideas and input. We've been talking with scientists, land-use experts, groups and individuals who have special knowledge about the natural resource values and community visions for these areas. With this information Metro has begun to identify the potential strategies and opportunities that will achieve the best results. Now we need to know: Do we have it right? What have we missed? What is most important to you?

2006 NATURAL AREAS BOND DESCRIPTION FOR THIS TARGET AREA

Connecting Forest Park to Rock Creek and the Westside Trail will keep important wildlife corridors intact and provide trail connections between the region's largest urban park and Washington County. Acquiring key properties will capitalize on recent successful acquisitions of land adjacent to and beyond Forest Park, connecting the park with the larger Pacific Greenway.

QUESTIONS

1. **The following priorities were identified in the Forest Park Connections target area based on scientific information about benefits to water quality, habitat diversity, wildlife connectivity and/or restoration potential and from information provided by key stakeholders in the area. Rank in order of importance to you from 1 to 4, with 1 being the most important and 4 being the least important.**

- _____ Protecting lands in the large natural corridor northwest of today's Forest Park connecting to other protected natural areas north of Newberry Road. (**Map area A**)
- _____ Protecting lands or purchasing development rights in the headwater areas of Balch Creek, Saltzman Creek, Doane Creek and Miller Creek on the east side of the ridgeline. (**Map area B**)
- _____ Protecting lands around key creek confluence areas on the Willamette River at Saltzman Creek, Doane Creek and Miller Creek. (**Map area C**)
- _____ Securing connections between Forest Park and Rock Creek headwaters areas on the west side of the ridgeline. (Note: see also the Rock Creek Headwaters and Greenway target area information.) (**Map area D**)

2. **In general, what should be emphasized in the Forest Park Connections target area? Rank in order of importance to you from 1 to 5, with 1 being the most important and 5 being the least important.**

- _____ Protecting existing wildlife habitat connections.
- _____ Protecting creeks and headwater areas for water quality, fish and wildlife habitat.
- _____ Providing people access to nature along trail corridors and within natural areas.
- _____ Protecting wildlife habitat and public access by securing inholdings or filling gaps in Forest Park.
- _____ Securing locations for additional trailheads for public access to Forest Park.

3. Are there other priorities that the Metro Council should consider in the Forest Park Connections target area? Please be specific.

4. Do you have suggestions about partnerships Metro should pursue or other innovative ways to leverage regional funding and enhance this natural area?

5. Are you interested in participating in Metro's Natural Areas program by selling or donating your property or selling or donating a conservation easement on your property?

☐ Yes ☐ No If yes, please be sure to provide your contact information below.

6. Do you have any other comments about this target area?

☐ Please add my name to the Forest Park Connections target area mailing list for future information, public meetings and events.

Name _____

Address _____

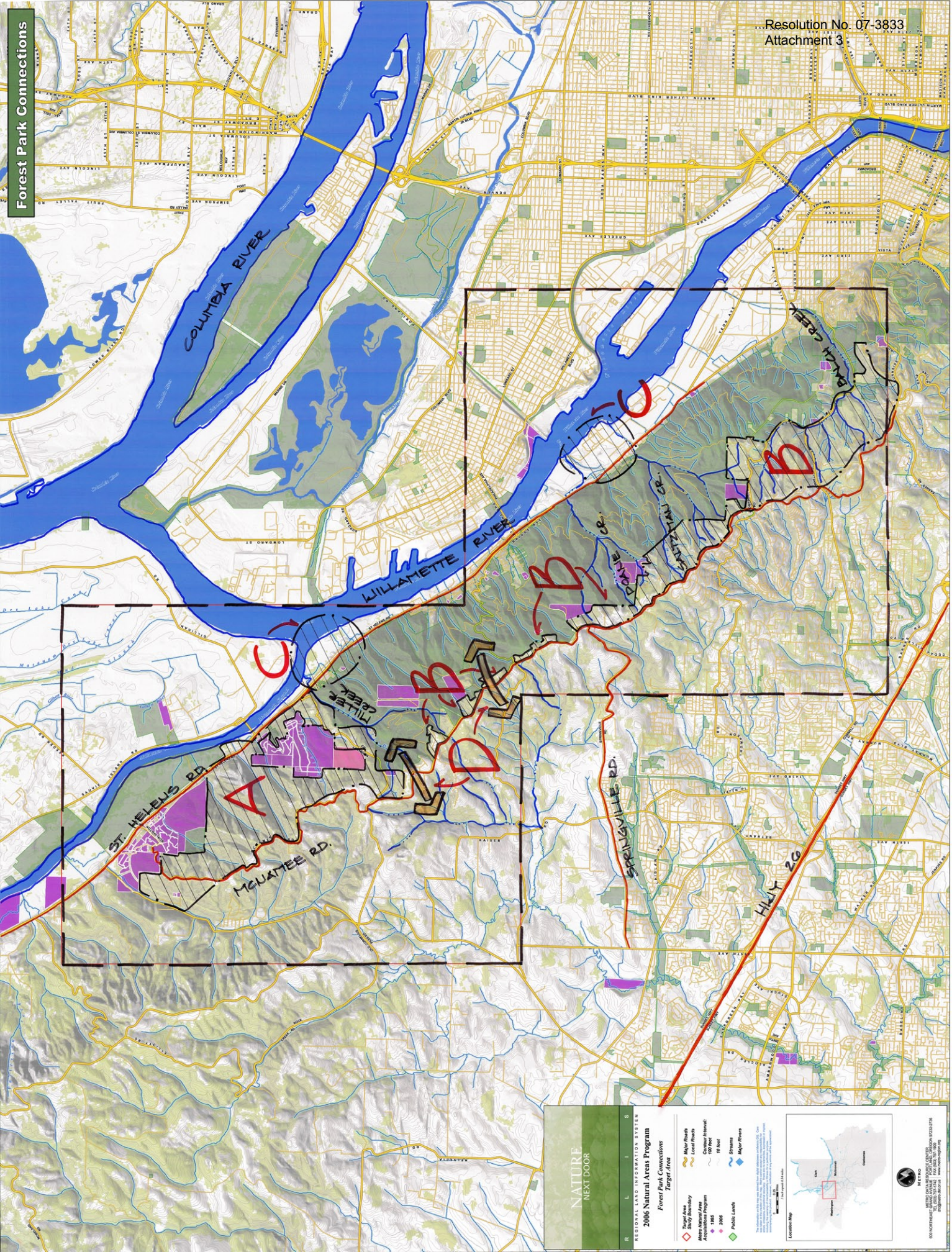
City/State/Zip _____

Phone _____

E-mail _____

**You may complete this questionnaire online at
www.metro-region.org/naturalareas**

or mail it to Metro at
600 NE Grand Avenue, Portland, OR 97232
(503) 797-1741



**NATURE
NEXT DOOR**

REGIONAL LAND INFORMATION SYSTEM
2006 Natural Area Program
Forest Park Connections
Target Area

Legend

- Target Area
- Study Boundary
- Major Road
- Minor Road
- Public Land
- Private Land
- Stream
- Major River
- Water
- 100 Feet
- 500 Feet
- 1 Mile

Location Map

Clatsop County, Oregon

Map of Oregon showing the location of Clatsop County.

600 NORTH MAIN STREET, SEASIDE, OREGON 97138-2700
TEL: 503/746-1000 FAX: 503/746-1000

Forest Park Connections Survey Results

1. The following priorities were identified in the Forest Park Connections target area based on scientific information about benefits to water quality, habitat diversity, wildlife connectivity and/or restoration potential and from information provided by key stakeholders in the area. Rank in order of importance to you.

	most important			least important	Rating Average	Response Count
Protecting lands in the large natural corridor northwest of today's Forest Park connecting to other protected natural areas northwest of Newberry Road. (Map area A)	46.0% (23)	22.0% (11)	14.0% (7)	18.0% (9)	2.04	50
Protecting lands or purchasing development rights in the headwater areas of Balch Creek, Saltzman Creek, Doane Creek and Miller Creek on the east side of the ridgeline. (Map area B)	18.0% (9)	36.0% (18)	32.0% (16)	14.0% (7)	2.42	50
Protecting lands around key creek confluence areas on the Willamette River at Saltzman Creek, Doane Creek and Miller Creek. (Map area C)	21.6% (11)	9.8% (5)	31.4% (16)	37.3% (19)	2.84	51
Securing connections between Forest Park and Rock Creek headwaters areas on the west side of the ridgeline. (Note: see also the Rock Creek Headwaters and Greenway target area information.) (Map area D)	20.8% (11)	32.1% (17)	20.8% (11)	26.4% (14)	2.53	53
	answered question					54
	skipped question					4

2. In general, what should be emphasized in the Forest Park Connections target area? Rank in order of importance to you.

	most important				least important	Rating Average	Response Count
Protecting existing wildlife habitat connections.	35.8% (19)	34.0% (18)	13.2% (7)	5.7% (3)	11.3% (6)	2.23	53
Protecting creeks and headwater areas for water quality, fish and wildlife habitat.	24.1% (13)	24.1% (13)	29.6% (16)	18.5% (10)	3.7% (2)	2.54	54
Providing people access to nature along trail corridors and within natural areas.	16.7% (9)	9.3% (5)	11.1% (6)	33.3% (18)	29.6% (16)	3.50	54
Protecting wildlife habitat and public access by securing inholdings or filling gaps in Forest Park.	23.2% (13)	19.6% (11)	33.9% (19)	10.7% (6)	12.5% (7)	2.70	56
Securing locations for additional trailheads for public access to Forest Park.	3.6% (2)	14.5% (8)	10.9% (6)	29.1% (16)	41.8% (23)	3.91	55
	<i>answered question</i>						56
	<i>skipped question</i>						2

3. Are there other priorities that the Metro Council should consider in the Forest Park Connections target area? Please be specific.

Expansion of mountain bike access.
I hope that as part of the vision for public access that there will be increased recognition of cycling as a legitimate and non-destructive recreational activity within park boundaries.
I hope that as part of the vision for public access that there will increased recognition of cycling as a legitimate and non-destructive recreational activity within park boundaries.
I'd really like to see some areas of the park opened up to mountain bikes -- actual singletrack. It's important to me to be able to ride to trailheads -- I think it's a bad thing that local mountain bikers inevitably end up burning gas to haul their bikes to remote trails. Consult with local and national mountain biking groups to discuss how negative impacts can be managed -- we don't want to mess up Forest Park any more than you do!
Single track mountain bike trails.
Make them bike accessible, the more use the better and right now bikes have a very limited range in Forest Park.
Measure 37 is a threat to McNamee Road area (Dorothy English's neighborhood). Be aware of development plans there and consider purchasing properties--just don't pay M37 claimants their ridiculously inflated ideas of property values.
Critical to link park to Willamette River more effectively.
A lot of the upland forests (Doug fir forests) have been protected. I would like to see more emphasis on protecting the riparian and bottomland forests. I know that Sauvie Island is outside of Metro's areas, but I love the idea mentioned at the St. John's open house of connecting Howell Territorial park with the river to the east.
Please try to obtain some westside creek headwaters areas a bit farther west, as well in "area D"---for instance near NW Quarry Rd. and/or NW Toelle Lane. These provide existing Elk routes as well as potential hiking/view sites for people who are farther west than Forest Park proper.

Specifically: protecting and expanding the area of park and trail connections NW from Forest Park to the old growth strand.

Maintain a separation between areas heavily used by people away from areas heavily used by wildlife.

Trail connections to Agency and Ennis Creeks and out to old growth property.

Ivy removal.

A bicycle commuting connection from the St. Johns Bridge through Forest Park and then connecting to Germantown/Old Germantown Rd. (or running along side it).

I didn't fill out the previous multiple choice questions because I don't have the expertise to rank them in order of importance - to me they all seem vitally important.

Alternative commuter routes into Portland from the westside should include routes free from automobiles. Thank you!

NO trail on the BPA powerline from Washington county to Germantown and Old Germantown. This is elk migration habitat: I have pic.

Please continue consideration of westside trails to connect Hillsboro to Portland. The rail to trail conversions being considered would be wonderful. Are there any off road, 4 season alternatives for westside cyclists?

I am most concerned about wildlife corridors from Forest Park to the Pacific Ocean.

The confluence areas have tremendous potential to strengthen wildlife corridors and to provide aquatic habitat. For example - Saltzman Creek - a few improvements to the channelized area through the industrial area would be a priority on my list - this stream (after Miller Cr) is the least culvertized of the West Hills streams that drain to into the Willamette and could net big improvements for f & w.

I would like to see a new effort towards putting single track mountain biking trails into the Park. I commute by bike from NE PDX to Beaverton everyday, and I would love to have a real MTB trail to use.

Single track mountain biking in Forest Park.

Mountain Bike singletrack trails! Mountain biking in Forest Park is something that Portlanders are truly missing. Leif does not count, it is a road! Well built trails will last a lifetime and there are organizations such as PUMP that will help build them!

KEEPING PEOPLE OUT OF NATURAL AREAS TO PRESERVE THE RIGHTS OF ANIMALS AND THIER NATURAL HABITAT IS A GOOD IDEA HOWEVER IT MUST BE BALANCED WITH THE PEOPLES RIGHT TO ENJOY THOSE NATURAL AREAS. I'M FOR INITIATING TRAIL FEES TO HELP RAISE REVENUE FOR PRESERVATION AND USING VOLUNTEERS EFFECTIVLY TO KEEP THE TRAILS CLEAN AND OPEN TO ALL OF US.

Ensuring public transportation access and limiting automobile traffic.

Developing trail systems through Metro acquisitions from 1995 to connect Forest Park proper to the old growth property owned by Friends of Forest Park.

Having worked on the Pacific Greenway through Friends of Forest Park, I would like to see a corridor reopen for possible coastal connection. Also a wildlife corridor at least 1-1/2 miles (in 1989 a trail worker spotted a bear and four cubs in Forest Park).

Map areas B & D are under most threats, while A is of critical long term importance, so all are important. Narrow portions of Forest Park need bolstering. I would focus on maintaining wildlife corridors, especially for larger animals like elk.

4. Do you have suggestions about partnerships Metro should pursue or other innovative ways to leverage regional funding and enhance this natural area? If so, please specify.

Use the IMBA - International Mountain Bike Association.

Trust for Public Land is looking for properties in the area.

Friends of Forest Park might be more effective at fundraising as conservancy.
Columbia Land Trust has not been active on Sauvie Island and the land along Highway 30, but have expressed interest in expanding into this area.
Encourage Friends of Forest Park to raise money to specifically purchase more land in and adjacent to the park.
We are not funding experts. It seems to us that the two Metro greenspaces bonds (1995, 2006) may be a sufficient property tax request, in the present social and economic climate - but they could be renewed (if voters approve) after the initial term. New to investigate: a state park or wildlife area, adjacent to forest park, using lottery revenue? A special "by invitation" donation request and honored donor program? Most Tualatin Mtn. Residents are not actually wealthy, but SOME are.
Work closely with Friends of Forest Park and Trust for Public Lands.
HSBC, the company I work for, has demonstrated a commitment to protecting the environment and to connecting employees with volunteer opportunities. I would suggest working out partnership with HSBC (they have offices in Tigard locally). If there were a fundraiser for employees, with matching funds from the company (this sort of thing happens quite often), or getting work parties of employees to volunteer.
Make use of conservation easements to protect lands in private ownership.
Yes- hire a fundraiser - consider parks to multiply funding and funds raised
BTA, PUMP, African American Health Coalition.
Conservation easements.
Connect with the Nature Conservancy and the Sierra Club starting with local offices. Contract out to hire a grants person to submit applications for relevant grants throughout the country, but begin with Oregon-based foundations.
If the single track were considered a transportation route, wouldn't that mean funding could be secured through the massive DOT budgets?
International Mountain bicycling association, local outdoor businesses. REI, Keen, Adidas, Nike, etc. BTA, Portland transportation.
With mountain bike trails, local bike retailers and companies such as Chris King would be a resource. As well as IMBA grants.
NO
When I worked with Keith Hag of Conservation Fund, we got grants from local family foundations. All of my files are in Friends of Forest Park office.
Forest Park Neighborhood would like to continue to work with Metro to identify important habitat and natural resource areas, and to protect them.
Develop the case with PDX and Friends of Forest Park. That Linnton and the NW Industrial Neighborhood Association need Forest Heights and all the others along Skyline and visa versa – that they need each other in protecting Forest Park in between.

5. Do you have any other comments about this target area? If so, please specify.

I'm pleased to see that the priorities listed regarding Forest Park appear to be well-conceived and thoughtfully gathered. Preserving Forest Park, its animal inhabitants, and the recreational opportunities present within it's boundaries will become increasingly important as the region's density magnifies.
Mountain bike singletrack trail access – separate from hiking/running.
Please promote more bicycle usage in forest park.
Work with Friends of Forest Park to be ready for spur of the moment opportunities, even if they are outside target areas. Metro MUST drop their efforts to bring Area 94 into the UGB. It's in direct conflict with this natural areas conservation effort.
Please don't bring any other land into UGB on west side of Forest Park.

If there is interest in acquiring conservation easements and/or more land on Sauvie Island, I would be very interested in helping.

It is an extremely valuable resource to wildlife. Its overuse threatens to disrupt its ability to function as a natural forested ecosystem; it needs to be protected from overuse

In addition to property improvement, long-term maintenance (control of invasives; trail main; restrooms, etc) is a key need for Forest Park and this need will only grow as more land is added. Forest park is a "Crown Jewel" and needs to be treated as such.

More educational outreach about the reasons for leash laws within the park. A lot of dog owners are unaware as to why such regulations are important, and how they specifically help protect the park (this could be done with signage near trailheads, along with something in the FoFP newsletter).

June 19, 2007 David Bragdon, Rex Burkholder and Metro Council Metro Regional Center 600 NE Grand Avenue Portland, OR 97232-2736 Dear Mr. Bragdon, Mr. Burkholder and other Council members, In May of 1989 the City of Portland along with neighborhood representatives began work on the East Columbia Neighborhood Natural Resources Plan. The Plan was adopted by Portland City Council on April 18, 1990. In that document it was recognized that the East Columbia Neighborhood is one of the most diverse areas in Portland and one of its most important characteristics is its wetlands and drainageways. Levees were constructed to assist in flood control and today a network of drainage ditches exist to divert water to one of two pump stations along the Columbia Slough. The diversity of wildlife in the area is remarkable – deer, fox, coyote, rabbits, birds, (hawks, blue heron, hummingbirds, and morning doves), hundreds of migrating geese and ducks are all found in open spaces in the neighborhood. While the city's Comprehensive Plan established increased residential densities on several of the area's vacant parcels and industrial zoning on the perimeter of the neighborhood there are still several pieces of land that are in need of protection as wetlands and wildlife habitat areas. Neighborhood residents have struggled over the past 15 years to deal with wetlands fills while participating in the confusing process of land development, city codes, and fill permit regulations. There is a current proposal by the Columbia Edgewater Country Club to develop land they refer to as "The Bean Field Property" and identified in the East Columbia Resources Plan as the Columbia Edgewater/Shragg Property. In the Natural Resources Plan this piece of property is identified as a wetland area of intermediate value and it is suggested that it has the potential to be useful for both wildlife and for sediment stabilization. In the plan the neighborhood's vision is that this wetland area be enhanced by planting emergent plant species and developed as a wildlife habitat and used as a site amenity for new residential developments. No enhancement has taken place and the site is generally mowed once a year. Metro's Natural Areas Program process of identifying the need to preserve natural areas for future generations is a perfect fit for this area in East Columbia Neighborhood. The neighborhood has an active group that works to maintain privately owned wetlands in the area. The Columbia Slough Watershed Council gave the Friends of Blue Heron an award in 2005 for their stewardship of their wetlands. This group could be a model to work with other neighbors in preserving the Columbia Edgewater/Shragg Property. We would work with Metro to enhance the Site with plantings and maintenance. East Columbia with its unique natural diversity has always been active in the preservation of natural areas and has a strong support base to continue that involvement. We believe this is an excellent opportunity for Metro to partner with citizens in preserving natural areas in our region. Sincerely, East Columbia Neighborhood Association Maryhelen Kincaid, Land Use Chairperson 503-286-3354 (home) jamasu88@msn.com

There are several undeveloped lots from Germantown Rd up to NW Wood... Its a beautiful area that I'd like to remain undeveloped.

There is a tract of land on the NW corner of NW Springville Rd. and NW Skyline Blvd. Which would seem to offer an ideal public park. Walking, wonderful views, kite flying, etc... Currently it's used as horse pasture. (It has been for sale in the past)

Keep trails in Forest Park open for hiking (all trails) and mt. biking (not the wild wood). Check out www.pump.org - (Portland United Mt. Pedalers is PUMP)

Thank you!

This has got to be one of the most important opportunities to provide additional protection to Forest Park and to provide headwater protections.

Make sure that the residents of the Linnton Neighborhood have a big say in what happens (no I don't live there). That neighborhood has been working very hard to build and maintain a strong community and connections – natural and human – are very important to them. They've done lots of work and thinking about this area and know it well.

If mountain bike trails were available in Forest Park less mountain bikers would be traveling away from Portland and more mountain bikers would travel to Portland to ride their bike. Also, if the trail was build in the right location it

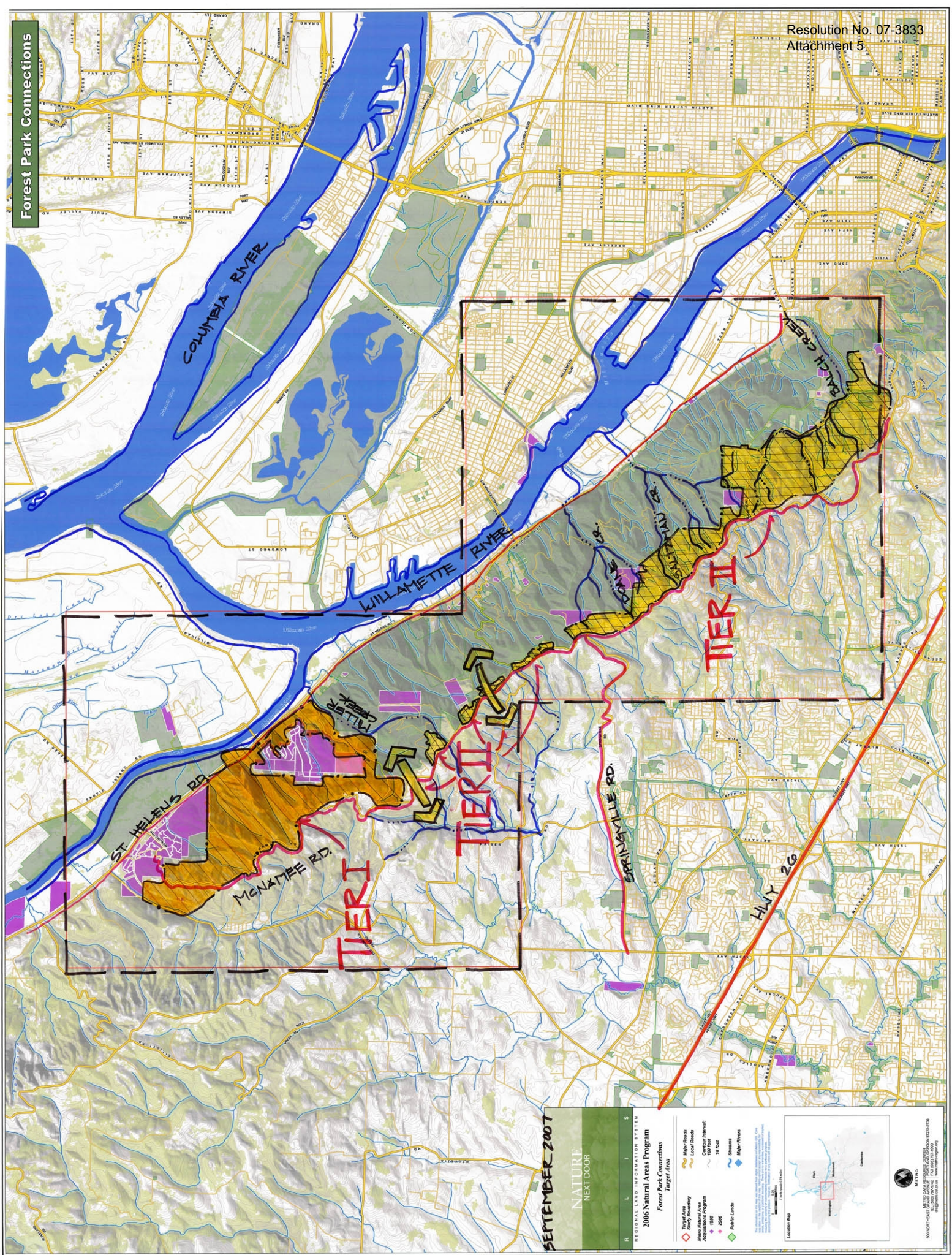
could be used as alternative transportation over the mountain to Beaverton.

PLEASE, NO DEVELOPMENT!

My comments are intended to support increasing river access in the Linnton neighborhood along NW St. Helens Rd. in Portland. While there is great access to Forest Park throughout this area there is minimal access to the west side of the Willamette River basically from downtown Portland to outside the City border, or near the City limit there is a boat ramp I believe. There is momentum to hold the City and future landowners of the old Linnton Plywood Mill site to provide public access to the river near NW 107th Ave. in the heart of the remaining Linnton business area. There is a very welcoming natural beach at that location, one of the last remaining opportunities to save a natural beach area along the industrial area of the Willamette. This could provide a wonderful trail end from the Forest Park trail system from Wildwood Trail down the Linnton Trail to Hwy 30 with access to the river for hikers. There is already a greenspace overlay on the City's zoning map for this area. If the City and Metro do not take advantage to preserve this small access point to the river, future industrial development will likely eliminate such future access. Then again, there could be an opportunity for the City and Metro to work with a probable likely buyer of the plywood mill site to allow certain less than desirable developments as long as public access is allowed to the beach, along with the building of a sidewalk or access route from the highway.

In my dreams I would like a walking bridge over W. Burnside to prevent fatalities. We tried to do this once. I think more clearly marked trailheads are needed. The more people using the park, the safer it will be for all. "Leif" is too congested.

I don't understand why Area D seems to stop well north of Springville Road. It should include at least the area down to Springville and possibly a little beyond that. One specific property – Beovich (in the big curve of Springville just west of Skyline) could be useful as a "connector" piece. Habitat quality on it isn't great today, but it lies in a narrow spot between other good habitats on the SW side of the hills.



SEPTEMBER 2007

NATURE
NEXT DOOR

REGIONAL LAND INFORMATION SYSTEM
2006 Natural Areas Program
Forest Park Connections
Target Area

Target Area
Study Boundary
Metro Natural Area
Forest Park Program
1998
2006
Public Lands
Streams
Major Rivers

Legend
Scale
North Arrow

Location Map

Map Data
Source: USGS, NOAA, and other sources
Map Date: 2007

Map Scale
1 inch = 1 mile

Map Legend
Legend

Map Data
Source: USGS, NOAA, and other sources
Map Date: 2007

Map Scale
1 inch = 1 mile

Agenda Item Number 5.3

Resolution No. 07-3834, Approving the Natural Areas Acquisition
Refinement Plan for the Rock Creek Headwaters and Greenway Target
Area

Metro Council Meeting
Thursday, September 6, 2007
Metro Council Chamber

BEFORE THE METRO COUNCIL

APPROVING THE NATURAL AREAS ACQUISITION
REFINEMENT PLAN FOR THE ROCK CREEK
HEADWATERS AND GREENWAY TARGET AREA

RESOLUTION NO. 07-3834

Introduced by Chief Operating Officer
Michael J. Jordan, with the
concurrence of Council President
David Bragdon

WHEREAS, on March 9, 2006, the Metro Council adopted Resolution No. 06-3672B “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” recommending submission for voter approval a general obligation bond to preserve and protect natural areas, clean water, and fish and wildlife (the “2006 Natural Areas Bond Measure” or “Measure”); and

WHEREAS, at the election held on November 7, 2006, the voters approved Ballot Measure 26-80, the 2006 Natural Areas Bond Measure; and

WHEREAS, the Rock Creek Headwaters and Greenway Target Area was identified in the Measure as one of 27 regional target areas for land acquisition, building on the success of land acquisitions pursuant to Metro’s 1995 Open Spaces Bond Measure Program; and

WHEREAS, as provided in the 2006 Natural Areas Bond Measure, Metro has undertaken a public refinement process to establish specific acquisition strategies, goals, objectives, and a confidential tax-lot specific acquisition target area map for each of the 27 target areas; and

WHEREAS, Metro’s refinement process included the compilation of available information about each target area; biological field visits and expert analysis of maps; interviews with key stakeholders including natural resource experts, property owners, representatives from state and local government agencies, and advocates from water quality, fish, and wildlife preservation interest groups; and eight public open houses at sites throughout the region and a “virtual” open house available via the internet, at which draft refinement plans were made available for public review and participants could share their target area priorities either in-person or electronically; and

WHEREAS, on March 1, 2007, the Council approved Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” authorizing the Metro Chief Operating Officer to acquire properties identified on a Council-approved target area “confidential refinement map;” and

WHEREAS, the Council has reviewed the draft refinement plans and considered information it has received from citizens, scientists, advocates, and state and local governments; now, therefore

BE IT RESOLVED that the Metro Council adopts the Rock Creek Headwaters and Greenway Refinement Plan attached hereto as Exhibit A, including the confidential tax-lot specific map reviewed by the Council in Executive Session on September 4, 2007, and signed by Council President David Bragdon on that date, and hereby authorizes the Chief Operating Officer to acquire properties in the Rock Creek Headwaters and Greenway Target Area consistent with the Council-approved Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan.

ADOPTED by the Metro Council this _____ day of _____ 2007.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

**2006 NATURAL AREAS ACQUISITION PROGRAM
ROCK CREEK HEADWATERS AND GREENWAY TARGET AREA REFINEMENT PLAN**

Background

The 1995 refinement plan goals for Rock Creek included acquisition of 300 acres along the greenway, acquiring key upland sites along Rock Creek's floodplain and tributaries, and creating a regional natural area at the confluence of Rock Creek and Holcomb Creek. A total of 116.5 acres were protected with 1995 bond funds. This was a challenging target area, and the focus on the lower creek within the UGB limited some opportunities. Rock Creek is a critical area for wildlife and water quality and the addition of the headwaters to this target area creates new opportunities. While the 1995 bond measure focused on acquisitions along Rock Creek within the UGB, the 2006 measure has a stronger focus on protection of headwater areas.

The 2006 Natural Areas bond measure stated:

A major tributary of the Tualatin River, upper Rock Creek and its tributaries are under intense development pressure as urban growth expands throughout the watershed. Watershed managers have identified protection of the upper watershed as a high priority for meeting water quality protection goals in the lower watershed. Opportunities to improve and protect habitat also exist through the protection of key tributaries and their associated wetlands. In addition, the protection of key undeveloped sites in the lower reaches of Rock Creek, particularly in Hillsboro, will buffer growth, protect water quality and provide nature in neighborhoods for local residents.

A biological assessment for this target area indicates that oak woodlands and oak savanna habitat support varied wildlife, and expanding the protected natural areas would increase habitat opportunities for vulnerable species such as red-legged frogs, Western bluebirds and northwestern pond turtles. In addition, threatened species such as steelhead, cutthroat trout and coho salmon are present in Rock, Abbey, Holcomb, Bannister and Bronson creeks, as well as in an Abbey Creek tributary.

Target Area Description

Rock Creek flows from the Tualatin Mountains to the Tualatin River. The headwaters hold key areas of undeveloped land which provides linkages for wildlife. These areas also contribute to water quality. Because the creek and its tributaries pass through rapidly urbanizing neighborhoods within the city of Hillsboro, protecting water quality is a priority. Metro has acquired 11 parcels of land, six of which are contiguous, along Rock Creek. The city of Hillsboro and the Tualatin Hills Park and Recreation District (THPRD) are managing most of the land. Tualatin Hills Nature Park surrounds one 22-acre site on three sides. It was acquired jointly by THPRD and Metro.

Refinement Process

During the refinement process, Metro staff compiled available information about the Rock Creek target area, analyzed maps and conducted biological field visits. In addition, a biological assessment was performed for this target area by SWCA Environmental Consultants. Individuals were interviewed representing various governmental agencies, property owners, interested friends groups and natural resource experts. The key concerns expressed during the interviews are summarized in Attachment 1.

A public open house to discuss the proposed Refinement Plan was held on June 12, 2007 at the Portland Community College Rock Creek Event Center, one of eight such open houses held throughout the region. Notices of the open houses were mailed to area residents and other interested citizens. Metro also conducted a "virtual" open house by making target area informational materials, including maps,

available “online” via the internet and allowing participants to share their target area priorities electronically. A total of 527 people attended the regional open houses, and the online open house had 6,363 visits from 3,419 unique visitors. More than 700 target area surveys were submitted either in person or online. Twenty-six people completed the Rock Creek Headwaters and Greenway survey. A copy of the survey questionnaire is included as Attachment 2. There are two maps associated with the questionnaire for this target area, and they are included as Attachment 3. Complete survey results are included as Attachment 4.

Findings

- Rock Creek is a major tributary of the Tualatin River. The headwaters of Rock Creek and its tributaries have been targeted for acquisition due to intense development pressure as urban growth expands throughout the watershed. Watershed managers have identified protection of the headwater areas as a high priority for meeting water quality protection goals in the lower watershed and also to improve and protect wildlife habitat.
- The headwaters of Rock Creek originate on the west side of the Tualatin Mountains southwest of NW Skyline Boulevard and Forest Park. Numerous tributary streams flow through woodlands and agricultural lands before crossing into the urbanized area near West Union and Springfield Roads.
- The watershed for Rock Creek includes in excess of 18,000 acres and numerous tributary streams. Major tributary streams include Abbey, Bronson, Holcomb and Beaverton Creeks.
- Established science continues to show the key importance of intact headwaters for water quality and quantity protection, habitat and maintenance of overall watershed health.
- The science report notes that the area’s oak woodlands and oak savanna habitat support varied wildlife, and expanding the protected natural areas would increase habitat opportunities for vulnerable species such as red-legged frogs, Western bluebirds and northwestern pond turtles. In addition, threatened species such as steelhead, cutthroat trout and coho salmon are present in Rock, Abbey, Holcomb and Bannister and Bronson creeks.
- Stakeholders identified protection of east/west wildlife corridors as just as important as north/south corridors.
- Multnomah County and Washington County do not regulate farm or forest practices (such as timber harvest) in the farm and forest zones. There are minimal regulations in place to protect upland habitat.
- Urbanization pressures are stronger in the Washington County portion of the target area than in Multnomah County, primarily because of differences in topography and availability of urban infrastructure. Washington County is currently preparing the *North Bethany Concept Plan* for approximately 800-acres that have been included within the Urban Growth Boundary. The North Bethany planning area sits at a unique location relative to local and regionally significant resource areas. Washington County is very interested in coordinating infrastructure plans for North Bethany with Metro’s refinement plans for the Rock Creek target area.
- Some stakeholders would like to see Metro focus on purchase of open spaces closer to the Urban Growth Boundary to help provide a natural edge between urban and rural areas.
- A substantial base of protected lands has been secured along the Rock Creek Greenway inside the Urban Growth Boundary, although there are some gaps in public ownership.

- Twenty-six people responded to surveys about Rock Creek Headwaters and Greenway. Additional commentary was provided orally at the open house, most of which was consistent with the written responses. In rank order, the public priorities were:
 1. *Map area A* – Preserving lands along the creeks and the adjacent upland forest habitat in the Abbey Creek and Bronson Creek headwater areas
 2. *Map area C* – Connecting the Rock Creek confluence area to Forest Park along the main stem of Abbey Creek to provide wildlife travel corridors.
 3. *Map area B* – Expanding the protected natural area near the confluence of Holcomb Creek and Rock Creek to provide greater habitat for vulnerable species.
 4. *Map area D* – Protecting remaining gaps in public ownership along Rock Creek between Highway 26 and the Tualatin River.

Goals

- Protect the upper watershed to meet water quality protection goals in the lower watershed.
- Protect key undeveloped sites in the lower reaches of Rock Creek to buffer growth, protect water quality and provide nature in neighborhoods.
- Protect habitat along key tributaries and associated wetlands.

Objectives

Two target area maps showing the tiered objectives described below are included as Attachment 5.

Tier I Objectives

- Acquire and protect the riparian corridors and important upland habitat in the Abbey Creek headwaters.
- Acquire and protect a natural corridor along the main stem of Abbey Creek linking its confluence at Rock Creek to the Westside Trail and to Forest Park.
- Acquire the remaining gaps in public ownership along the Rock Creek Greenway between Highway 26 and the Tualatin River.

Tier II Objective

- Expand the protected natural area near the confluence of Holcomb Creek and Rock Creek to provide greater habitat for vulnerable species.

Partnership Objective

- Pursue partnership opportunities with Washington County, the City of Hillsboro, Tualatin Hills Park and Recreation District, Clean Water Services (CWS), PCC-Rock Creek and Three Rivers Land Conservancy to meet protection goals in the Rock Creek Headwaters and Greenway target area.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 07-3834, APPROVING THE NATURAL AREAS ACQUISITION REFINEMENT PLAN FOR THE ROCK CREEK HEADWATERS AND GREENWAY TARGET AREA

Date: September 6, 2007

Prepared by: Jim Desmond
Kathleen Brennan-Hunter

BACKGROUND—REFINEMENT PROCESS

The Natural Areas Bond Measure (Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” adopted by the Metro Council March 9, 2006) provided that Metro would undertake a “Refinement Process” to “gather additional information about each individual target area and begin zeroing in on particular parcels that would be valuable to acquire” (Exhibit A to Resolution No. 06-3672B). In addition, the Natural Areas Implementation Work Plan (Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” adopted by the Metro Council on March 1, 2007) authorized the Metro Chief Operating Officer to acquire properties without further Council approval if they have been identified on a Council-approved target area “confidential refinement map.” To implement those directives, the Refinement Plans for each target area contain overall target area objectives and confidential tax-lot specific target area maps identifying priority properties for acquisition, enabling Metro staff to begin the acquisition of property and property rights as detailed in the Natural Areas Implementation Work Plan.

Additional background information, target area information, a description of the specifics of the refinement process regarding this target area, and the refinement plan’s findings, goals, and objectives are described in further detail in Exhibit A to this resolution, the Rock Creek Headwaters and Greenway Target Area Refinement Plan.

ANALYSIS/INFORMATION

1. **Known Opposition**

None.

2. **Legal Antecedents**

Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” adopted on March 9, 2006.

The voters’ approval of Metro’s 2006 Natural Areas Bond Measure at the general election held on November 6, 2006.

Resolution No. 07-3766A “Authorizing the Chief Operating Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” adopted by the Metro Council on March 1, 2007, established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

3. **Anticipated Effects**

Acquisition of natural area properties in the Rock Creek Headwaters and Greenway target area to achieve the goals and purposes of the 2006 Natural Areas Bond Measure.

4. **Budget Impacts**

The FY 2007-08 budget includes budgetary authority to purchase \$35 million in natural area lands, with an additional \$15.4 million in contingency, if necessary. It is estimated, based on historical spending patterns, that this authority will be sufficient to cover the anticipated acquisition activity for this fiscal year. Additional unappropriated fund balance (\$64 million) exists for land acquisition in future years, along with the authority to issue up to an additional \$102 million in General Obligation bonds in support of this program.

RECOMMENDED ACTION

Staff recommends adoption of Resolution No. 07-3834.

Summary of Comments from Stakeholder Interviews for Rock Creek Headwaters and Greenway Target Area

Stakeholder(s) Interviewed

Joint Meeting of Forest Park & Skyline Neighborhood Associations
Tualatin Riverkeepers Advisory Committee
Mary Ordal, Hillsboro Parks Department
Andrea Vannelli & Aisha Willits, Washington County Planning
Robin Craig, Greenworks (Westside Trail)
Regional Stakeholder Group (Portland Audubon, Clean Water Services, Three Rivers Land Conservancy)
Chuck Beasley, Multnomah County Planning
Greg Malinowski, Organic Farmer
Dave Vanasche, Washington County Farm Bureau

Key Themes Discussed:

Water Quality

- For greatest water quality benefit – focus on protection of headwater areas at highest elevations in the watershed
- 1995 bond measure focused on acquisitions in the lower Rock Creek watershed; growing recognition that protection of headwaters might result in greater water quality benefits
- Focus on opportunities to buy land adjacent to the floodplain
- Abbey Creek mentioned as an important headwater creek (link to Forest Park and Rock Creek); could also potentially form an “edge” for urban expansion
- Planners are focusing on streams as the key amenity in the North Bethany concept planning
- CWS and Multnomah County Soil & Water Conservation District are working with farmers (on a voluntary basis) to make improvements such as fencing and planting trees along streams to benefit water quality

Wildlife Habitat

- Importance of wildlife corridors – open areas down-slope of Forest Park into the Tualatin Valley are very important for wildlife (sunnier, open fields, more available food and water)
- East/west wildlife corridors (Forest Park to Tualatin Valley) are just as important as north/south corridors (Forest Park to Coast Range)
- Unique clusters of white oak should be mapped – disappearing habitat in the region
- Minimal regulations to protect upland habitat – more and more areas are being harvested near Rock Creek & tributaries
- Rural areas zoned for farm & forestry might not be at risk for urbanization; however, farm and forest practices (including timber harvest) are allowed
- Abbey Creek mentioned as an important creek/riparian area
- Potential conflicts between wildlife and people using trails

Land Use / Urban/Rural Form

- Important to connect Forest Park to urban areas with “ribbons of green” – important for wildlife corridors, water quality and livability
- Build on wetland/creek confluence near PCC/Rock Creek – opportunity for a “natural edge” between urban and rural areas; Hillsboro and Washington County planners support a larger “regional” scale park farther up in the watershed, but accessible to the urban population
- Focus on linkage of Rock Creek Headwaters, Forest Park and Westside Trail regional target areas
- Look at opportunities to acquire open space nodes around the Westside Trail corridor
- Urbanization pressures going north & west of the existing UGB (Washington County and Hillsboro); less urbanization pressure in Multnomah County – West Hills Plan emphasis on keeping the area rural, topography is challenging and infrastructure is limited
- Consider mutual benefits of protecting open space and providing buffers for small farm operations in proximity to urban areas
- Metro program is focused on natural area functions – could serve a complimentary role to low impact agricultural practices, particularly those that supply local food markets

Miscellaneous Comments

- Different levels of protection/dedication of floodplain inside and outside of the UGB; Clean Water Services “buffer” requirements don’t apply in the rural areas
- Rock Creek Greenway and trail is a very important amenity for the City of Hillsboro and Washington County – accessible to many employers and higher density neighborhoods
- Strong support for expansion and connection of trails (partner with THPRD, City, County)
- North Bethany concept plan includes potential road and sewer connections across or along creeks (Rock & Abbey). Can infrastructure issues be coordinated with Metro acquisitions?
- Washington County would like to see Metro focus purchase of open spaces closer to the UGB; don’t consider upper headwaters of Rock Creek in Multnomah County at risk of urbanization
- Washington County Farm Bureau supports open space acquisitions near areas of urban expansion instead of more remote locations
- Westside Trail is not designated in the Multnomah County rural plan - Issues associated with public access & trails through rural/resource zones can be complicated

QUESTIONNAIRE

TARGET AREA: ROCK CREEK HEADWATERS AND GREENWAY

In November 2006 voters directed the Metro Council to extend a regionwide program and acquire between 3,500 and 4,500 acres of additional natural areas to protect water quality and fish and wildlife habitat and to provide future generations opportunities for greater access to nature. Now it's time for the Metro Council to refine priorities in the 27 regional natural areas and trail corridors targeted for acquisition. Initial estimates are that a minimum of 190 acres of land would be protected within this target area.

The Metro Council wants your ideas and input. We've been talking with scientists, land-use experts, groups and individuals who have special knowledge about the natural resource values and community visions for these areas. With this information Metro has begun to identify the potential strategies and opportunities that will achieve the best results. Now we need to know: Do we have it right? What have we missed? What is most important to you?

2006 NATURAL AREAS BOND DESCRIPTION FOR THIS TARGET AREA

A major tributary of the Tualatin River, upper Rock Creek and its tributaries are under intense development pressure as urban growth expands throughout the watershed. Watershed managers have identified protection of the upper watershed as a high priority for meeting water quality protection goals in the lower watershed. Opportunities to improve and protect habitat also exist through the protection of key tributaries and their associated wetlands. In addition, the protection of key undeveloped sites in the lower reaches of Rock Creek, particularly in Hillsboro, will buffer growth, protect water quality and provide nature in neighborhoods for local residents.

QUESTIONS

- The following priorities were identified in the Rock Creek Headwaters and Greenway target area based on scientific information about benefits to water quality, habitat diversity, wildlife connectivity and/or restoration potential and from information provided by key stakeholders in the area. Rank in order of importance to you from 1 to 4, with 1 being the most important and 4 being the least important.**

- _____ Preserving lands along the creeks and the adjacent upland forest habitat in the Abbey Creek and Bronson Creek headwater areas. **(Map area A)**
- _____ Expanding the protected natural area near the confluence of Holcomb Creek and Rock Creek to provide greater habitat for vulnerable species. **(Map area B)**
- _____ Connecting the Rock Creek confluence area to Forest Park along the main stem of Abbey Creek to provide wildlife travel corridors. **(Map area C)**
- _____ Protecting remaining gaps in public ownership along Rock Creek between Highway 26 and the Tualatin River. **(Map area D)**

2. In general, what should be emphasized in the Rock Creek Headwaters and Greenway target area? Rank in order of importance to you from 1 to 5, with 1 being the most important and 5 being the least important.

- _____ Preserving remnant scattered oak woodlands and oak savanna habitat in the general area east of Cornelius Pass, between Springville and Germantown Roads.
- _____ Preserving habitat areas for sensitive species, including steelhead, red-legged frogs, pond turtles and bluebirds.
- _____ Preserving headwater areas, riparian areas and wetlands to protect water quality and wildlife habitat.
- _____ Protecting natural areas and corridors from the confluence of Rock Creek and the Tualatin River into Forest Park to benefit water quality, wildlife habitat and for future trail connections.
- _____ Providing a natural buffer between urban development and rural areas.

3. Are there other priorities that the Metro Council should consider in the Rock Creek Headwaters and Greenway target area? Please be specific.

4. Do you have suggestions about partnerships Metro should pursue or other innovative ways to leverage regional funding and enhance this natural area?

5. Are you interested in participating in Metro's Natural Areas program by selling or donating your property or selling or donating a conservation easement on your property?

☐ Yes ☐ No If yes, please be sure to provide your contact information below.

6. Do you have any other comments about this target area?

- ☐ **Please add my name to the Rock Creek Headwaters and Greenway target area mailing list for future information, public meetings and events.**

Name _____

Address _____

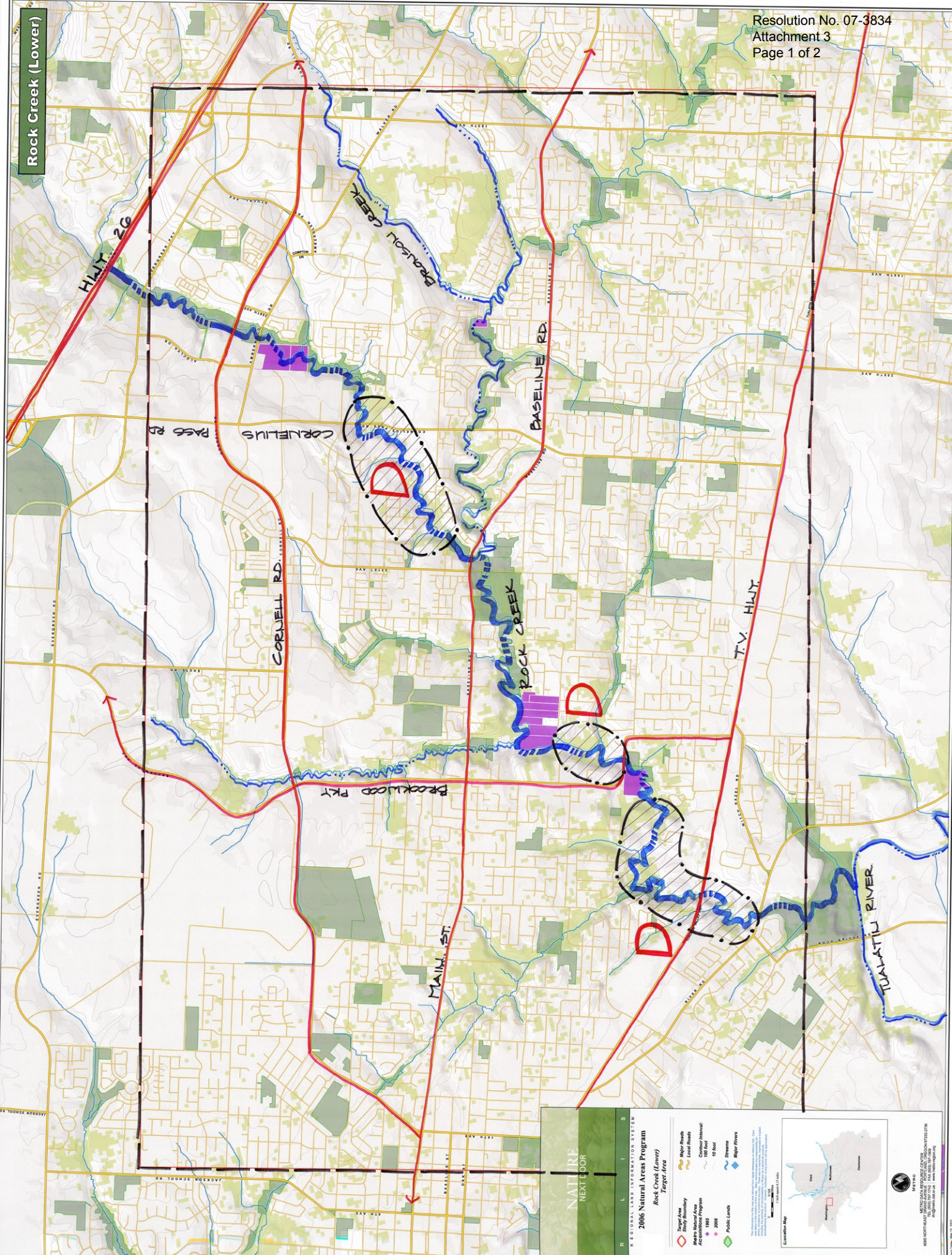
City/State/Zip _____

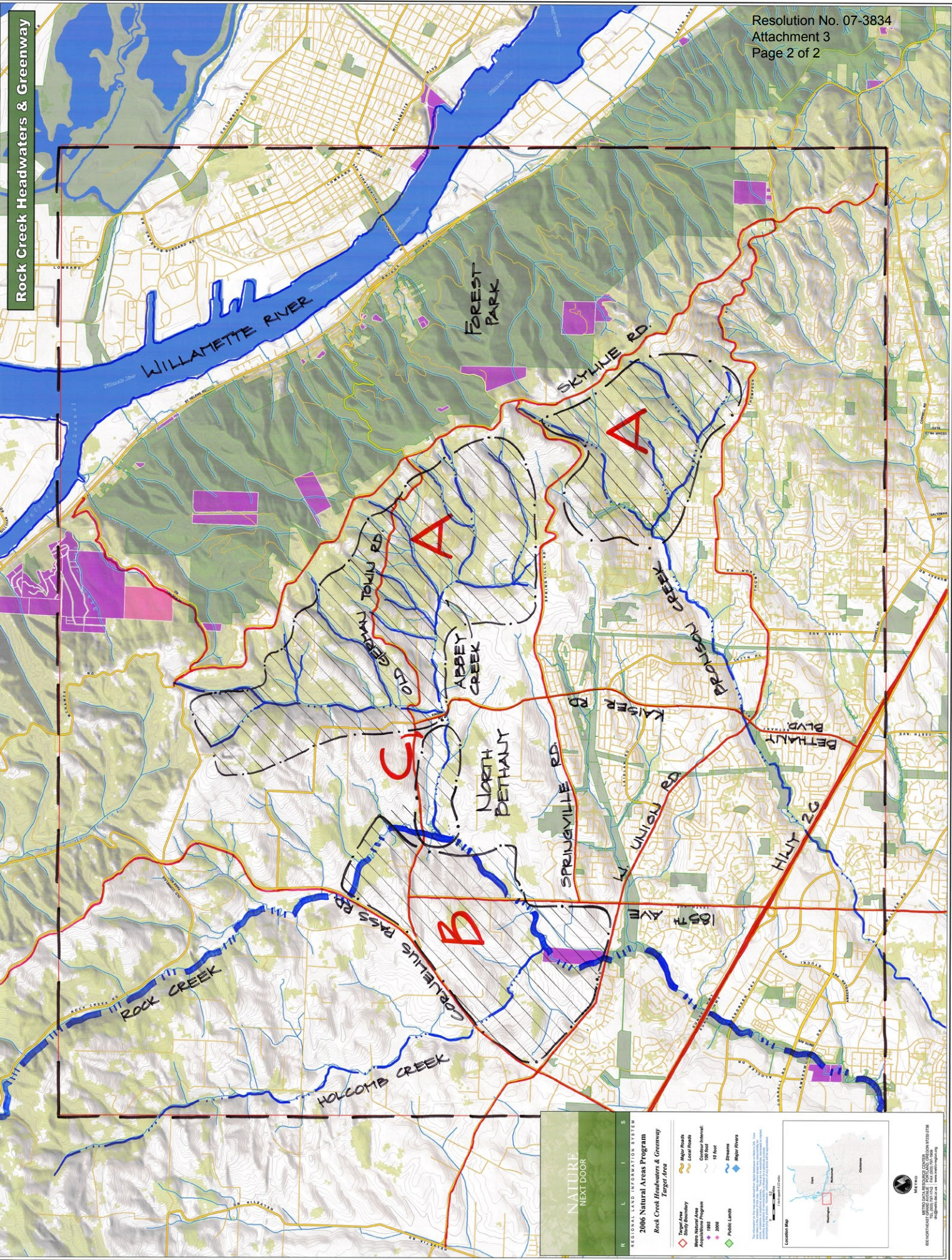
Phone _____

E-mail _____

**You may complete this questionnaire online at
www.metro-region.org/naturalareas**

or mail it to Metro at
600 NE Grand Avenue, Portland, OR 97232
(503) 797-1741





NATURE NEXT DOOR

REGIONAL LAND INFORMATION SYSTEM

2006 Natural Area Program

Rock Creek Headwaters & Greenway

Target Area

Legend

- Major Roads
- Local Roads
- Water Natural Area
- Acquisition Program
- 100-foot Buffer
- 15-foot Buffer
- Streams
- Major Rivers
- Public Lands

Location Map

Scale

North Arrow

Map Date

Map Author

Map Reviewer

Map Approval

Map Distribution

Map Contact

Map Copyright

Rock Creek Headwaters and Greenway Survey Results

1. The following priorities were identified in the Rock Creek Headwaters and Greenway target area based on scientific information about benefits to water quality, habitat diversity, wildlife connectivity and/or restoration potential and from information provided by key stakeholders in the area. Rank in order of importance to you.

	most important			least important	Rating Average	Response Count
Preserving lands along the creeks and the adjacent upland forest habitat in the Abbey Creek and Bronson Creek headwater areas. (Map area A)	57.1% (12)	19.0% (4)	23.8% (5)	0.0% (0)	1.67	21
Expanding the protected natural area near the confluence of Holcomb Creek and Rock Creek to provide greater habitat for vulnerable species. (Map area B)	9.5% (2)	28.6% (6)	52.4% (11)	9.5% (2)	2.62	21
Connecting the Rock Creek confluence area to Forest Park along the main stem of Abbey Creek to provide wildlife travel corridors. (Map area C)	28.6% (6)	38.1% (8)	19.0% (4)	14.3% (3)	2.19	21
Protecting remaining gaps in public ownership along Rock Creek between Highway 26 and the Tualatin River. (Map area D)	16.7% (4)	12.5% (3)	4.2% (1)	66.7% (16)	3.21	24
	answered question					24
	skipped question					3

2. In general, what should be emphasized in the Rock Creek Headwaters and Greenway target area? Rank in order of importance to you.

	most important				least important	Rating Average	Response Count
Preserving remnant scattered oak woodlands and oak savanna habitat in the general area east of Cornelius Pass, between Springville and Germantown Roads.	26.1% (6)	8.7% (2)	26.1% (6)	17.4% (4)	21.7% (5)	3.00	23
Preserving habitat areas for sensitive species, including steelhead, red-legged frogs, pond turtles and bluebirds.	8.7% (2)	30.4% (7)	17.4% (4)	34.8% (8)	8.7% (2)	3.04	23
Preserving headwater areas, riparian areas and wetlands to protect water quality and wildlife habitat.	28.0% (7)	20.0% (5)	16.0% (4)	24.0% (6)	12.0% (3)	2.72	25
Protecting natural areas and corridors from the confluence of Rock Creek and the Tualatin River into Forest Park to benefit water quality, wildlife habitat and for future trail connections.	17.4% (4)	13.0% (3)	30.4% (7)	8.7% (2)	30.4% (7)	3.22	23
Providing a natural buffer between urban development and rural areas.	29.2% (7)	25.0% (6)	8.3% (2)	12.5% (3)	25.0% (6)	2.79	24
	<i>answered question</i>						26
	<i>skipped question</i>						1

3. Are there other priorities that the Metro Council should consider in the Rock Creek Headwaters and Greenway target area? Please be specific.

I could not tell if the Rock Creek Headwaters project included the idea of a park adjacent to the new Bonny Slope Elementary School and Bluffs Park. I consider that a project that would be very beneficial to the community in the area and hope you would count this feedback towards the idea somewhere in your planning.

Safe areas for wildlife that allow us to teach our children about wildlife -- places that families can visit and watch birds or other natural areas.

Also consider that the elk herds use both the riparian areas (food and water) and the open uplands (food, bulls running around and displaying) and upland mature woods (yarding up at night; daytime rest and shade; story shelter.) Protect some connected "stepping stone" forest and fields.

Greetings I think that it is very important that Metro consider buying and protecting as habitat, the actual upper Rock Creek watershed and associated riparian areas. There is roughly 100 acres bordering Rock Creek along Rock Creek Rd that is the best habitat remaining in the Rock Creek watershed. This area has trees around one hundred years old, and riparian areas that could be considered old second growth, and these areas support a great diversity of species, including red legged frogs, giant pacific salamanders, pilated woodpeckers, mink , northern flying squirrels, pygmy rabbits, wood ducks, bobcat, cougar, elk, deer, black bear, three owl species, two red tail hawk nests, a nesting pair of merlins, band tail pigeons, at least twenty song bird species, the only beaver dam complex in the real upper watershed, cutthroat trout and even a few turtles. This area is the highest quality habitat left along Rock Creek, it is for the most part not inhabited , and with some effort on the part of Metro could be purchased for much less than you would be paying for much less desirable land along lower Rock Creek. If Metro is serious about protecting the Rock Creek watershed then you need to really consider the riparian zone upstream of boundary you are currently considering.

The UGB expansion process should be more careful about the exact location of the UGB boundary. The current North Bethany expansion primarily follows property lines, rather than natural features. This results in a failure to optimally use stream corridors and other natural features to define community and to separate urban and agricultural areas. It also results in irregular, inaccessible parcels "trapped" between the existing UGB and stream corridors. This is especially true in the northwest corner of North Bethany. The current planning process is spending a great deal of time and money trying to plan a "community of distinction" in North Bethany, but the result is necessarily flawed by the inability to plan and develop the entire community simultaneously.

Please consider alternative commuter connections in these corridors and public access to see these special habitats.

Please focus on acquiring land for state listed species (Red legged frog and turtles). Both present in this target area.

Please continue to provide trail access to advertise the importance of these headwaters and greenway

Like all the projects which would preserve land along ridgetops, buttes, etc., this project would also enhance the quality of life for all in the visible area by providing us with views of greenery and open spaces along our hilltops, instead of McMansions. This greatly adds to the feeling of even more natural area, instead of urbanization and sprawl.

Turner Creek near TV Highway and Valley Memorial Mortuary is identified on the Metro website as 'High habitat conservation area' and 'Class 1 riparian, highest-value'. The area is under extreme stress due to residential development and sewer line component failure. It is not listed on any of the relevant agency sites for restoration/maintenance.

Rock Creek headwaters - along NW Rock Creek Rd and higher to head of creek - is fine wildlife area - beaver dam on Rock Creek adj. to Rock Creek Rd! Call Doug Wallover. Property owner close to beaver dam.

Orenco Golf course property.

N. Bethany Planning www.bethanyplan.org.

I would subdivide area A, and give a lower priority to the upper Bronson Creek because it doesn't connect as well to habitats to the west like upper Abbey Creek does.

4. Do you have suggestions about partnerships Metro should pursue or other innovative ways to leverage regional funding and enhance this natural area? If so, please specify.

How about a new state park or wildlife area, related to the primacy of forest park, funded with lottery dollars? Or a small % fee on clean water services bills devoted to headwaters protection? Or a donation campaign (land \$) targeted at the relatively few very wealthy residents along the ridge - with appropriate honors of course.

Work with local landowners that allow current use and allow preservation of plants and wildlife.

With the number of relevant agencies and their various volunteer projects, ongoing and planned, it seems that structure is sufficiently in place to initiate or continue work in the identified areas: voters approval of the bond measure at the expense of other funding issues and are anxious to see action and timely results.

The Orenco neighborhood organization is engaged with the urban lands preservation alliance to raise money to purchase some (or all 55 acres) of the former Orenco golf course (NW corner at Cornelius Pass Rd. and Quatana, just south of the light rail line). Could Metro provide some funds to help initiate the purchase (with Urban Lands Conservation Alliance generating the bulk of the finances)--Urban Lands would own the property but there would be local control.

5. Do you have any other comments about this target area? If so, please specify.

This is the most critical NW target area (Forest Park can use additions, but is already magnificent; Westside Trail is important, but just a narrow corridor). The multiple creek headwaters, quality habitat and year round water for animals are key to a viable (broad and mixed) wildlife corridor.

It's a high priority and has rare pond turtles that need our help and protection. Thanks!

I really support the efforts of Metro to strengthen natural resource protection in this area. You are doing great work.

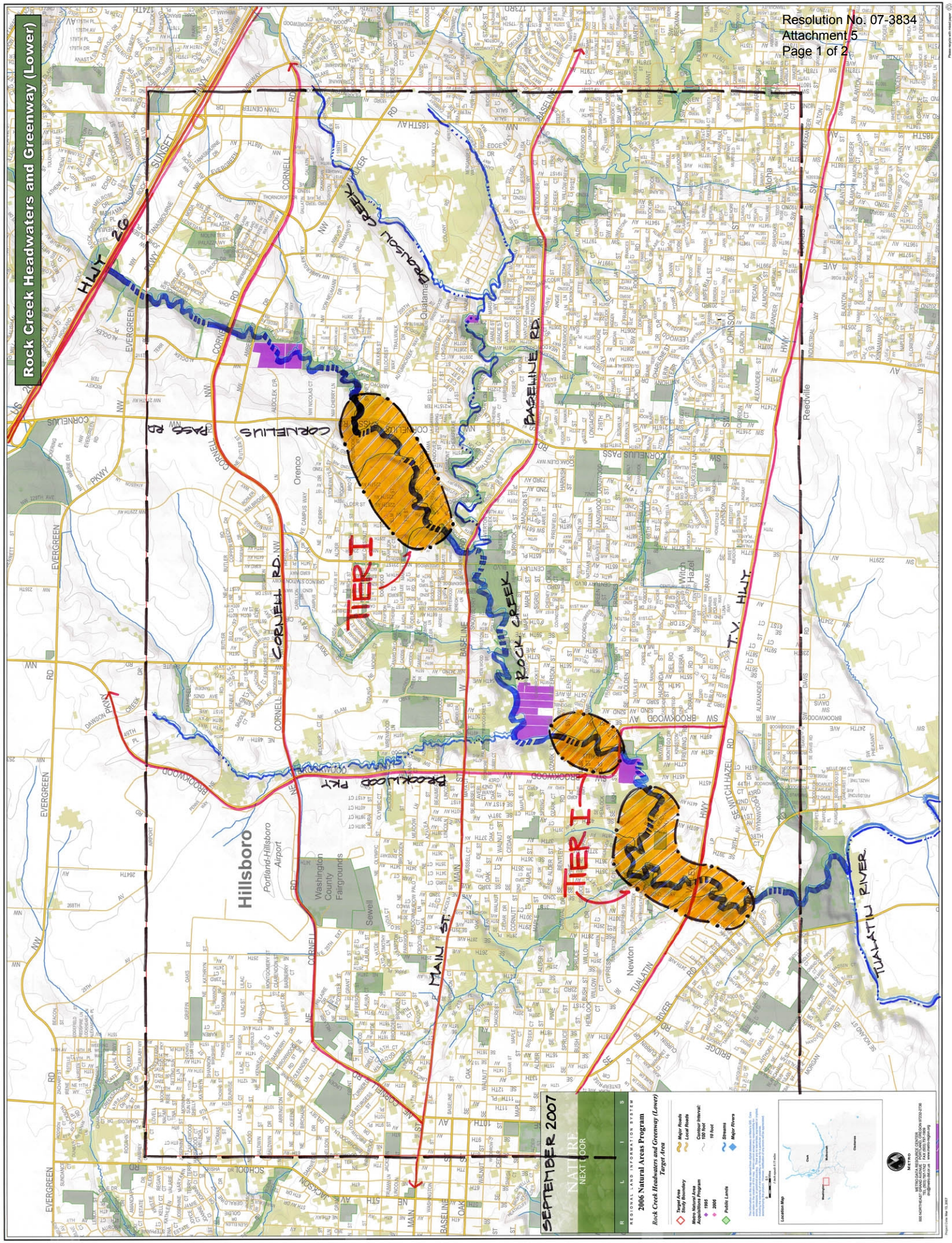
Thank you!

Would like to work with Metro to be a wildlife corridor. We are an organic farm. Malinowshi Farm.

I have requested information regarding Turner Creek from several agencies including the Metro Council and have received little; I have had rep's from Clean Water Services and Friends of Rock Creek tour the site (prior to the toxic sewage contamination) with minimal results. I remain available for contact in the event that the issue can be revisited. Macis.Dave@con-way.com 503 450 2180

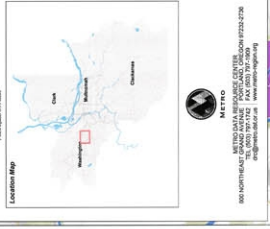
I would like information on capital grants and local neighborhood organizations.

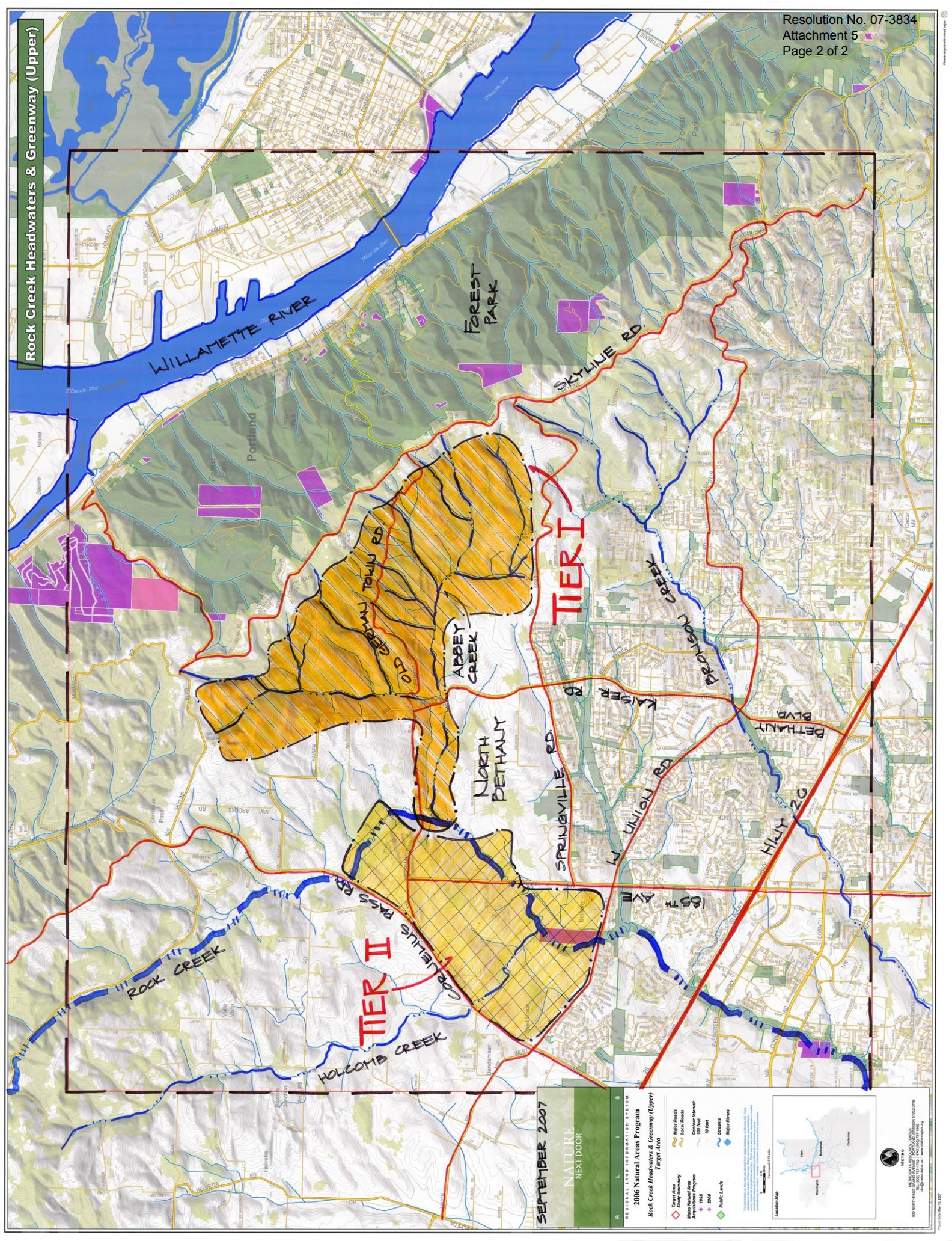
Polling done as the bond measure was developed clearly showed public support for natural areas and healthy streams, with diminishing support as human interactions were added. Metro should honor that by not requiring public access on conservation easement property and should not ass trails or public access on Metro owned property unless it does not conflict with and discourage wildlife, including human – sensitive species like elk.



SEPTEMBER 2007
NATURE NEXT DOOR

- 2006 Natural Areas Program**
Rock Creek Headwaters and Greenway (Lower)
Target Area
- Target Area Boundary
 - Study Boundary
 - Major Roads
 - Local Roads
 - County Boundary
 - 100 Foot Buffer
 - 2006
 - Public Lands
 - Major Rivers
 - Streams
 - Waterways





SEPTEMBER 2007

NATURE
NEXT DOOR

REGIONAL LAND INFORMATION SYSTEM
2006 Natural Areas Program
Rock Creek Headwaters & Greenway (Upper)
Tier I Area

- Target Area
- Study Boundary
- Major Road
- Local Road
- County Interstate
- 100 Foot
- 50 Foot
- Streams
- Major Rivers
- Public Lands

Location Map



Map No. 10
1000 NORTH AVENUE, SUITE 200
PORTLAND, OREGON 97208
503.253.1000
WWW.METRO-OR.GOV

Agenda Item Number 5.4

Resolution No. 07-3835, Approving the Natural Areas Acquisition
Refinement Plan for the Westside Trail Target Area

Metro Council Meeting
Thursday, September 6, 2007
Metro Council Chamber

BEFORE THE METRO COUNCIL

APPROVING THE NATURAL AREAS ACQUISITION
REFINEMENT PLAN FOR THE WESTSIDE TRAIL
TARGET AREA

RESOLUTION NO. 07-3835

Introduced by Chief Operating Officer
Michael J. Jordan, with the
concurrence of Council President
David Bragdon

WHEREAS, on March 9, 2006, the Metro Council adopted Resolution No. 06-3672B “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” recommending submission for voter approval a general obligation bond to preserve and protect natural areas, clean water, and fish and wildlife (the “2006 Natural Areas Bond Measure” or “Measure”); and

WHEREAS, at the election held on November 7, 2006, the voters approved Ballot Measure 26-80, the 2006 Natural Areas Bond Measure; and

WHEREAS, the Westside Trail Target Area was identified in the Measure as one of 27 regional target areas for land acquisition; and

WHEREAS, as provided in the 2006 Natural Areas Bond Measure, Metro has undertaken a public refinement process to establish specific acquisition strategies, goals, objectives, and a confidential tax-lot specific acquisition target area map for each of the 27 target areas; and

WHEREAS, Metro’s refinement process included the compilation of available information about each target area; biological field visits and expert analysis of maps; interviews with key stakeholders including natural resource experts, property owners, representatives from state and local government agencies, and advocates from water quality, fish, and wildlife preservation interest groups; and eight public open houses at sites throughout the region and a “virtual” open house available via the internet, at which draft refinement plans were made available for public review and participants could share their target area priorities either in-person or electronically; and

WHEREAS, on March 1, 2007, the Council approved Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” authorizing the Metro Chief Operating Officer to acquire properties identified on a Council-approved target area “confidential refinement map;” and

WHEREAS, the Council has reviewed the draft refinement plans and considered information it has received from citizens, scientists, advocates, and state and local governments; now, therefore

BE IT RESOLVED that the Metro Council adopts the Westside Trail Refinement Plan attached hereto as Exhibit A, including the confidential tax-lot specific map reviewed by the Council in Executive Session on September 4, 2007, and signed by Council President David Bragdon on that date, and hereby authorizes the Chief Operating Officer to acquire properties in the Westside Trail Target Area consistent with the Council-approved Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan.

ADOPTED by the Metro Council this _____ day of _____ 2007.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

**2006 NATURAL AREAS ACQUISITION PROGRAM
WESTSIDE TRAIL TARGET AREA REFINEMENT PLAN**

Background

The 2006 Natural Areas bond states:

This 16-mile north/south alignment stretches from the Tualatin River in Tigard north through Beaverton, unincorporated Washington and Multnomah Counties through Forest Park to the Willamette River. The corridor, located within one mile of over 120,000 residents, and near numerous parks, schools, regional centers and the MAX line, could become a primary westside recreation and commuter spine.

There are several regionally significant natural areas adjacent to or nearby the Westside Trail corridor including Forest Park at the northern end, Cooper Mountain Nature Park in the middle near Beaverton and the Tualatin River Greenway to the south. Preserving this connection is important for both people and wildlife throughout the region. Some right-of-way necessary for completion of the trail is in public ownership, and some remains to be acquired. Securing this right-of-way is the primary focus within the Target Area.

Target Area Description

The Westside Trail will be located primarily within a scenic 16-mile utility corridor stretching from the Tualatin River in Tigard through Beaverton. Mostly owned by the Bonneville Power Administration (BPA), the corridor averages 225 feet in width, approximately 25 feet of which will be needed for the trail.

The corridor presents a unique opportunity to develop a critical piece of the regional trails system serving as the primary recreation and alternative transportation connection for people getting to jobs, services and recreation areas throughout the most densely populated and fastest growing portion of Washington County. The trail will connect major trails and natural areas in Washington County to the region's largest natural area, 5,000-acre Forest Park, and the Willamette River to the north. To date, nearly 3.5 miles of the trail have been built or are under construction.

Refinement Process

During the refinement process, Metro staff compiled available information about the Westside Trail target area and analyzed maps. Individuals were interviewed representing various government agencies, property owners, interested friends groups and natural resource experts. The key concerns expressed during the interviews are summarized in Attachment 1.

A public open house to discuss the proposed Refinement Plan was held on June 12, 2007 at the Portland Community College Rock Creek Campus and on June 14, 2007 at Metro Regional Center, two of eight such open houses held throughout the region. Notices of the open houses were mailed to area residents and other interested citizens. Metro also conducted a "virtual" open house by making target area informational materials, including maps, available "online" via the internet and allowing participants to share their target area priorities electronically. A total of 527 people attended the regional open houses, and the online open house had 6,363 visits from 3,419 unique visitors. More than 700 target surveys were submitted either in person or online. Forty people completed the Westside Trail survey. A copy of the survey questionnaire is included as Attachment 2. The map associated with the questionnaire for this target area is included as Attachment 3, and complete survey results are included as Attachment 4.

Findings

- The Westside Trail will be the only north/south regional trail to provide connections from the Tualatin River north to Forest Park and east to the Willamette River and 40-Mile Loop Trail.
- Recreation and commuter needs will be met by the trail. It will be a multi-modal trail and be accessible to the disabled in many sections.
- The Westside Trail crosses many sensitive habitats, wetlands, riparian buffers and sensitive lands which will benefit from restoration and stewardship. Trail segments that include wide buffers or other habitat-friendly features can also protect native plants and wildlife.
- There are several regionally significant natural areas adjacent to or nearby the Westside Trail corridor including Forest Park at the northern end, Tualatin Hills Nature Park and Cooper Mountain Nature Park in the middle near Beaverton and the Tualatin River Greenway to the south. Multiple parks, open spaces, greenways and trails are adjacent or near the Westside Trail alignment, providing multiple opportunities for pedestrian and bicycle access.
- A Bike/Ped crossing bridge is planned for the southern reach of the trail corridor over the Tualatin River and will provide connection to the Tonquin Trail and the Tualatin River National Wildlife Refuge. The City of King City is located along the north side of the river. The future bridge could be on King City Park land on the north side of the river, and Metro land on the south side of the river.
- An existing active rail line (e.g. Burlington Northern Rail with Trail) north of Forest Park could serve as an accessible trail route to cross the Tualatin Mountains; however a trail easement may not be available from ODOT and the Portland & Western Railroad Company.
- The northern extent of Forest Park, which is governed by the City of Portland's "North End Management Unit," is not available for trail implementation. The "Central Management Unit" of the park is available for the Westside Trail corridor alignment.
- The cities of Portland, Tigard, and Beaverton, Tualatin Hills Park and Recreation District, Washington and Multnomah Counties, and PGE are all supportive of Metro's desire to secure the necessary right-of-way for the Westside Trail.
- Metro and its partners need to work cooperatively with homeowner's associations and private landowners with agricultural easements and/or fee interests in developing the trail.
- Acquisition within the power line corridor will require planning coordination, cooperation and an official trail permit application to the Bonneville Power Administration to obtain a land use agreement for the trail.
- Acquisition of parcels not necessary for the right-of-way should be limited to those directly adjacent to the trail, which will improve the experience of trail users.
- Miller Creek has high water quality due to the surrounding forest.
- The Abbey Creek watershed area has high water quality and natural resource value, in addition to providing habitat connectivity between the Forest Park and Rock Creek target areas.
- Multiple wetlands are present within the trajectory of the proposed alignment, which will require mitigation for trail construction.
- Projected Westside Trail alignment north of Springville Road is currently used as an elk corridor. Much of the western slope of Forest Park is an elk migratory area.
- Ancient Forest Preserve in Forest Park is a bald eagle nesting site to be protected.

- Master planning for the Westside Trail will begin in the Fall of 2009 to determine the final alignment, easements, and right-of-way access needed, and cost to design and construct. Master planning efforts will be funded by the Metropolitan Transportation Improvement Program (MTIP) of the Federal Highway Administration.
- Forty people responded to the Westside Trail questionnaire. Additional commentary was provided orally at the open house, most of which was consistent with the written responses. In rank order, the public priorities matched the order they appear on the map areas:
 1. *Map area A* – Securing a regional trail corridor for recreational and commuter uses for the entire Westside Trail corridor.
 2. *Map arrows B* – Connecting the Westside Trail and the communities along the trail to Forest Park.

Goal

Develop a continuous trail corridor from the Tualatin River north to and east through Forest Park to connect to the Willamette River Greenway and 40-Mile Loop Trail.

Objectives

A target area map showing the tiered objectives described below is included as Attachment 5.

Tier I Objective

- Develop a continuous trail corridor by acquiring needed right-of-way and easements for a regional trail that connects the Tualatin River to the Willamette River and onward to the 40-Mile Loop Trail (at St. Johns Bridge).

Tier II Objective

- Acquire properties that directly enhance the use of or access to the Westside Trail corridor. Acquisition of these properties will be subject to a 50% match from a local partner.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 07-3835, APPROVING THE NATURAL AREAS ACQUISITION REFINEMENT PLAN FOR THE WESTSIDE TRAIL TARGET AREA

Date: September 6, 2007

Prepared by: Jim Desmond
Kathleen Brennan-Hunter

BACKGROUND—REFINEMENT PROCESS

The Natural Areas Bond Measure (Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” adopted by the Metro Council March 9, 2006) provided that Metro would undertake a “Refinement Process” to “gather additional information about each individual target area and begin zeroing in on particular parcels that would be valuable to acquire” (Exhibit A to Resolution No. 06-3672B). In addition, the Natural Areas Implementation Work Plan (Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” adopted by the Metro Council on March 1, 2007) authorized the Metro Chief Operating Officer to acquire properties without further Council approval if they have been identified on a Council-approved target area “confidential refinement map.” To implement those directives, the Refinement Plans for each target area contain overall target area objectives and confidential tax-lot specific target area maps identifying priority properties for acquisition, enabling Metro staff to begin the acquisition of property and property rights as detailed in the Natural Areas Implementation Work Plan.

Additional background information, target area information, a description of the specifics of the refinement process regarding this target area, and the refinement plan’s findings, goals, and objectives are described in further detail in Exhibit A to this resolution, the Westside Trail Target Area Refinement Plan.

ANALYSIS/INFORMATION

1. **Known Opposition**

None.

2. **Legal Antecedents**

Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” adopted on March 9, 2006.

The voters’ approval of Metro’s 2006 Natural Areas Bond Measure at the general election held on November 6, 2006.

Resolution No. 07-3766A “Authorizing the Chief Operating Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” adopted by the Metro Council on March 1, 2007, established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

3. **Anticipated Effects**

Acquisition of natural area properties in the Westside Trail target area to achieve the goals and purposes of the 2006 Natural Areas Bond Measure.

4. **Budget Impacts**

The FY 2007-08 budget includes budgetary authority to purchase \$35 million in natural area lands, with an additional \$15.4 million in contingency, if necessary. It is estimated, based on historical spending patterns, that this authority will be sufficient to cover the anticipated acquisition activity for this fiscal year. Additional unappropriated fund balance (\$64 million) exists for land acquisition in future years, along with the authority to issue up to an additional \$102 million in General Obligation bonds in support of this program.

RECOMMENDED ACTION

Staff recommends adoption of Resolution No. 07-3835.

Summary of Comments from Stakeholder Interviews for Westside Trail Target Area

Stakeholder(s) Interviewed:

Jim Sjulín, City Nature North Zone Manager, Portland Parks & Recreation, City of Portland
Shannon Buono, City Planner, Planning Bureau, City of Portland
Kendra Smith, Water Resources Program Manager, Clean Water Services
Keith Hobson, THPRD
Steve Gulgren, Superintendent, THPRD
Bob Wayt, THPRD
Joe Barcott, THPRD Trails Advisory Committee
Chuck Beasley, Senior Planner, Multnomah County
Dick Schouten, County Commissioner, Washington County
Andrea Vanelli, Senior Planner, Washington County
Aisha Willits, Senior Planner, Washington County
Juntu Capistrano, PUMP (Portland United Mountain Pedalers Club)
Amy Singmaster, PUMP Club
Tom Archer, PUMP Club
Barbara Freyer, City of Beaverton
Margaret Middleton, City of Beaverton
Duane Roberts, Associate Planner, City of Tigard
Jim Emerson, Forest Park Neighborhood Association
Carol Chesarek, Forest Park Neighborhood Association
Jerry Grossnickle, President, Forest Park Neighborhood Association
Bob Melbo, Rail Planner, Rail Division Oregon Department of Transportation
Mike Livingston, Manager, Property Services, PGE
G. Rob Butenschoen, Supervisor, Property Services, PGE
Bob Bothman, 40 Mile Loop Land Trust
Dawneen Dostert, Realty Specialist, Bonneville Power Administration
Oral Lee Rose, Realty Specialist, Bonneville Power Administration
Joan Kendall, Realty Specialist, Bonneville Power Administration

Key Themes Discussed:

Water Quality

- Miller Creek is the best example of water quality for an urban stream in the City of Portland.
- The Abbey Creek watershed area has high water quality at the headwaters of the stream corridor.
- Multiple wetlands are present within the trajectory of the proposed alignment which will require mitigation for trail construction.

Wildlife Habitat

- Projected Westside Trail alignment north of Springville Road is currently used as an elk corridor. Entire western slope of Forest park is an elk migratory area.
- Ancient Forest Preserve in Forest park is a Bald Eagle nesting site to be protected.
- Peregrine Falcons use Willamette Greenway area for hunting and habitat.

Land Use / Urban/Rural Form

- The alignment north of Springville Road falls within the EFU zoning of Multnomah County, which as an agricultural zone requires limited development.
- The West Hills Rural Area Plan requires a zoning change or a conditional use permit to allow for trail construction north of Springville Road through Multnomah County. The goal of the West Hills Rural Area Plan is to preserve the rural character of the area.
- The northern extent of Forest Park, the North End Management Unit which is protected by the Forest Park Natural Resource Management Plan, is not available for trail implementation. The Central Management Unit is available and accessible for Westside Trail corridor alignment.

Miscellaneous Comments

- Steep grades in the trail alignment between Springville Road and Highway 30 will be difficult for ADA access; this portion of the trail may solely be recreational.
- Multiple crossings of difficult intersections such as Highway 26 and the Max Line will present difficulty in securing safe trail alignment.
- Develop partnership agreements with THPRD, the City of Tigard, the City of Portland, Washington County, and Multnomah County for cooperative management of sites, land trades, monitoring, restoration and maintenance of trail.
- Washington County and PGE are fully supportive of the Westside Trail.
- Leverage opportunities with Clean Water Services to develop supportive policies to maintain and enhance riparian areas. There are numerous wetlands within the alignment and floodplains that will require wetland mitigation for trail construction.
- Pursue opportunities with THPRD for sharing alternate trail resources for temporary phasing of the Westside Trail using the Waterhouse Trail.
- Connect to publicly owned lands along the corridor including THPRD Parks, Metro regional trails, and the City of Portland Parks & Recreation and provide connectivity to existing neighborhoods.
- The rail line north of Forest Park has an accessible route to cross the Tualatin Mountains; however easement acquisition may not be available with ODOT and Portland & Western.
- Various homeowner's associations and private landowners with agricultural easements may oppose public use in proximity to private property.
- Acquisition within the Westside Trail Corridor will require an application process and cooperation with the Bonneville Power Administration (U.S. Department of Energy) to obtain a land use agreement for the BPA right of way.

QUESTIONNAIRE

TARGET AREA: WESTSIDE TRAIL

In November 2006 voters directed the Metro Council to extend a regionwide program and acquire between 3,500 and 4,500 acres of additional natural areas to protect water quality and fish and wildlife habitat and to provide future generations opportunities for greater access to nature. Now it's time for the Metro Council to refine priorities in the 27 regional natural areas and trail corridors targeted for acquisition.

The Metro Council wants your ideas and input. We've been talking with scientists, land-use experts, groups and individuals who have special knowledge about the natural resource values and community visions for these areas. With this information Metro has begun to identify the potential strategies and opportunities that will achieve the best results. Now we need to know: Do we have it right? What have we missed? What is most important to you?

2006 NATURAL AREAS BOND DESCRIPTION FOR THIS TARGET AREA

This 24-mile north/south alignment stretches from the Tualatin River in Tigard north through Beaverton, unincorporated Washington and Multnomah Counties through Forest Park to the Willamette River. The corridor, located within one mile of over 120,000 residents, and near numerous parks, schools, regional centers and the MAX line, could become a primary westside recreation and commuter spine.

QUESTIONS

1. **Beginning in 2009, a master plan will be developed for the Westside Trail providing more specifics about the future trail alignment. The Metro Council has two main priorities in this target area. Rank in order of importance to you with 1 being the most important.**
 - _____ Securing a regional trail corridor for recreational and commuter uses for the entire Westside Trail corridor. (Map area A)
 - _____ Connecting the Westside Trail and the communities along the trail to Forest Park. (Map arrows B)
2. **In addition to securing the trail corridor, what else should be emphasized in the Westside Trail target area? Rank in order of importance to you from 1 to 3, with 1 being the most important and 3 being the least important.**
 - _____ Preserving natural areas along the trail to enhance the experience for trail users.
 - _____ Creating buffers between private property owners and the trail corridor.
 - _____ Providing access to the trail for people at regional or local trailhead locations.

**3. Are there other priorities that the Metro Council should consider in the Westside Trail target area?
Please be specific.**

4. Do you have suggestions about partnerships Metro should pursue or other innovative ways to leverage regional funding and enhance this natural area?

5. Are you interested in participating in Metro's Natural Areas program by selling or donating your property or selling or donating a trail or conservation easement on your property?

☐ Yes ☐ No If yes, please be sure to provide your contact information below.

6. Do you have any other comments about this target area?

☐ **Please add my name to the Westside Trail target area mailing list for future information, public meetings and events.**

Name _____

Address _____

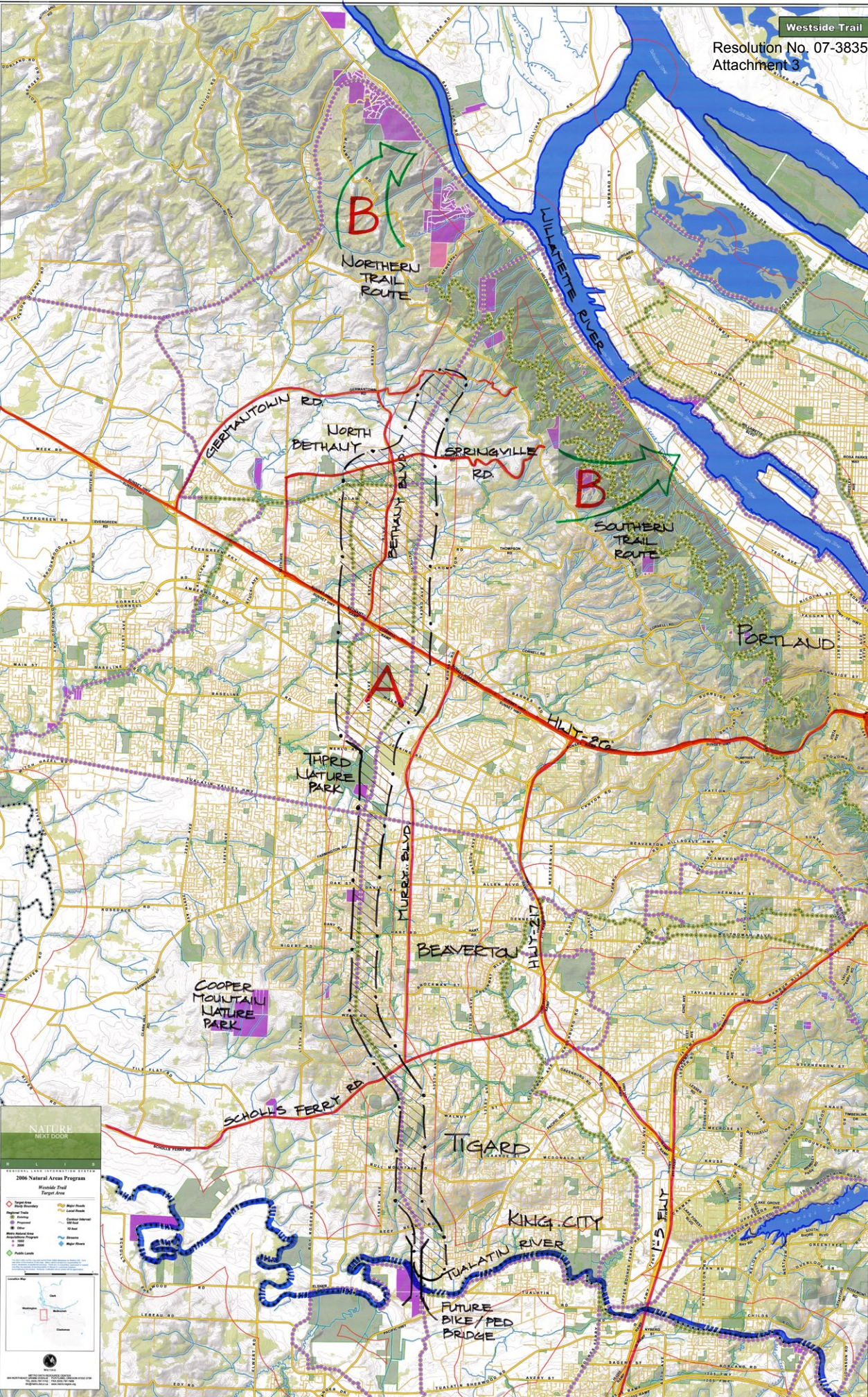
City/State/Zip _____

Phone _____

E-mail _____

**You may complete this questionnaire online at
www.metro-region.org/naturalareas**

or mail it to Metro at
600 NE Grand Avenue, Portland, OR 97232
(503) 797-1741



Westside Trail Survey Results

- 1. Beginning in 2009, a master plan will be developed for the Westside Trail providing more specifics about the future trail alignment. The Metro Council has two main priorities in this target area. Rank in order of importance to you.**

	most important	least important	Rating Average	Response Count
Securing a regional trail corridor for recreational and commuter uses for the entire Westside Trail corridor. (Map area A)	86.8% (33)	13.2% (5)	1.13	38
Connecting the Westside Trail and the communities along the trail to Forest Park. (Map arrows B)	14.7% (5)	85.3% (29)	1.85	34
	answered question			38
	skipped question			2

- 2. In addition to securing the trail corridor, what else should be emphasized in the Westside Trail target area? Rank in order of importance to you.**

	most important		least important	Rating Average	Response Count
Preserving natural areas along the trail to enhance the experience for trail users.	50.0% (20)	27.5% (11)	22.5% (9)	1.73	40
Creating buffers between private property owners and the trail corridor.	2.6% (1)	44.7% (17)	52.6% (20)	2.50	38
Providing access to the trail for people at regional or local trailhead locations.	48.7% (19)	25.6% (10)	25.6% (10)	1.77	39
	answered question				40
	skipped question				0

- 3. Are there other priorities that the Metro Council should consider in this target area? If so, please specify.**

A sufficient multi-use path to support and promote bicycle commuting to relieve congestion on West side roads and highways... or at least to relieve tension for the person who chooses to use it.
The "Arrows B, Southern Trail Route," from NW Springville Rd. at the BPA powerline, up the hill to Skyline Blvd./Springville Rd. entrance to Forest Park, makes lots of sense in that it completes as westside trail connection to and through Forest Park, to the St. Johns Bridge/40 Mile Loop, with just a short connection up along or near Springville Rd. Major water crossing at the Abbey Creek floodplain, and very steep slopes are avoided.

Save easy crossings over busy streets.
Please provide MAX Blue Line Station and Washington County Commuter Railroad station connections to the nearest stations to where the trail crosses the tracks.
The rail to trail conversion in the northern portion of the target area would make a tremendous contribution to the Metro trails network. I could see this linking Gresham to the coast, via Portland, and eventually becoming one of the best destinations for hiking and cycling in the country! Very exciting!
Early improvements or acquisition to make the most of our investment resulting in the greatest completion of a system as possible.
Because this trail will match the Wilsonville Commuter Train route, it will be critical to encouraging train commuters to bike to stations instead of driving, and allowing better connections to worksites once train commuters are in Wilsonville. Also, improving bike access along Boones Ferry Road south of the Bridgeport development is critical to regional bike connectivity and biker safety, and should be done ASAP.
Tek Woods, while probably very challenging to incorporate due to its ownership and political complications, is a unique opportunity in the Beaverton area and would give added value to the adjacent natural area.
2009!!?? Accelerate the master plan and get this project built before I'm too old to use it...
Increase blob A to cover N. Bethany, Lori Waldo - I would love a response
Four season bicycle commuting options off roads. We love Forest Park but do not ride it in the winter to protect the trail.
A more appropriate name - "Westside" could be anywhere in Washington County.
Protect habitats for state and federal listed species and songbirds - create LARGE buffers!
Both are equally important. Has any consideration been given to the historical route(?) for Saltzman Rd. between Laidlaw and Skyline as an alternative/additional route for the Westside Trail.
Work with communities/cities to provide bike lanes to trail. Filling in the trails gaps - Bary trail alignment w/vegetation, follow contours, come closer to streams.
But keep out of wildlife areas!
Please leave dirt path for mountain bikers and trail runners.
Find a way to connect Cooper Mt. Natural area. Focus on filling gaps rather than building trail north of N. Bethany.
This could be the jewel of the westside, akin to the eastside's Springwater trail. the area it passes through is particularly challenging for cyclists & walkers, so a trail like this could be hugely popular. Plan & design the trail for very high levels of use, & to minimize user conflicts. Well-designed and safe arterial street crossings are also important.
Preserve and protect wildlife – don't sacrifice good quality habitat for human recreation.

4. Do you have suggestions about partnerships Metro should pursue or other innovative ways to leverage regional funding and enhance this natural area? If so, please specify.

We assume you are coordinating with the State of Oregon and Multnomah County transportation to seek federal, state, and/or local transportation related (bike lane?) moneys. Could some later improvements to an alignment(?) be funded in an extended or renewed (with voter approval) bond, in 2015? What about lottery revenues? A program for wealthy "honored donors"? (There are a few instances of considerable wealth on "the hill", but they'd have to be asked appropriately).
Metro should partner with Portland Park and Recreation to enhance the local share investment with Metro, e.g. trail completion from the Willamette River to the Westside Trail at Stephens Creek Nature Park. An enhanced, year-round crossing over Stephens Creek whereby Metro partners with PP&R and provides an elevated pedestrian foot bridge along this trail and then the improvements to the trail leading west to the Westside Trail would be a great investment.

N. Bethany Planning & THPRD trail planning -Call Joe Dills @ OTAK.

North and south trail routes (Map arrows B) should be all weather surface.

Conservation easements.

Federal earmarks for Portland's regional trails. Leverage \$ from transit providers and large employers who will benefit from safer commute routes.

For the southern route, I would use the P...(?) trail the THPRD has started parallel to Springville Rd.

There are so many volunteer groups that would help build trails and plant trees etc. - Audubon.

5. Do you have any other comments about this target area? If so, please specify.

I have some concerns about the connection to/thru Forest Park, particularly if it to be fully accessible for roadbikes.

We agree that the Westside Trail (in its entirety) is a key goal for future regional health. Full implementation can be gradual.

I personally think nature next door sounds great in theory but should be balanced against the costs of other restoration. If it cost 50k per mile to restore a stream in the city but only 5k per mile to restore a stream in a clearcut, use the money in the clearcut. The water all goes to the same place and it's a much bigger bang for the buck. I would rather have a healthy planet than a healthy neighborhood. The neighborhood I can live without, the planet I can't.

Implement the improvements called out in the Red Electric Trail Planning Study, <http://www.portlandonline.com/shared/cfm/image.cfm?id=155483>. Implementation of both Metro's and Portland trail efforts via the Metro Natural Areas bond efforts is the greatest complement that I would see as a property owner and property tax investor.

Making a safe way for bicyclists to get around is the key to encouraging more bicycling - one of the cheapest and least environmentally impactive modes. As a former Wilsonville worker, I knew many people who risked their lives daily to bike to Wilsonville because it was important to them. And I knew many more people who would have biked to Wilsonville, either all or part of the way, if there had been a safer route.

Providing 'bridges' over the major roads in the area both for people and wildlife will be challenging, but is an important aspect in a greenspace's continuity.

We believe that a path along Abbey Creek is practical. This could connect Rock Creek Trail to Westside Trail and to Forest Park. Much of it is just outside the UGB. Best to move quickly.

Sincere thanks for considering Westside bicycle commuters!

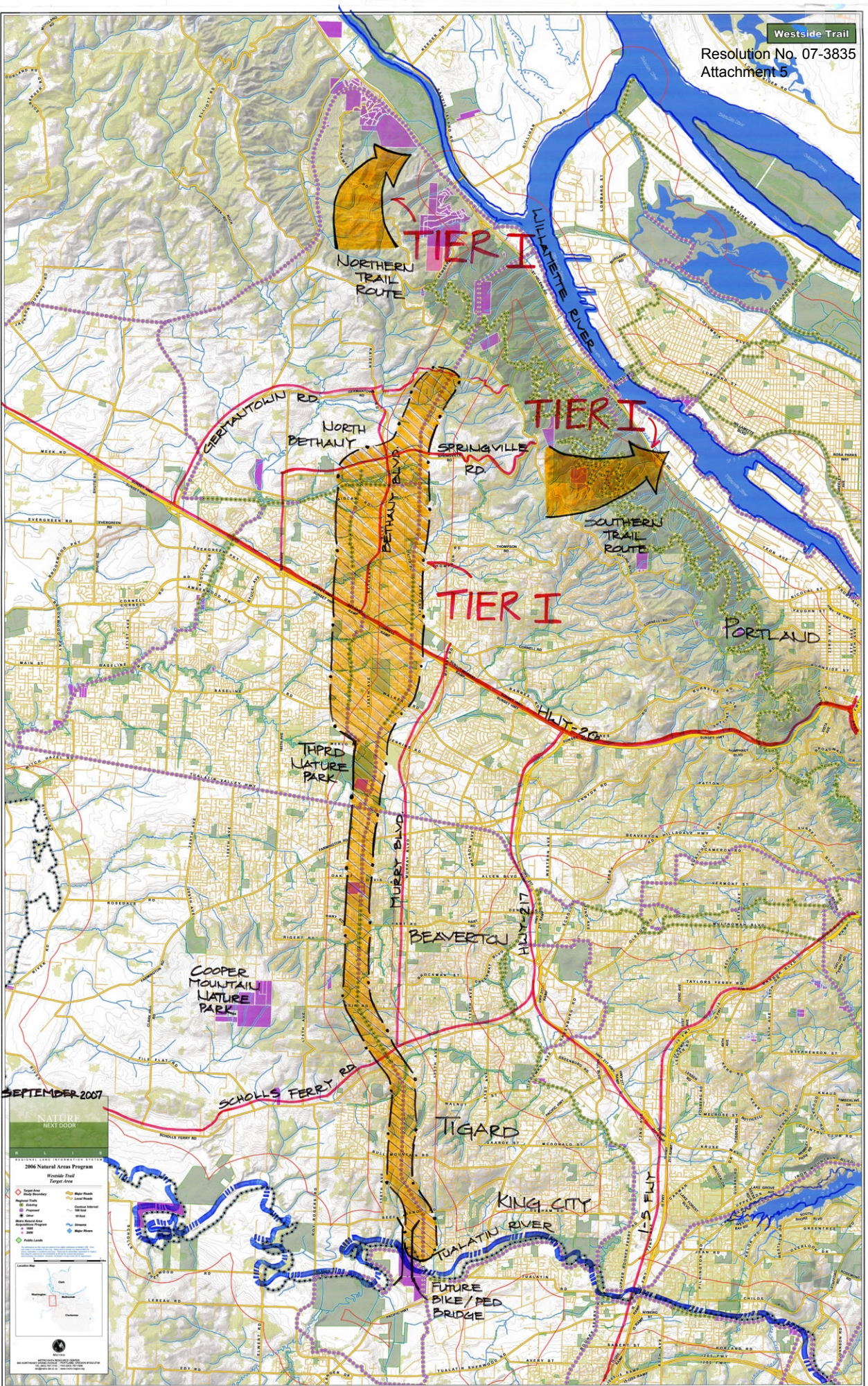
To loath(?) the name "Westside Trail," a contest should take place to rename "Heads to Tails" (headwater to tail water). This is my contest submittal.

Start early to secure funding for trail overcrossings or undercrossings at major roadways - maintain smooth trail alignment.

Please, NO TRAILS over the westside of the Tualatin Mountains! This is designated as prime wildlife CORRIDOR for elk, etc.

Would prefer more dirt trails and less paved trails.

It would be nice to find a route for the trail that could be used by bicyclists who commute over the hills, say from Bethany to Portland, I think the southern options near Springville would work better for users and for wildlife, and for park management.



Agenda Item Number 5.5

Resolution No. 07-3836, Approving the Natural Areas Acquisition
Refinement Plan for the Cooper Mountain Target Area

Metro Council Meeting
Thursday, September 6, 2007
Council Chamber

BEFORE THE METRO COUNCIL

APPROVING THE NATURAL AREAS ACQUISITION
REFINEMENT PLAN FOR THE COOPER MOUNTAIN
TARGET AREA

RESOLUTION NO. 07-3836

Introduced by Chief Operating Officer
Michael J. Jordan, with the
concurrence of Council President
David Bragdon

WHEREAS, on March 9, 2006, the Metro Council adopted Resolution No. 06-3672B “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” recommending submission for voter approval a general obligation bond to preserve and protect natural areas, clean water, and fish and wildlife (the “2006 Natural Areas Bond Measure” or “Measure”); and

WHEREAS, at the election held on November 7, 2006, the voters approved Ballot Measure 26-80, the 2006 Natural Areas Bond Measure; and

WHEREAS, the Cooper Mountain Target Area was identified in the Measure as one of 27 regional target areas for land acquisition, building on the success of land acquisitions in the Cooper Mountain Target Area pursuant to Metro’s 1995 Open Spaces Bond Measure Program; and

WHEREAS, as provided in the 2006 Natural Areas Bond Measure, Metro has undertaken a public refinement process to establish specific acquisition strategies, goals, objectives, and a confidential tax-lot specific acquisition target area map for each of the 27 target areas; and

WHEREAS, Metro’s refinement process included the compilation of available information about each target area; biological field visits and expert analysis of maps; interviews with key stakeholders including natural resource experts, property owners, representatives from state and local government agencies, and advocates from water quality, fish, and wildlife preservation interest groups; and eight public open houses at sites throughout the region and a “virtual” open house available via the internet, at which draft refinement plans were made available for public review and participants could share their target area priorities either in-person or electronically; and

WHEREAS, on March 1, 2007, the Council approved Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” authorizing the Metro Chief Operating Officer to acquire properties identified on a Council-approved target area “confidential refinement map;” and

WHEREAS, the Council has reviewed the draft refinement plans and considered information it has received from citizens, scientists, advocates, and state and local governments; now, therefore

BE IT RESOLVED that the Metro Council adopts the Cooper Mountain Refinement Plan attached hereto as Exhibit A, including the confidential tax-lot specific map reviewed by the Council in Executive Session on September 4, 2007, and signed by Council President David Bragdon on that date, and hereby authorizes the Chief Operating Officer to acquire properties in the Cooper Mountain Target Area consistent with the Council-approved Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan.

ADOPTED by the Metro Council this _____ day of _____ 2007.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

**2006 NATURAL AREAS ACQUISITION PROGRAM
COOPER MOUNTAIN TARGET AREA REFINEMENT PLAN**

Background

The 1995 Open Space Acquisition Program refinement goal for Cooper Mountain was to acquire 428 acres, and included a goal to provide wildlife corridors and trail linkages. To date, Metro has acquired 255.8 acres. The master plan for the Cooper Mountain Nature Park is complete and the design and engineering phase of development is underway.

The 2006 Natural Areas bond measure stated:

Acquiring remaining oak communities and streamside forests will build on the investment already made in protecting Oregon white oak and rare prairie habitat at Cooper Mountain near Beaverton.

Established science shows that the area's habitat supports several mammal species that are uncommon in urban settings, as well as an extremely diverse bird community. The regionally rare upland prairie and oak/madrone woodland habitat supports exceptional species including what is perhaps the largest remaining population of state endangered pale larkspur and breeding populations of the Northern red-legged frog.

Target Area Description

Cooper Mountain Natural Area sits on the southwestern slopes of Cooper Mountain, an 800-foot high basalt mound located near the western edge of Beaverton. The natural area provides stunning views of the Tualatin Valley and Chehalem Mountains and is comprised of remnant and recently reforested conifer forests, oak and madrone woodlands and upland prairies nestled between residential and agricultural lands. Restoration projects at the site include the reintroduction of more than 60,000 trees and shrubs in former clear-cut areas and a series of prescribed burns to enhance oak and upland prairie habitat and improve conditions for the endangered pale larkspur and other rare wildflowers. Also included are enhancements to a small quarry pond to improve habitat conditions for a breeding population of the state-sensitive Northern red-legged frog.

Site design and development of the first phase of visitor improvements as described in the adopted master plan for Cooper Mountain Nature Park is under way. Planned improvements include a network of trails and public facilities, interpretive cultural and natural history signage and a "nature house" for environmental education programs.

Refinement Process

During the refinement process, Metro staff compiled available information about the Cooper Mountain target area, analyzed maps and conducted biological field visits. Individuals were interviewed representing various government agencies, property owners, interested friends groups and natural resource experts. The key concerns expressed during the interviews are summarized in Attachment 1.

A public open house to discuss the proposed Refinement Plan was held on June 14, 2007 at the Tualatin Hills Nature Park Interpretive Center, one of eight such open houses held throughout the region. Notices of the open houses were mailed to area residents and other interested citizens. Metro also conducted a "virtual" open house by making target area informational materials, including maps, available "online" via the internet and allowing participants to share their target area priorities electronically. A total of 527 people attended the regional open houses, and the online open house had 6,363 visits from 3,419 unique visitors. More than 700 target area surveys were completed either in person or online. Eleven people responded to the Cooper Mountain survey. A copy of the survey questionnaire is included as Attachment

2. The map associated with the questionnaire for this target area is included as Attachment 3, and complete survey results are included as Attachment 4.

Findings

- The Cooper Mountain target area is regionally significant due to the rare and disappearing oak/madrone woodlands and prairie habitats it supports, and its fish, wildlife, regional recreation and water quality values.
- Acquisition to date has secured a substantial contiguous portion (231 acres) of the remaining undeveloped open space on Cooper Mountain. Targeted additions on the east, south and west perimeter of Cooper Mountain Nature Park would serve multiple conservation and recreation functions including protecting riparian forests, oak habitat, water quality and wildlife corridor linkages, and expanding public access opportunities.
- Tributary headwater creeks on the south side of Cooper Mountain contribute to the Tualatin River. They are important to protect for water quality, riparian forest habitat and wildlife linkages.
- Maintaining a contiguous open space corridor connecting publicly owned greenspaces and trails in the vicinity of the Cooper Mountain Nature Park area has support among a large number of stakeholders.
- An east-west regional trail linkage to Cooper Mountain Nature Park between the Westside Trail and proposed Burlington Northern Trail is identified in the following planning documents:
 - Metro's Regional Trails Map
 - Tualatin Hills Park and Recreation Department Comprehensive Plan (2006)
 - Metro's Cooper Mountain Master Plan (2005)
- Water quality is a significant concern on Cooper Mountain. The land south and west of Cooper Mountain Nature Park is outside the Clean Water Services boundary, and is therefore not covered by that agency's stream protection and buffer requirements.
- Cooper Mountain Nature Park provides an important buffer between residential development to the north and agricultural uses to the south.
- Eleven people responded to the Cooper Mountain survey. Additional commentary was provided orally at the open house, which was consistent with the written responses. In rank order, the public priorities were:
 1. *Map area A* – Protect forested lands along tributaries to the Tualatin River to protect rare oak habitat and natural corridors for wildlife
 2. *Map area C* – Protect lands adjacent to the planned Cooper Mountain Nature Park
 3. *Map area B* – Secure a corridor between the planned Cooper Mountain Nature Park and other regional and local trails and natural areas.
 4. *Map area D* – Expand the planned Cooper Mountain Nature Park to allow for additional recreational uses such as horseback riding and mountain biking and provide a regional trailhead off of Scholls Ferry Road.

Goals

Acquire key land parcels in the Cooper Mountain target area to build on Metro's successful efforts using 1995 Bond Measure funds to:

- Expand habitat protection of Oregon white oak and rare prairie habitat and riparian corridors along Lindow and McKernan Creeks.
- Enhance access to Cooper Mountain Nature Park by land acquisition and securing trail connections between major publicly-owned properties.
- Keep important wildlife corridors and buffers intact.

Objectives

A target area map showing the tiered objectives described below is included as Attachment 5.

Tier 1 Objective

- Acquire lands adjacent to the Cooper Mountain Nature Park to secure rare oak habitat and riparian corridors and enhance the experience of park users.

Tier 2 Objective

- Secure a corridor between the planned Cooper Mountain Nature Park and other regional and local trails (including the Westside Trail) and natural areas.

Partnership Objectives

- Pursue partnership opportunities with the City of Beaverton, Tualatin Hills Park and Recreation District and Washington County to leverage regional bond dollars.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 07-3836, APPROVING THE NATURAL AREAS ACQUISITION REFINEMENT PLAN FOR THE COOPER MOUNTAIN TARGET AREA

Date: September 6, 2007

Prepared by: Jim Desmond
Kathleen Brennan-Hunter

BACKGROUND—REFINEMENT PROCESS

The Natural Areas Bond Measure (Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” adopted by the Metro Council March 9, 2006) provided that Metro would undertake a “Refinement Process” to “gather additional information about each individual target area and begin zeroing in on particular parcels that would be valuable to acquire” (Exhibit A to Resolution No. 06-3672B). In addition, the Natural Areas Implementation Work Plan (Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” adopted by the Metro Council on March 1, 2007) authorized the Metro Chief Operating Officer to acquire properties without further Council approval if they have been identified on a Council-approved target area “confidential refinement map.” To implement those directives, the Refinement Plans for each target area contain overall target area objectives and confidential tax-lot specific target area maps identifying priority properties for acquisition, enabling Metro staff to begin the acquisition of property and property rights as detailed in the Natural Areas Implementation Work Plan.

Additional background information, target area information, a description of the specifics of the refinement process regarding this target area, and the refinement plan’s findings, goals, and objectives are described in further detail in Exhibit A to this resolution, the Cooper Mountain Target Area Refinement Plan.

ANALYSIS/INFORMATION

1. **Known Opposition**

None.

2. **Legal Antecedents**

Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” adopted on March 9, 2006.

The voters’ approval of Metro’s 2006 Natural Areas Bond Measure at the general election held on November 6, 2006.

Resolution No. 07-3766A “Authorizing the Chief Operating Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” adopted by the Metro Council on March 1, 2007, established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

3. **Anticipated Effects**

Acquisition of natural area properties in the Cooper Mountain target area to achieve the goals and purposes of the 2006 Natural Areas Bond Measure.

4. **Budget Impacts**

The FY 2007-08 budget includes budgetary authority to purchase \$35 million in natural area lands, with an additional \$15.4 million in contingency, if necessary. It is estimated, based on historical spending patterns, that this authority will be sufficient to cover the anticipated acquisition activity for this fiscal year. Additional unappropriated fund balance (\$64 million) exists for land acquisition in future years, along with the authority to issue up to an additional \$102 million in General Obligation bonds in support of this program.

RECOMMENDED ACTION

Staff recommends adoption of Resolution No. 07-3836.

Summary of Comments from Stakeholder Interviews for Cooper Mountain Target Area

Stakeholder(s) Interviewed

Kendra Smith, Clean Water Services (CWS)
Steve Gulgren, Tualatin Hills Park & Recreation District (THPRD)
Tim O'Brien, Metro Planning
Aisha Willits, Washington County Planning
Ed Bartholemy, South Cooper Mt. Landowner Association
Eric Squires, Washington County CPO-6 Chair

Key Themes Discussed

Water Quality

- The various drainages and tributaries to Lindow Creek, primarily south and west of the current Cooper Mountain Nature Park are outside the Clean Water Services boundary, and therefore exempt from buffer requirements. Suggested concentrating on establishing buffers along these riparian zones, either through easements or acquisition. Extend all the way to Tualatin River if possible. These areas are important both for fish habitat, water quality and wildlife corridors.
- Increased volume and rate of water run-off in ditches and drainages has been noted in recent years. This is causing erosion in ditches and contributing silt to waterways.
- Lindow Creek tributaries are identified as drainage hazard areas by Washington County.
- Any land that can be kept in open space will be beneficial for groundwater.

Wildlife Habitat

- Lindow Creek and its tributaries provide a wildlife corridor south to the Tualatin River.
- Protection of remaining oak/madrone communities should also be a priority. Oak woodland noted south of Cooper Mountain Nature Park and west, across Grabhorn Road.
- Deer move north-south along 175th Avenue, and up drainages on north side of mountain to Cooper Mountain Nature Park. Visibility has increased in recent years, probably due to loss of habitat, not population increase.

Land Use / Urban / Rural Form

- The UGB bisects Cooper Mountain Nature Park with two exception areas south of Cooper Mountain Nature Park. The exception areas have to be reviewed first when UGB expansion is next considered. UGB exception areas may be valuable targets for protection, due to their potential incorporation into the UGB and subsequent development pressure.
- Cooper Mountain Nature Park forms a buffer between residential development to the north and agricultural uses to the south.
- Development/real estate speculation is high on undeveloped lands in the area.
- Trail connections are key to reducing traffic and providing alternative transportation options as development in the area continues.

Connections to existing parks, trails, public open space

- Recent master planning by Tualatin Hills Park and Recreation District includes development of a Cooper Mountain Regional Trail to connect east-west between the Westside/Powerline Trail and the Burlington-Northern Trail through Cooper Mountain Nature Park.
- Tualatin Hills Park and Recreation District recently acquired a 20-acre parcel just east of Cooper Mountain Nature Park, and is working with landowners to acquire right-of-way to connect the parcels by trail.
- Corridors along creek drainages could serve dual purpose as trail connections between scattered open spaces and wildlife corridors.

Miscellaneous Comments

- The group held some discussion about Measure 37 claims and development plans/pressure on parcels south of Cooper Mountain Nature Park.
- Acquisition of in-holding was mentioned as an obvious top priority by most stakeholders.
- Quarry site to west was noted by several stakeholders as having open space potential.
- Several stakeholders expressed the opinion that money will go farther for creation of linkages/corridors rather than large parcels.

Key Partners

- Clean Water Services
- Tualatin Hills Park and Recreation District
- Washington County

QUESTIONNAIRE

TARGET AREA: COOPER MOUNTAIN

In November 2006 voters directed the Metro Council to extend a regionwide program and acquire between 3,500 and 4,500 acres of additional natural areas to protect water quality and fish and wildlife habitat and to provide future generations opportunities for greater access to nature. Now it's time for the Metro Council to refine priorities in the 27 regional natural areas and trail corridors targeted for acquisition. The 1995 acreage goal for this target area was 428 and Metro has acquired 259 acres to date. The 2006 program will provide additional funding for protection goals in this target area.

The Metro Council wants your ideas and input. We've been talking with scientists, land-use experts, groups and individuals who have special knowledge about the natural resource values and community visions for these areas. With this information Metro has begun to identify the potential strategies and opportunities that will achieve the best results. Now we need to know: Do we have it right? What have we missed? What is most important to you?

2006 NATURAL AREAS BOND DESCRIPTION FOR THIS TARGET AREA

Acquiring remaining oak communities and streamside forests will build on the investment already made in protecting Oregon white oak and rare prairie habitat at Cooper Mountain near Beaverton.

QUESTIONS

1. **The following priorities were identified in the Cooper Mountain target area based on scientific information about benefits to water quality, habitat diversity, wildlife connectivity, restoration potential and/or public access and from information provided by key stakeholders in the area. Rank in order of importance to you from 1 to 4, with 1 being the most important and 4 being the least important.**

- _____ Protecting forested lands along Lindow Creek and other tributaries of the Tualatin River to the south and west of the planned Cooper Mountain Nature Park to protect rare oak habitat and natural corridors for wildlife. **(Map area A)**
- _____ Securing a corridor between the planned Cooper Mountain Nature Park and other regional and local trails and natural areas. **(Map arrows B)**
- _____ Protecting lands adjacent to the planned Cooper Mountain Nature Park to buffer existing protected natural areas from development, close gaps or secure inholdings. **(Map area C)**
- _____ Expanding the planned Cooper Mountain Nature Park to allow for additional recreational uses such as horseback riding and mountain biking and provide a regional trailhead off of Scholls Ferry Road. **(Map area D)**

2. **In general, what should be emphasized in the Cooper Mountain target area? Rank in order of importance to you from 1 to 4, with 1 being the most important and 4 being the least important.**

- _____ Preserving lands along creeks and tributaries to protect water quality and wildlife habitat.
- _____ Preserving Oregon white oak and rare prairie habitat.
- _____ Buffering the natural area from urban development and farmland uses.
- _____ Providing access to nature for people by connecting natural areas with local and regional trails.

3. Are there other priorities that the Metro Council should consider in the Cooper Mountain target area? Please be specific.

4. Do you have suggestions about partnerships Metro should pursue or other innovative ways to leverage regional funding and enhance this natural area?

5. Are you interested in participating in Metro's Natural Areas program by selling or donating your property or selling or donating a conservation easement on your property?

☐ Yes ☐ No If yes, please be sure to provide your contact information below.

6. Do you have any other comments about this target area?

☐ **Please add my name to the Cooper Mountain target area mailing list for future information, public meetings and events.**

Name _____

Address _____

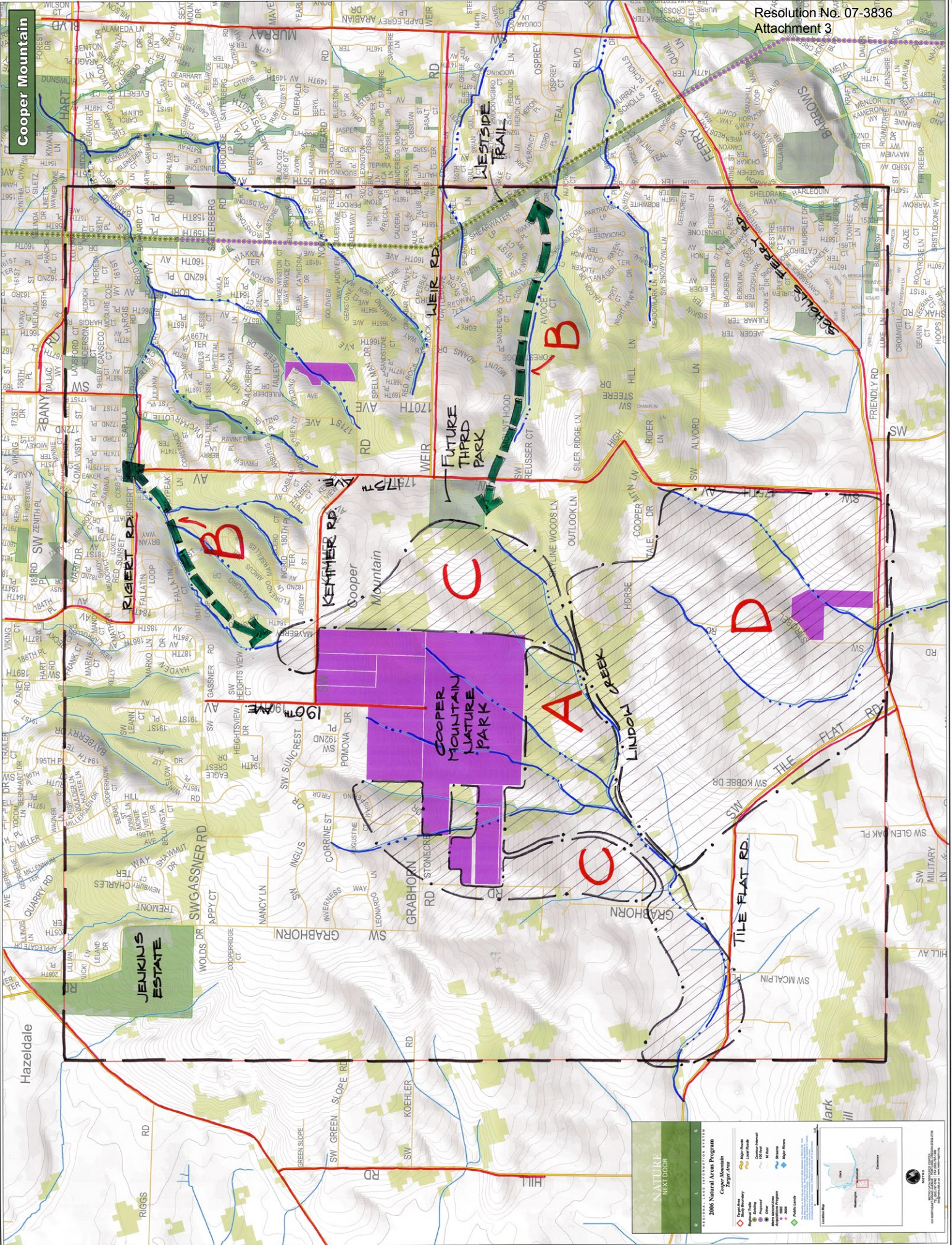
City/State/Zip _____

Phone _____

E-mail _____

**You may complete this questionnaire online at
www.metro-region.org/naturalareas**

or mail it to Metro at
600 NE Grand Avenue, Portland, OR 97232
(503) 797-1741



Cooper Mountain Survey Results

1. The following priorities were identified in the Cooper Mountain target area based on scientific information about benefits to water quality, habitat diversity, wildlife connectivity, restoration potential and/or public access and from information provided by key stakeholders in the area. Rank in order of importance to you.

	most important			least important	Rating Average	Response Count
Protecting forested lands along Lindow Creek and other tributaries of the Tualatin River to the south and west of the planned Cooper Mountain Nature Park to protect rare oak habitat and natural corridors for wildlife. (Map area A)	33.3% (5)	46.7% (7)	13.3% (2)	6.7% (1)	1.93	15
Securing a corridor between the planned Cooper Mountain Nature Park and other regional and local trails and natural areas. (Map arrows B)	28.6% (4)	14.3% (2)	57.1% (8)	0.0% (0)	2.29	14
Protecting lands adjacent to the planned Cooper Mountain Nature Park to buffer existing protected natural areas from development, close gaps or secure inholdings. (Map area C)	40.0% (6)	26.7% (4)	33.3% (5)	0.0% (0)	1.93	15
Expanding the planned Cooper Mountain Nature Park to allow for additional recreational uses such as horseback riding and mountain biking and provide a regional trailhead off of Scholls Ferry Road. (Map area D)	6.7% (1)	6.7% (1)	0.0% (0)	86.7% (13)	3.67	15
	answered question					16
	skipped question					3

2. In general what should be emphasized in the Cooper Mountain target area? Rank in order of importance to you.

	most important			least important	Rating Average	Response Count
Preserving lands along creeks and tributaries to protect water quality and wildlife habitat.	41.2% (7)	17.6% (3)	23.5% (4)	17.6% (3)	2.18	17
Preserving Oregon white oak and rare prairie habitat.	25.0% (4)	43.8% (7)	18.8% (3)	12.5% (2)	2.19	16
Buffering the natural area from urban development and farmland uses.	11.8% (2)	29.4% (5)	35.3% (6)	23.5% (4)	2.71	17
Providing access to nature for people by connecting natural areas with local and regional trails.	29.4% (5)	11.8% (2)	17.6% (3)	41.2% (7)	2.71	17
	answered question					18
	skipped question					1

3. Are there other priorities that the Metro Council should consider in the Cooper Mountain target area? Please be specific.

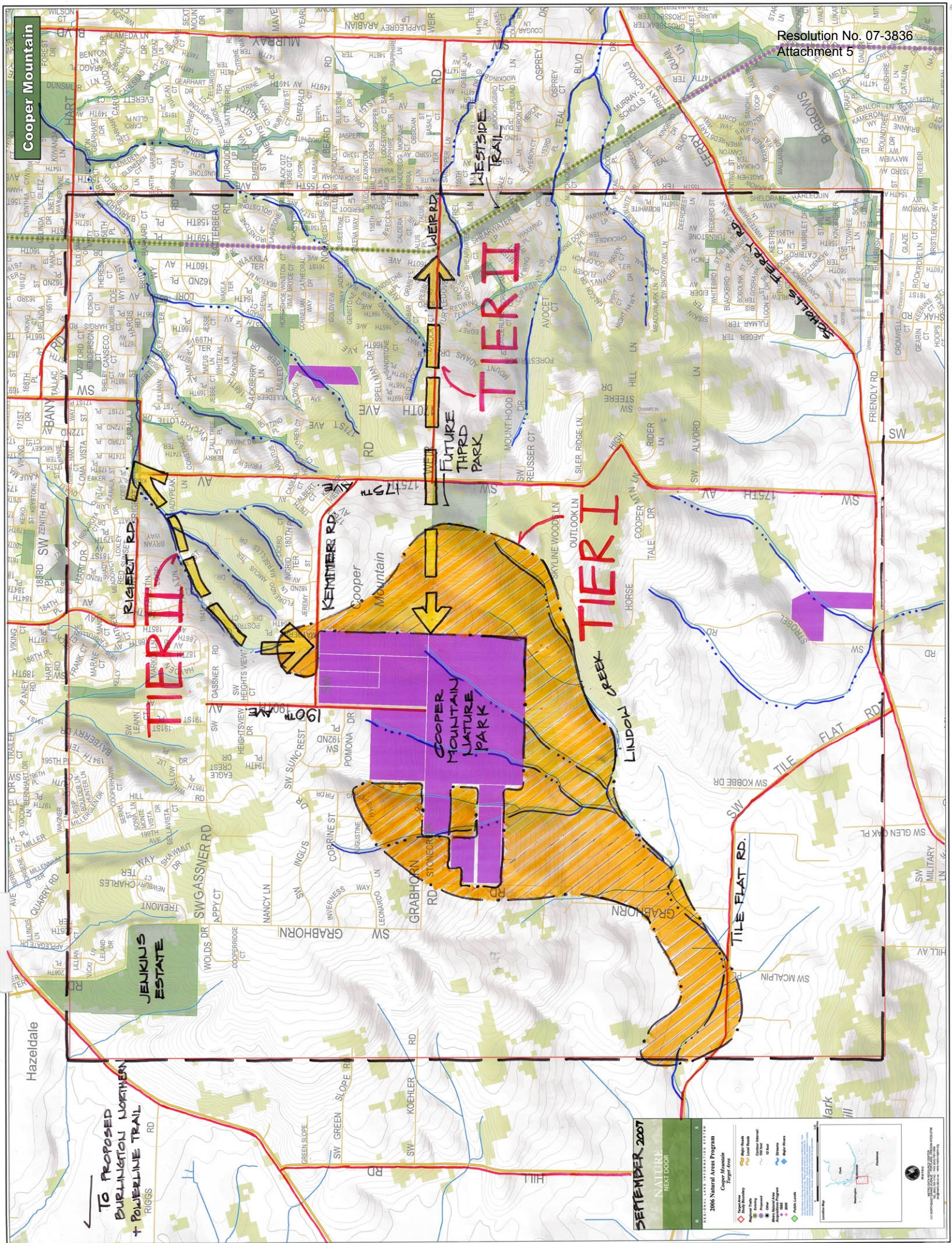
As much access from neighborhoods to trails as possible.
Question 1 above: "...such as horseback riding and mountain biking" - NO. Question 1 above: "...provide a regional trailhead off of Scholls" - YES
Be sure to find connection(s) between Westside Trail & Cooper Mt. Natural Area - otherwise most people will have to drive to the park.
Allow other uses, eg - star viewing parties on the parking lot like Jackson-Bottom does.
Would like mountain bike trails.
Enlarge the existing park in line with it's original vision in 1995 (450 acres).

4. Do you have suggestions about partnerships Metro should pursue or other innovative ways to leverage regional funding and enhance this natural area? If so, please specify.

Partner with neighborhood associations in the area to help set up trail access to Metro lands.
Partner with THPRD, Beaverton & Washington County to make connection to Westside Trail.
THPRD, State, County, Fed

5. Do you have any other comments about this target area? If so, please specify.

I am VERY concerned about so MANY proposed trails in open spaces. Too many trails will push all the wildlife OUT due to TOO much disturbance! We would rather see sidewalks used to AVOID wildlife habitat! Thanks!
We should look at what are compatible activities. Is horseback riding on the same trail compatible with hikers? Who wants to step on horse shit.
We live near this area and I welcome an opportunity to use my brawn or brain as a volunteer for the Cooper Mt. Park.
Please open more trails to mountain bikes



Agenda Item Number 5.6

Resolution No. 07-3837, Approving the Natural Areas Acquisition
Refinement Plan for the Fanno Creek Linkages Target Area

Metro Council Meeting
Thursday, September 6, 2007
Council Chamber

BEFORE THE METRO COUNCIL

APPROVING THE NATURAL AREAS ACQUISITION
REFINEMENT PLAN FOR THE FANNO CREEK
LINKAGES TARGET AREA

RESOLUTION NO. 07-3837

Introduced by Chief Operating Officer
Michael J. Jordan, with the
concurrence of Council President
David Bragdon

WHEREAS, on March 9, 2006, the Metro Council adopted Resolution No. 06-3672B “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” recommending submission for voter approval a general obligation bond to preserve and protect natural areas, clean water, and fish and wildlife (the “2006 Natural Areas Bond Measure” or “Measure”); and

WHEREAS, at the election held on November 7, 2006, the voters approved Ballot Measure 26-80, the 2006 Natural Areas Bond Measure; and

WHEREAS, the Fanno Creek Linkages Target Area was identified in the Measure as one of 27 regional target areas for land acquisition, building on the success of land acquisitions in the Fanno Creek Target Area pursuant to Metro’s 1995 Open Spaces Bond Measure Program; and

WHEREAS, as provided in the 2006 Natural Areas Bond Measure, Metro has undertaken a public refinement process to establish specific acquisition strategies, goals, objectives, and a confidential tax-lot specific acquisition target area map for each of the 27 target areas; and

WHEREAS, Metro’s refinement process included the compilation of available information about each target area; biological field visits and expert analysis of maps; interviews with key stakeholders including natural resource experts, property owners, representatives from state and local government agencies, and advocates from water quality, fish, and wildlife preservation interest groups; and eight public open houses at sites throughout the region and a “virtual” open house available via the internet, at which draft refinement plans were made available for public review and participants could share their target area priorities either in-person or electronically; and

WHEREAS, on March 1, 2007, the Council approved Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” authorizing the Metro Chief Operating Officer to acquire properties identified on a Council-approved target area “confidential refinement map;” and

WHEREAS, the Council has reviewed the draft refinement plans and considered information it has received from citizens, scientists, advocates, and state and local governments; now, therefore

BE IT RESOLVED that the Metro Council adopts the Fanno Creek Linkages Refinement Plan attached hereto as Exhibit A, including the confidential tax-lot specific map reviewed by the Council in Executive Session on September 4, 2007, and signed by Council President David Bragdon on that date, and hereby authorizes the Chief Operating Officer to acquire properties in the Fanno Creek Linkages Target Area consistent with the Council-approved Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan.

ADOPTED by the Metro Council this _____ day of _____ 2007.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

**2006 NATURAL AREAS ACQUISITION PROGRAM
FANNO CREEK LINKAGES TARGET AREA REFINEMENT PLAN**

Background

The 1995 refinement goal was to establish 12 miles of greenway along Fanno Creek and its tributaries in order to protect water quality, fish and wildlife habitat and recreational values. Great progress was made in making purchases along Fanno Creek, and to date 39.08 acres have been protected by the Metro program.

The 2006 Natural Areas bond measure stated:

Additions to this existing west side greenway will extend the corridor from the Tualatin River into a highly urbanized, “walker challenged” area of the city, and further protect water quality in one of our critical regional rivers.

Established science continues to show the importance of intact riparian areas for water quality and quantity protection, wildlife habitat and maintenance of overall watershed health along the main branch of Fanno Creek, as well as the following tributaries: Pendleton Creek, Woods Creek, Sylvan Creek, Vermont Creek and Ash Creek.

Target Area Description

Fanno Creek originates on the west side of the Tualatin Mountains and meanders through the cities of Portland, Beaverton, Tigard, Durham and Tualatin to its confluence with the Tualatin River. Along its route, small but significant natural areas have been protected and additional opportunities remain to secure lands along the main stem of the Fanno Creek and its tributaries for the benefit of water quality and wildlife.

The Fanno Creek Greenway Trail corridor mimics the creek’s weaving path through five cities and two counties, stretching 15 miles from Willamette Park on the Willamette River Greenway, (just south of downtown Portland) through highly urbanized neighborhoods in Beaverton and Tigard and ending at the Tualatin River within the City of Tualatin. A new bridge was recently opened to the public this year that allows bikes and pedestrians to cross the Tualatin River at Cook Park and connects Tualatin to Tigard and Durham.

A completed Fanno Creek Greenway Trail will provide safe access connecting neighborhoods, parks, schools, community centers and other trails, such as the Willamette River Greenway at the northern end and the Tualatin River Greenway at the south. Within the city of Portland, several trail alignments have been proposed for bicycle commuters, walkers and hikers including the conversion to a trail of the former Red Electric Railroad corridor. With approximately half of the trail finished, the Fanno Creek Greenway Trail is on its way to becoming one of the premier urban greenway trails in the Portland metropolitan region.

Refinement Process

During the refinement process, Metro staff compiled available information about the Fanno Creek Linkages target area and analyzed maps. Individuals were interviewed representing various government agencies, property owners, interested friends groups and natural resource experts. The key concerns expressed during the interviews are summarized in Attachment 1.

A public open house to discuss the proposed Refinement Plan was held on June 13, 2007 at Metro Regional Center, one of eight such open houses held throughout the region. Notices of the open house were mailed to area residents and other interested citizens. Metro also conducted a “virtual” open house by making target area informational materials, including maps, available “online” via the internet and

allowing participants to share their target area priorities electronically. A total of 527 people attended the regional open houses, and the online open house had 6,363 visits from 3,419 unique visitors. More than 700 target area surveys were submitted either in person or online. Thirty-three people completed the Fanno Creek Linkages survey. A copy of the survey questionnaire is included as Attachment 2. The map associated with the questionnaire for this target area is included as Attachment 3, and complete survey results are included as Attachment 4.

Findings

- Fanno Creek is a regionally significant resource due to its recreation, fish, wildlife, and educational value.
- The greenway system is incomplete in the Tigard/Durham vicinity along the mainstem of Fanno Creek. Significant amounts of riparian corridor are already in public ownership, however, major portions of the corridor – particularly between Cook Park (Tigard)/Durham City Park and Fanno Creek Park (Tigard) – are not in public ownership. Creating a publicly owned corridor has high support among stakeholders.
- The main stem of Fanno Creek is fairly intact from the mouth to Vista Brook Park. From Vista Brook Park, the creek splits into numerous tributaries, which have been highly urbanized. The off-street alignment of the greenway/corridor will need to follow the proposed Red Electric Trail (Portland Parks and Recreation) through SW Portland to the Willamette River.
- Established science continues to show the importance of intact riparian areas for water quality and quantity protection, wildlife habitat, and maintenance of overall watershed health along the main branch of Fanno Creek, as well as the following tributaries: Pendleton Creek, Woods Creek, Sylvan Creek, Vermont Creek and Ash Creek.
- Flooding is a significant problem in the Fanno Creek watershed. Clean Water Services is lengthening the channel in several locations to address this issue. Partnership opportunities exist to work with local agencies to protect lands that could limit future flood damage.
- Easements, dedications, donations and other voluntary property-owner agreements could be pursued in addition to fee acquisition in order to stretch the value of the regional dollars spent.
- Thirty-three people completed the survey about Fanno Creek Linkages. Additional commentary was provided verbally at the open house, most of which was consistent with the written responses. In rank order, the public priorities were:
 1. *Map area B* – Securing missing sections of the proposed regional trail corridor within the City of Portland connecting the trail from the Garden Home Recreation Center to the Willamette River (including along the former Red Electric railroad corridor).
 2. *Map area A* – Securing missing sections of the proposed regional trail corridor connecting Cook Park with Woodard Park.

Goal

Complete a continuous greenway trail from the Tualatin River into a highly urbanized, “walker-challenged” area of Portland, and further protect water quality along Fanno Creek and its tributaries.

Objectives

A target area map showing the tiered objectives described below is included as Attachment 5.

Tier I Objective

- Connect publicly-owned land along the mainstem of Fanno Creek between Cook Park and Woodard Park to complete the corridor and enhance habitat and water quality protection in this area.

Tier II Objective

- Acquire key trail linkages along the Red Electric Corridor to connect the Garden Home Recreation Center and the Willamette River.

Partnership Objectives

- Pursue partnership opportunities with the City of Portland (Parks and Recreation and Bureau of Environmental Services), City of Tigard, City of Durham, Friends of Fanno Creek and Clean Water Services to leverage the regional investment in the Fanno Creek Linkages target area with local share funds and for management of purchased properties.
- Work with private landowners to explore opportunities for conservation easements.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 07-3837, APPROVING THE NATURAL AREAS ACQUISITION REFINEMENT PLAN FOR THE FANNO CREEK LINKAGES TARGET AREA

Date: September 6, 2007

Prepared by: Jim Desmond
Kathleen Brennan-Hunter

BACKGROUND—REFINEMENT PROCESS

The Natural Areas Bond Measure (Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” adopted by the Metro Council March 9, 2006) provided that Metro would undertake a “Refinement Process” to “gather additional information about each individual target area and begin zeroing in on particular parcels that would be valuable to acquire” (Exhibit A to Resolution No. 06-3672B). In addition, the Natural Areas Implementation Work Plan (Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” adopted by the Metro Council on March 1, 2007) authorized the Metro Chief Operating Officer to acquire properties without further Council approval if they have been identified on a Council-approved target area “confidential refinement map.” To implement those directives, the Refinement Plans for each target area contain overall target area objectives and confidential tax-lot specific target area maps identifying priority properties for acquisition, enabling Metro staff to begin the acquisition of property and property rights as detailed in the Natural Areas Implementation Work Plan.

Additional background information, target area information, a description of the specifics of the refinement process regarding this target area, and the refinement plan’s findings, goals, and objectives are described in further detail in Exhibit A to this resolution, the Fanno Creek Linkages Target Area Refinement Plan.

ANALYSIS/INFORMATION

1. **Known Opposition**

None.

2. **Legal Antecedents**

Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” adopted on March 9, 2006.

The voters’ approval of Metro’s 2006 Natural Areas Bond Measure at the general election held on November 6, 2006.

Resolution No. 07-3766A “Authorizing the Chief Operating Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” adopted by the Metro Council on March 1, 2007, established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

3. **Anticipated Effects**

Acquisition of natural area properties in the Fanno Creek Linkages target area to achieve the goals and purposes of the 2006 Natural Areas Bond Measure.

4. **Budget Impacts**

The FY 2007-08 budget includes budgetary authority to purchase \$35 million in natural area lands, with an additional \$15.4 million in contingency, if necessary. It is estimated, based on historical spending patterns, that this authority will be sufficient to cover the anticipated acquisition activity for this fiscal year. Additional unappropriated fund balance (\$64 million) exists for land acquisition in future years, along with the authority to issue up to an additional \$102 million in General Obligation bonds in support of this program.

RECOMMENDED ACTION

Staff recommends adoption of Resolution No. 07-3837.

Summary of Comments from Stakeholder Interviews for Fanno Creek Linkages Target Area

Stakeholder(s) Interviewed

Steve Martin, City of Tigard
Dave Drescher, Friends of Fanno Creek
Bob Bothman, 40-Mile Loop
Doug Vorwaller, Friends of Trails Tigard / Bull Mountain Shannon Axtell, BES
Roland Sugnett, City of Durham
Barbara Fryer, City of Beaverton
Elaine Stewart, Metro
Joy Chang, Washington County
Wendy Bell, THPRD
Duane Roberts, City of Tigard
Gregg Everhart, Portland Parks and Recreation
Mel Huie, Metro
Jeffrey Gottfried, Educational Recreational Adventures
Scott Bricker, Bicycle Transportation Alliance
Don Baack, SW Trails
William Eadie, Metro
Kendra Smith, Clean Water Services
Steve Gulgren, THPRD
Deborah Lev, Portland Parks and Recreation
Ahmin Wahab, BES
Jim Sjulín, Portland Parks and Recreation

Key Themes Discussed

Fanno Creek Greenway Trail

- Link up the publicly owned parcels between Cook Park and Fanno Creek Park (Tigard) and between the creek and the railroad corridor to create a continuous greenway/trail corridor.
- Identify additional east/west links in Tigard to connect to the Fanno Creek Greenway.
- Areas of particular importance that were mentioned by stakeholders include:
 - 26 acres with 10-12 acres remnant oak and 10-12 acres of open meadow in the floodplain with creek frontage east of Hall Blvd and southwest of the rail line directly adjacent (east) to Fanno Creek Park .
 - A small triangle-shaped property bounded by Durham Road and RR tracks needed for trail completion.
 - Red Electric trail alignment parcels for continuing/creating an off-street trail from Garden Home to the Willamette River.
- Once into Portland, the 3 priority areas include: connecting Garden Home and Hillsdale, connecting Hillsdale to the River, and connecting to the Willamette Greenway.
- Close the one block gap from 92nd – Scholls (potential use of the old RR ROW) while providing a safe crossing. 92nd.

Water Quality / Wildlife Habitat

- There are restoration opportunities on wooded wetlands that abut the trail on the 50 acres north of Summer Creek, adjacent to Fowler Middle School.
- Clean Water Services is increasing the channel length in several locations to slow down the creek.
- The parcels north of Vermont/East of 65th would be tremendous asset/open space due to habitat and opportunities for water quality preservation and restoration.
- Preserving creek/riparian corridors is important as they serve as wildlife corridors given the pace and type of development in the region. Notable wildlife information provided includes:
 - Fanno has both steelhead and local cutthroat –fish and macro report on CWS webpage for all drainages in Tualatin watershed.
 - There are resident fish in main stem of Fanno up to SW 30th.
 - Elk have been seen in the last 3 years along Columbia Creek and near Woods Park.
- Connect separate parcels along main stem to make habitat and water quality management easier.

Existing Projects

- Clean Water Services is currently doing restoration work on Fanno Creek south of OR 99W and Fanno Creek Park (Tigard)
- There is MTIP funding for Hall Blvd crossing of Fanno Creek Trail.
- Fanno Creek Park master plan is being developed.
- Clean Water Services is realigning the creek through the Fanno Creek Park.
- BES has been focused on the main stem in order to have the greatest impact on meeting compliance requirements.
- Oleson Road improvements are occurring and can provide short-term on-street alternative for the Fanno Creek Greenway.

Miscellaneous Comments

- OES and Frank Estates have concerns regarding safety/privacy of students and property if a trail is located through/near their properties.
- Need innovative design for on-street segments
- Coordination of uniform wayfinding signs to help users find/follow the trail in on-street segments
- Property just north of Raleighwood Park is severely flood-prone with existing structure.

QUESTIONNAIRE

TARGET AREA: FANNO CREEK LINKAGES AND TRAIL

In November 2006 voters directed the Metro Council to extend a regionwide program and acquire between 3,500 and 4,500 acres of additional natural areas to protect water quality and fish and wildlife habitat and to provide future generations opportunities for greater access to nature. Now it's time for the Metro Council to refine priorities in the 27 regional natural areas and trail corridors targeted for acquisition.

The Metro Council wants your ideas and input. We've been talking with scientists, land-use experts, groups and individuals who have special knowledge about the natural resource values and community visions for these areas. With this information Metro has begun to identify the potential strategies and opportunities that will achieve the best results. Now we need to know: Do we have it right? What have we missed? What is most important to you?

2006 NATURAL AREAS BOND DESCRIPTION FOR THIS TARGET AREA

Additions to this existing west side greenway will extend the corridor from the Tualatin River into a highly urbanized, "walker challenged" area of the city, and further protect water quality in one of our critical regional rivers.

QUESTIONS

- 1. The following priorities were identified in the Fanno Creek Linkages and Trail target area based on information provided by key stakeholders in the area about the regional trail. Rank in order of importance to you, with 1 being the most important.**

- _____ Securing missing sections of the proposed regional trail corridor connecting Cook Park with Woodard Park. (**Map area A**)
- _____ Securing missing sections of the proposed regional trail corridor within the City of Portland connecting the trail from the Garden Home Recreation Center to the Willamette River (including along the former Red Electric railroad corridor). (**Map area B**)

- 2. In general, what should be emphasized in the Fanno Creek Linkages and Trail target area? Rank in order of importance to you from 1 to 5, with 1 being the most important and 5 being the least important.**

- _____ Protecting lands along the main stem of Fanno Creek for water quality benefits.
- _____ Protecting water quality along the main tributaries of Fanno Creek, including Pendleton Creek, Vermont Creek, Woods Creek and Ash Creek.
- _____ Securing a publicly owned regional trail corridor serving both recreational users and commuters.
- _____ Preserving wetlands along Fanno Creek to benefit water quality and wildlife habitat.
- _____ Protecting areas adjacent to the trail corridor to benefit wildlife and to improve access and connectivity to and from adjacent parks, natural areas and other trails.

- 3. Are there other priorities that the Metro Council should consider in the Fanno Creek Linkages and Trail target area? Please be specific.**

4. Do you have suggestions about partnerships Metro should pursue or other innovative ways to leverage regional funding and enhance this natural area?

5. Are you interested in participating in Metro's Natural Areas program by selling or donating your property or selling or donating a trail or conservation easement on your property?

☐ Yes ☐ No If yes, please be sure to provide your contact information below.

6. Do you have any other comments about this target area?

☐ **Please add my name to the Fanno Creek Linkages and Trail target area mailing list for future information, public meetings and events.**

Name _____

Address _____

City/State/Zip _____

Phone _____

E-mail _____

**You may complete this questionnaire online at
www.metro-region.org/naturalareas**

or mail it to Metro at
600 NE Grand Avenue, Portland, OR 97232
(503) 797-1741



Fanno Creek Linkages Survey Results

1. The following priorities were identified in the Fanno Creek Linkages target area based on information provided by key stakeholders in the area about the regional trail. Rank in order of importance to you.

	most important	least important	Rating Average	Response Count
Securing missing sections of the proposed regional trail corridor connecting Cook Park with Woodard Park. (Map area A)	31.3% (10)	68.8% (22)	1.69	32
Securing missing sections of the proposed regional trail corridor within the City of Portland connecting the trail from the Garden Home Recreation Center to the Willamette River (including along the former Red Electric railroad corridor). (Map area B)	74.2% (23)	25.8% (8)	1.26	31
	answered question			33
	skipped question			0

2. In general, what should be emphasized in the Fanno Creek Linkages target area?

	most important				least important	Rating Average	Response Count
Protecting lands along the main stem of Fanno Creek for water quality benefits.	10.0% (3)	20.0% (6)	6.7% (2)	20.0% (6)	43.3% (13)	3.67	30
Protecting water quality along the main tributaries of Fanno Creek, including Pendleton Creek, Vermont Creek, Woods Creek and Ash Creek.	3.3% (1)	16.7% (5)	26.7% (8)	30.0% (9)	23.3% (7)	3.53	30
Securing a publicly owned regional trail corridor serving both recreational users and commuters.	62.5% (20)	6.3% (2)	12.5% (4)	3.1% (1)	15.6% (5)	2.03	32
Preserving wetlands along Fanno Creek to benefit water quality and wildlife habitat.	12.9% (4)	9.7% (3)	51.6% (16)	16.1% (5)	9.7% (3)	3.00	31
Protecting areas adjacent to the trail corridor to benefit wildlife and to improve access and connectivity to and from adjacent parks, natural areas and other trails.	12.5% (4)	46.9% (15)	3.1% (1)	31.3% (10)	6.3% (2)	2.72	32
	answered question						32
	skipped question						1

3. Are there other priorities that the Metro Council should consider in the Fanno Creek Linkages target area? Please be specific.

Emphasize trail acquisition in Portland this round, since it was not a focus (due to route not being designated) in 1995 bond.

"Caution" signs when approach trail curves on weekend of heavy use. I have almost crashed on pedestrians who walk in the middle of the path. Instructions on path, etiquette at trail heads would be terrific.

Please, please, please connect the trail to the Willamette River Trail, and post adequate signs along the trail.

All of the above are important. Since southwest is so lacking in sidewalks, our trails system is particularly important. The more neighborhood connections the better, so that people can go for a walk from their doors. Improving walkability is also the best way to reduce traffic and its associated pollution. Of course the water quality issues are important too. The Garden Home and Raleigh Hills areas need much more pedestrian connectivity as well as green spaces.

Washington Square Regional Center Trail route east of 217 should be close to Oak St. to preserve largest possible greenspace (or lands LLP and Dr. Davis) without human impact, see map marking #1.

Please protect wildlife habitat for sensitive species such as turtles, red-legged frogs, etc. PLEASE make this a priority!

Fill gap between 92nd and HWY 217.

Would like to be able to bicycle from Fanno Headwaters to the Willamette.

In general, I think Metro's priorities for this funding are off the mark. The money should be used to purchase and conserve open space inside the urban growth boundary - in people's neighborhoods - for future use and enjoyment. Preserving water quality and wildlife habitat, especially on land outside of Metro's actual boundaries, is more properly the task of state agencies like the Department of Environmental Quality.

A pedestrian foot bridge across Stephens Creek in SW Portland at Stephens Creek Nature Park (SW Bertha Blvd. at SW Chestnut Drive and SW Capitol Hill Road).

3. Do you have suggestions about partnerships Metro should pursue or other innovative ways to leverage regional funding and enhance this natural area? If so, please specify.

Hit up Burlington Northern for donating tracks or land?

The Garden Home Recreation Center would be a good place to advertise your concerns.

Partner with Tualatin River Keepers, Clean Water Services, City of Tigard.

Work with Portland Parks for trail (Wash Square Rec. Center Trail) around perimeter of Redtail Golf Course.

Obviously, Metro should partner with existing local governments who better know the needs of their citizens. Entities with their own taxing authority could combine their own funding with Metro greenspace dollars to get the maximum benefit, both fiscally and in terms of land conservation.

Use a portion of Portland's local share to partner with Portland on this investment.

4. Do you have any other comments about this target area? If so, please specify.

The Fanno Creek trail would be a safe and efficient commuter trail ... if it were completed from Beaverton through Tigard. Currently, the trail is fractured and there are inconvenient and often unsafe crossings and detours that must be made to travel the corridor. Linking all the disparate sections will create a beautiful greenway that is encouraging to use; bicycle commuters would have a safe, off-street path to use, increasing ridership and decreasing morning and evening congestion on major roads.

The Garden Home trail, from the community center on Oleson to Scholls Ferry Rd, has many wetland areas that are trashy and overgrown with invasive plants, such as English ivy and Himalayan blackberry. There also is a growing problem with Japanese knotweed. Occasionally deer, coyotes, pileated woodpeckers, and kingfishers are spotted, along with woodland hawks. Please clean up and preserve this area for wildlife.

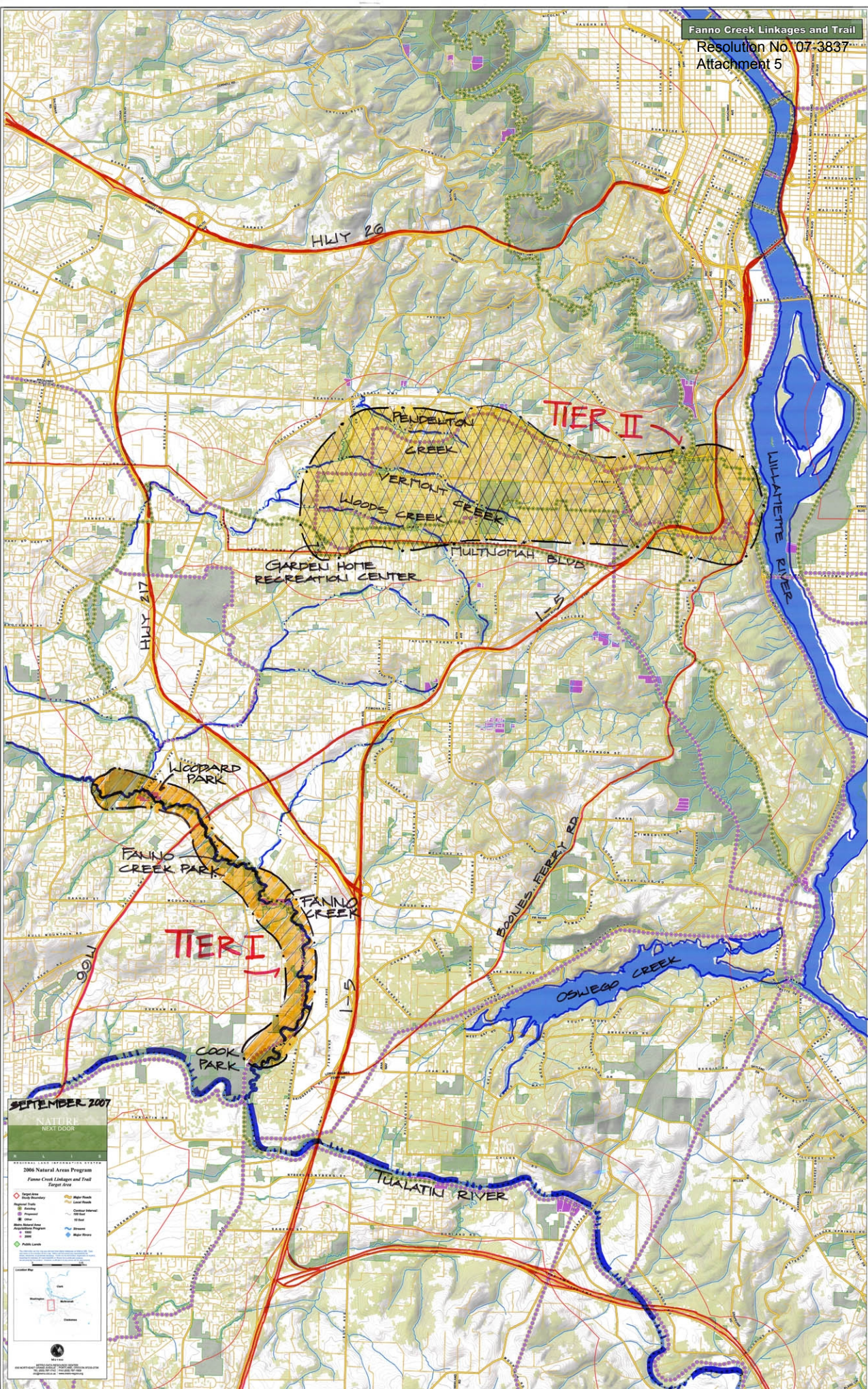
We are interested in a trail to connect the Raleigh Ridge and Wilcox West developments, which abut each other on Patton Road (near Scholls Ferry) but have no path connecting the two housing developments. There is a tributary of Fanno Creek running between these developments. We'd need a footbridge and an easement in each development to do the connection. Raleigh Ridge is cut off for pedestrians because there are no sidewalks on either Patton or Scholls Ferry. If kids could cross the creek into Wilcox West they could connect with the network of paths there that go to Bridlemile School and the rest of the Bridlemile neighborhood.

Yes, see attached... [there is a map attached to paper questionnaire with some lines/arrows drawn on it, and an extra sheet of paper]

Yes, please, we do not want trails along all the creeks! Some areas need to be kept JUST for wildlife - especially in urban areas.

Here and elsewhere, the effort should be focused on public purchase of land under threat of development.

Trail improvements along trail linkage.



Agenda Item Number 5.7

Resolution No. 07-3838, Approving the Natural Areas Acquisition
Refinement Plan for the Tryon Creek Linkages Target Area

Metro Council Meeting
Thursday, September 6, 2007
Council Chamber

BEFORE THE METRO COUNCIL

APPROVING THE NATURAL AREAS ACQUISITION
REFINEMENT PLAN FOR THE TRYON CREEK
LINKAGES TARGET AREA

RESOLUTION NO. 07-3838

Introduced by Chief Operating Officer
Michael J. Jordan, with the
concurrence of Council President
David Bragdon

WHEREAS, on March 9, 2006, the Metro Council adopted Resolution No. 06-3672B “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” recommending submission for voter approval a general obligation bond to preserve and protect natural areas, clean water, and fish and wildlife (the “2006 Natural Areas Bond Measure” or “Measure”); and

WHEREAS, at the election held on November 7, 2006, the voters approved Ballot Measure 26-80, the 2006 Natural Areas Bond Measure; and

WHEREAS, the Tryon Creek Linkages Target Area was identified in the Measure as one of 27 regional target areas for land acquisition, building on the success of land acquisitions in the Tryon Creek Linkages Target Area pursuant to Metro’s 1995 Open Spaces Bond Measure Program; and

WHEREAS, as provided in the 2006 Natural Areas Bond Measure, Metro has undertaken a public refinement process to establish specific acquisition strategies, goals, objectives, and a confidential tax-lot specific acquisition target area map for each of the 27 target areas; and

WHEREAS, Metro’s refinement process included the compilation of available information about each target area; biological field visits and expert analysis of maps; interviews with key stakeholders including natural resource experts, property owners, representatives from state and local government agencies, and advocates from water quality, fish, and wildlife preservation interest groups; and eight public open houses at sites throughout the region and a “virtual” open house available via the internet, at which draft refinement plans were made available for public review and participants could share their target area priorities either in-person or electronically; and

WHEREAS, on March 1, 2007, the Council approved Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” authorizing the Metro Chief Operating Officer to acquire properties identified on a Council-approved target area “confidential refinement map;” and

WHEREAS, the Council has reviewed the draft refinement plans and considered information it has received from citizens, scientists, advocates, and state and local governments; now, therefore

BE IT RESOLVED that the Metro Council adopts the Tryon Creek Linkages Refinement Plan attached hereto as Exhibit A, including the confidential tax-lot specific map reviewed by the Council in Executive Session on September 4, 2007, and signed by Council President David Bragdon on that date, and hereby authorizes the Chief Operating Officer to acquire properties in the Tryon Creek Linkages Target Area consistent with the Council-approved Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan.

ADOPTED by the Metro Council this _____ day of _____ 2007.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

**2006 NATURAL AREAS ACQUISITION PROGRAM
TRYON CREEK LINKAGES TARGET AREA REFINEMENT PLAN**

Background

The 1995 refinement goals for Tryon Creek included protecting the streambed and riparian areas along Tryon Creek, providing a linkage between Tryon Creek State Park and Marshall Park, and acquiring key parcels in the headwaters of Tryon Creek and Arnold Creek. Great progress was made in making purchases on the main stem between Tryon Creek State Park and Marshall Park, and 59 acres were purchased, exceeding the original 20-acre goal.

The 2006 Natural Areas bond measure stated:

Acquisition of key land parcels will build on the successful efforts to protect Tryon Creek State Natural Area and riparian areas of Tryon Creek's major tributaries.

Established science continues to show the key importance of intact riparian areas and headwaters for water quality and quantity protection, wildlife habitat and maintenance of overall watershed health.

Target Area Description

The Tryon Creek Watershed covers more than 4,000 acres, including about 3,000 acres within Portland's city limits. Tryon Creek flows southeast for approximately seven miles from its headwaters near Multnomah Village to its confluence with the Willamette River in Lake Oswego and is one of the only streams in the metropolitan area with a run of steelhead trout.

Parks and natural areas make up about 21 percent of the watershed; the rest of the area is predominately made up of single-family homes. The 645-acre Tryon Creek State Natural Area is Oregon's only state park within a major metropolitan area and makes up a large portion of the undeveloped area in the Tryon Creek Watershed. The area supports good wildlife habitat and recreation opportunities. Protecting and restoring the streams that feed into Tryon Creek will benefit water quality as well as support the integrity of the wildlife habitat at Tryon Creek State Natural Area.

Refinement Process

During the refinement process, Metro staff compiled available information about the Tryon Creek Linkages target area, analyzed maps and conducted biological field visits. Individuals were interviewed representing various government agencies, property owners, interested friends groups and natural resource experts. The key concerns expressed during the interviews are summarized in Attachment 1.

Public open houses to discuss the proposed Refinement Plan were held on June 13, 2007 at Metro Regional Center and on June 18, 2007 at Athey Creek Middle School, two of eight such open houses held throughout the region. Notices of the open houses were mailed to area residents and other interested citizens. Metro also conducted a "virtual" open house by making target area informational materials, including maps, available "online" via the internet and allowing participants to share their target area priorities electronically. A total of 527 people attended the regional open houses, and the online open house had 6,363 visits from 3,419 unique visitors. More than 700 target area surveys were submitted either in person or online. Sixteen people completed the Tryon Creek Linkages survey. A copy of the survey questionnaire is included as Attachment 2. The map associated with the questionnaire for this target area is included as Attachment 3, and complete survey results are included as Attachment 4.

Findings

- The Tryon Creek Linkages target area is a regionally significant natural area due to its fish, wildlife, regional recreation and water quality values.
- The Tryon Creek State Natural Area is the predominate feature within the Tryon Creek Linkages target area and provides significant wildlife and fish habitat.
- Protecting water quality in the tributaries and maintaining a contiguous open space corridor connecting publicly owned properties in the Tryon Creek mainstem canyon upstream of the State Natural Area has support among a large number of stakeholders.
- Water quality is a primary concern in Tryon Creek. Development pressure in the watershed is increasing runoff, altering natural flow regimes, and reducing the amount of forest cover. The amount of suspended sediment being deposited in Tryon Creek continues to increase.
- Maintenance or enhancement of fish resources will require careful attention to water quality issues. Protection of forested buffer areas around the State Natural Area would enhance watershed and interior wildlife habitat protection.
- Tributary creek corridors in the Tryon Creek watershed are important to protect for water quality, habitat value and flood control. Forested sections of these creek corridors are also important for controlling temperature and stream siltation.
- Arnold Creek is a key tributary stream to Tryon Creek for water quality and wildlife habitat but has very little publicly owned land within its sub-watershed.
- Established science continues to show the key importance of intact headwaters for water quality and quantity protection, habitat and maintenance of overall watershed health.
- Important upland and riparian habitat connections exist between the Tryon Creek Watershed and extensive habitat areas along the Willamette River.
- Sixteen people completed the survey about Tryon Creek. Additional commentary was provided orally at the open house, most of which was consistent with the written responses. In rank order, the public priorities were:
 1. *Map area A* – Protect lands along the main stem of Tryon Creek linking the State Natural Area with other publicly owned lands for habitat and trail connections.
 2. *Map area C* – Protect wildlife corridors and upland forest connections between the Tryon Creek watershed and the Willamette River.
 3. *Map area B* – Protect the forested edges around Tryon Creek State Natural Area and creating a greater natural buffer for wildlife habitat and for visitors.
 4. *Map area D* – Protect headwater areas in the upper main stem of Arnold creek for water quality benefits.

Goals

- Acquire few key land parcels to complete the connection between existing public lands and Tryon Creek State Natural Area.
- Protect connections to adjacent watersheds to maintain important wildlife corridors.

Objectives

A target area map showing the tiered objectives described below is included as Attachment 5.

Tier I Objective

- Close the remaining gaps in public ownership along the mainstem of Tryon Creek to create a continuous corridor that links to the Tryon Creek State Natural Area.

Tier II Objective

- Protect important wildlife corridors and upland forest connections between the Tryon Creek watershed and the Willamette River.

Partnership Objectives

- Pursue partnership opportunities with the City of Portland's Bureau of Environmental Services and Parks and Recreation, City of Lake Oswego, Oregon State Parks, Clackamas County and Friends of Tryon Creek to leverage the regional investment in the Tryon Creek Linkages target area with local share funds and for management of purchased properties.
- Work with private landowners to explore opportunities for conservation easements and other water quality protection strategies.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 07-3838, APPROVING THE NATURAL AREAS ACQUISITION REFINEMENT PLAN FOR THE TRYON CREEK LINKAGES TARGET AREA

Date: September 6, 2007

Prepared by: Jim Desmond
Kathleen Brennan-Hunter

BACKGROUND—REFINEMENT PROCESS

The Natural Areas Bond Measure (Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” adopted by the Metro Council March 9, 2006) provided that Metro would undertake a “Refinement Process” to “gather additional information about each individual target area and begin zeroing in on particular parcels that would be valuable to acquire” (Exhibit A to Resolution No. 06-3672B). In addition, the Natural Areas Implementation Work Plan (Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” adopted by the Metro Council on March 1, 2007) authorized the Metro Chief Operating Officer to acquire properties without further Council approval if they have been identified on a Council-approved target area “confidential refinement map.” To implement those directives, the Refinement Plans for each target area contain overall target area objectives and confidential tax-lot specific target area maps identifying priority properties for acquisition, enabling Metro staff to begin the acquisition of property and property rights as detailed in the Natural Areas Implementation Work Plan.

Additional background information, target area information, a description of the specifics of the refinement process regarding this target area, and the refinement plan’s findings, goals, and objectives are described in further detail in Exhibit A to this resolution, the Tryon Creek Linkages Target Area Refinement Plan.

ANALYSIS/INFORMATION

1. **Known Opposition**

None.

2. **Legal Antecedents**

Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” adopted on March 9, 2006.

The voters’ approval of Metro’s 2006 Natural Areas Bond Measure at the general election held on November 6, 2006.

Resolution No. 07-3766A “Authorizing the Chief Operating Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” adopted by the Metro Council on March 1, 2007, established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

3. **Anticipated Effects**

Acquisition of natural area properties in the Tryon Creek Linkages target area to achieve the goals and purposes of the 2006 Natural Areas Bond Measure.

4. **Budget Impacts**

The FY 2007-08 budget includes budgetary authority to purchase \$35 million in natural area lands, with an additional \$15.4 million in contingency, if necessary. It is estimated, based on historical spending patterns, that this authority will be sufficient to cover the anticipated acquisition activity for this fiscal year. Additional unappropriated fund balance (\$64 million) exists for land acquisition in future years, along with the authority to issue up to an additional \$102 million in General Obligation bonds in support of this program.

RECOMMENDED ACTION

Staff recommends adoption of Resolution No. 07-3838.

Summary of Comments from Stakeholder Interviews for Tryon Creek Linkages Target Area

Stakeholder(s) Interviewed

Jim Labbe, Portland Audubon
Bob Sallinger, Portland Audubon
M G Devereux, Oregon State Parks and Recreation Dept.
Amin Wahab, City of Portland Bureau of Environmental Services
Don Baacke, Southwest Trails
Lisa Hammerlynck, City of Lake Oswego Parks
Deborah Lev, City of Portland Parks and Recreation
Stephanie Wagner, Friends of Tryon Creek State Park
Kathleen Murrin, City of Portland Parks & Recreation
Virginia Bowers, Three Rivers Land Conservancy
Christie Galen, Lewis & Clark College

Key Themes Discussed

Linking public properties along the Tryon mainstem

- Link up the publicly owned parcels along the Tryon Creek mainstem that separate the various public parks within the Tryon Creek canyon above the Tryon Creek State Natural Area.
- Public agencies are close to completing public ownership of substantial portions of the Tryon Creek riparian area above the state park.
- Areas of particular importance that were mentioned by stakeholders include:
 - Existing high quality wildlife habitat along Tryon Creek above the state park at the confluence with Arnold Creek.
 - The Boones Ferry “pinch” point where BES is looking into replacing the Boones Ferry culvert. This would open upper Tryon to fish passage for the listed salmonids in Tryon Creek.
 - There are numerous restoration opportunities and opportunities for purchase of conservation easements.

Forested Edges of Tryon Creek State Natural Area

- The forested edges around the Tryon Creek State Natural Area are important upland and riparian habitats and represent vital missing pieces in the completion of the park.
- Protecting the edge properties improves interior forest habitat by maintaining a deep buffer of vegetation between the forest edge and the interior.
- There are likely opportunities to purchase some of the larger border properties and sell back a small portion for development after land division, protecting the majority of the parcels in public ownership.
- Estate planning and conservation easements may also be successful strategies for large properties around the state park boundaries.

Wildlife and recreation corridors between Tryon Creek and the Willamette River

- The habitat connections between the Tryon Creek Watershed and the Willamette River are important to maintain for wildlife habitat health and recreational opportunities.
- The Cemetery/Lewis & Clark College connection over the ridge top in the Dunthorpe area is a particularly important habitat connection and upland habitat area.
- Tryon Creek confluence with the Willamette River in Lake Oswego is an important area for habitat and possibly recreational opportunities.

Trails and public access

- The Hillsboro to Lake Oswego trail route is designated to pass through the Tryon Creek Watershed and there are opportunities to provide missing trail linkages between the public parks along the Tryon Creek mainstem.
 - SW 18th Drive north of the Marshall Park gully.
- The City of Portland's SW Trails Plan also identifies properties that would connect existing trail sections.
- Look for opportunities for connections to the Willamette Greenway Trail.

Protect headwaters to maintain water quality

- Headwater streams and upland forests are important areas to protect for maintaining water quality and may have conservation easement opportunities.
- Nettle Creek and Park Creek are two of the healthiest tributaries to Tryon Creek and have good intact riparian and instream habitat.
- The upper one-third of the mainstem of the Tryon Creek Watershed currently has water quality and quantity problems especially above SW 26th & Taylor's Ferry and between Taylor's Ferry & I-5.
- Some headwaters areas are outside of Portland and Lake Oswego resource protection overlays and are vulnerable to development and degradation.

Arnold Creek riparian forest and connectivity

- Vacant, forested headwater lands in Arnold/Upper Arnold needs protection.
- Arnold Creek remaining riparian forest may have easement opportunities

Look for partnerships with other public and private entities

- There may be opportunities to stretch and leverage bond money with private interests or public/private partnerships with entities such as the Cities of Portland and Lake Oswego, Oregon State Parks, Friends of Tryon Creek, the Three Rivers Conservancy, and others.
- Some headwaters areas are outside of Portland and Lake Oswego resource protection overlays and are vulnerable to development and degradation.

Miscellaneous Comments

- The Iron Mountain/Kelly Creek area has rare or unique habitats and plant communities and is a high wildlife value corridor.
- Unincorporated Multnomah County areas are under heavy pressure to create estate lots and there is no septic or public sewer access.

QUESTIONNAIRE

TARGET AREA: TRYON CREEK LINKAGES

In November 2006 voters directed the Metro Council to extend a regionwide program and acquire between 3,500 and 4,500 acres of additional natural areas to protect water quality and fish and wildlife habitat and to provide future generations opportunities for greater access to nature. Now it's time for the Metro Council to refine priorities in the 27 regional natural areas and trail corridors targeted for acquisition. The 1995 acreage goal for this target area was 20 and Metro has acquired 59 acres to date. The 2006 program will provide additional funding for protection goals in this target area.

The Metro Council wants your ideas and input. We've been talking with scientists, land-use experts, groups and individuals who have special knowledge about the natural resource values and community visions for these areas. With this information Metro has begun to identify the potential strategies and opportunities that will achieve the best results. Now we need to know: Do we have it right? What have we missed? What is most important to you?

2006 NATURAL AREAS BOND DESCRIPTION FOR THIS TARGET AREA

Acquisition of key land parcels will build on the successful efforts to protect Tryon Creek State Natural Area and riparian areas of Tryon Creek's major tributaries.

QUESTIONS

1. **The following priorities were identified in the Tryon Creek Linkages target area based on scientific information about benefits to water quality, habitat diversity, wildlife connectivity and/or restoration potential and from information provided by key stakeholders in the area. Rank in order of importance to you from 1 to 4, with 1 being the most important and 4 being the least important.**

- _____ Protecting lands along the main stem of Tryon Creek linking the State Natural Area with other publicly owned lands for habitat and trail connections. **(Map area A)**
- _____ Protecting the forested edges around Tryon Creek State Natural Area and creating a greater natural buffer for wildlife habitat and for visitors. **(Map area B)**
- _____ Protecting habitat corridors and upland forest connections between the Tryon Creek watershed and the Willamette River. **(Map area C)**
- _____ Protecting headwater areas in the upper main stem of Arnold creek for water quality benefits. **(Map area D)**

2. **In general, what should be emphasized in the Tryon Creek Linkages target area? Rank in order of importance to you from 1 to 6, with 1 being the most important and 6 being the least important.**

- _____ Protecting and restoring fish and wildlife habitat.
- _____ Protecting the water quality of rivers and stream corridors.
- _____ Protecting wetlands and floodplain areas for water quality and wildlife.
- _____ Providing public access, including trails and pathways for recreation.
- _____ Providing opportunities for environmental education and wildlife watching.
- _____ Securing remaining gaps in trail connections between parks along Tryon Creek.

3. Are there other priorities that the Metro Council should consider in the Tryon Creek Linkages target area? Please be specific.

4. Do you have suggestions about partnerships Metro should pursue or other innovative ways to leverage regional funding and enhance this natural area?

5. Are you interested in participating in Metro's Natural Areas program by selling or donating your property or selling or donating a conservation easement on your property?

☐ Yes ☐ No If yes, please be sure to provide your contact information below.

6. Do you have any other comments about this target area?

☐ Please add my name to the Tryon Creek Linkages target area mailing list for future information, public meetings and events.

Name _____

Address _____

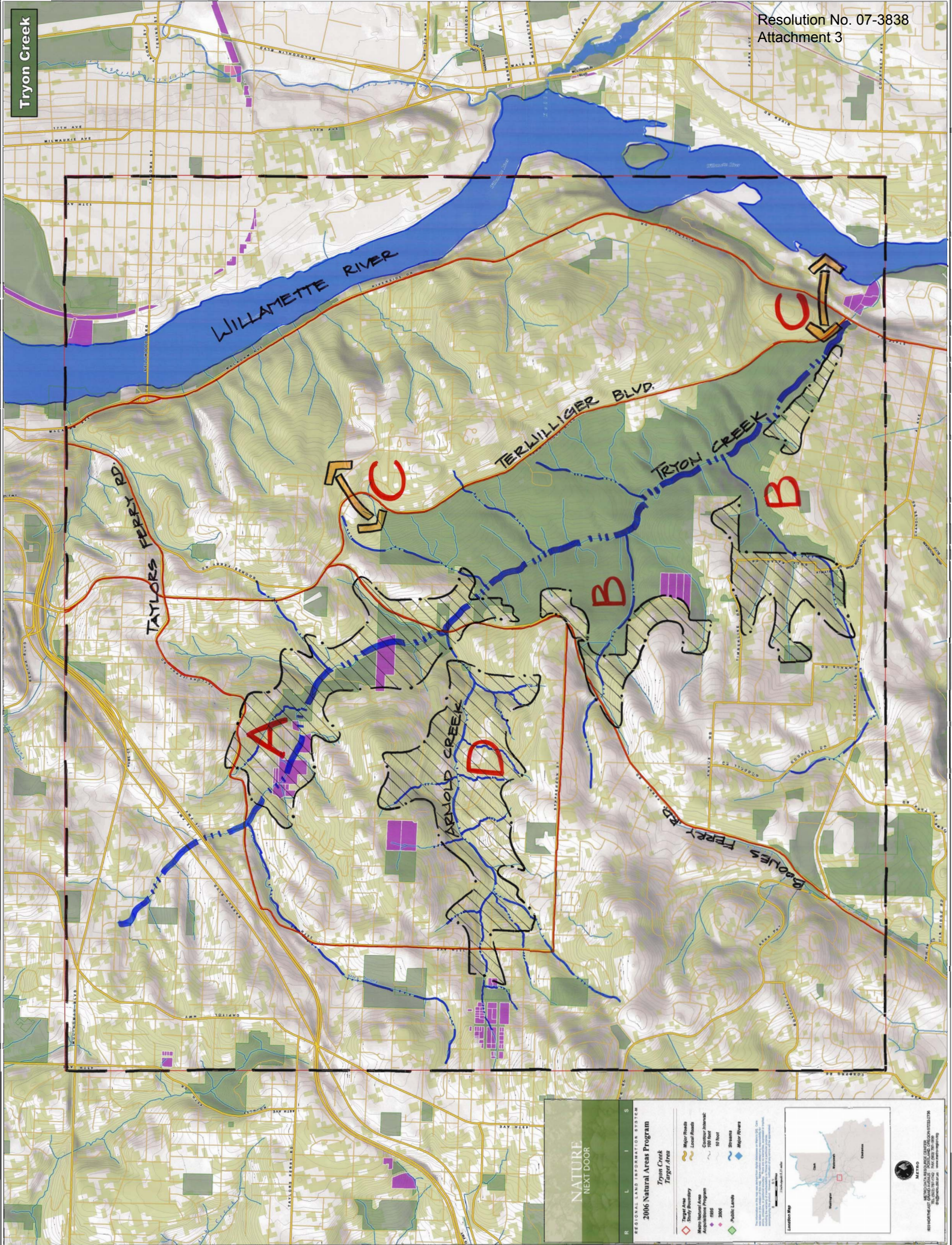
City/State/Zip _____

Phone _____

E-mail _____

**You may complete this questionnaire online at
www.metro-region.org/naturalareas**

or mail it to Metro at
600 NE Grand Avenue, Portland, OR 97232
(503) 797-1741

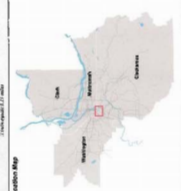


NATURE
NEXT DOOR

2006 Natural Areas Program

Tryon Creek
Target Area

- Target Area
- Study Boundary
- Adjacent Property
- 1985
- 2000
- Public Lands
- Major Roads
- Local Roads
- County Road
- 100 Feet
- 50 Feet
- Streams
- Major Rivers



Scale: 1 inch = 1 mile
Map Date: 10/10/06
Map Author: [illegible]
Map Reviewer: [illegible]
Map Approval: [illegible]

Tryon Creek Linkages Survey Results

1. The following priorities were identified in the Tryon Creek Linkages target area based on scientific information about benefits to water quality, habitat diversity, wildlife connectivity and/or restoration potential and from information provided by key stakeholders in the area. Rank in order of importance to you.

	most important			least important	Rating Average	Response Count
Protecting lands along the main stem of Tryon Creek linking the State Natural Area with other publicly owned lands for habitat and trail connections. (Map area A)	31.3% (5)	37.5% (6)	12.5% (2)	18.8% (3)	2.19	16
Protecting the forested edges around Tryon Creek State Natural Area and creating a greater natural buffer for wildlife habitat and for visitors. (Map area B)	25.0% (4)	18.8% (3)	37.5% (6)	18.8% (3)	2.50	16
Protecting habitat corridors and upland forest connections between the Tryon Creek watershed and the Willamette River. (Map area C)	25.0% (4)	31.3% (5)	12.5% (2)	31.3% (5)	2.50	16
Protecting headwater areas in the upper main stem of Arnold creek for water quality benefits. (Map area D)	18.8% (3)	12.5% (2)	37.5% (6)	31.3% (5)	2.81	16
	answered question					16
	skipped question					0

2. In general, what should be emphasized in this target area? Rank in order of importance to you.

	most important				least important		Rating Average	Response Count
Protecting and restoring fish and wildlife habitat.	30.8% (4)	15.4% (2)	23.1% (3)	15.4% (2)	0.0% (0)	15.4% (2)	2.85	13
Protecting the water quality of river and stream corridors.	23.1% (3)	23.1% (3)	38.5% (5)	0.0% (0)	0.0% (0)	15.4% (2)	2.77	13
Protecting wetlands and floodplain areas for water quality and wildlife.	15.4% (2)	23.1% (3)	7.7% (1)	23.1% (3)	23.1% (3)	7.7% (1)	3.38	13
Providing public access, including trails and pathways for recreation.	0.0% (0)	23.1% (3)	7.7% (1)	15.4% (2)	15.4% (2)	38.5% (5)	4.38	13
Providing opportunities for environmental education and wildlife watching.	7.7% (1)	0.0% (0)	15.4% (2)	23.1% (3)	38.5% (5)	15.4% (2)	4.31	13
Securing remaining gaps in trail connections between parks along Tryon Creek.	23.1% (3)	15.4% (2)	7.7% (1)	23.1% (3)	23.1% (3)	7.7% (1)	3.31	13
	answered question							13
	skipped question							3

3. Are there other priorities that the Metro Council should consider in this target area? If so, please specify.

Mountain biking!
Obtain trail linkage between Marshal and Maricara Parks
The southern section of area A is particularly important where Tryon Creek passes under Boones Ferry Road.
Buy the Tryon Creek Farm outright. It's located on Boones Ferry Rd adjacent to the state lands.
The trail corridor connecting the Lewis and Clark College area to the Willamette River and the Sellwood Bridge will be heavily used and should remain a trail priority in this area...currently the bike trail goes through Riverview Cemetery which is fenced off at night and can be dangerous at any time of the day because of the combination of blind turns and autos that drive through the cemetery.

4. Do you have suggestions about partnerships Metro should pursue or other innovative ways to leverage regional funding and enhance this natural area? If so, please specify.

Maybe Three Rivers Land Conservancy could help work with landowners to acquire conservation easements.
The Friends of Tryon Creek and Three Rivers Land Conservancy are willing to look at partnerships for acquisition and easements.

5. Do you have any other comments about this target area? If so, please specify.

Please do it right, we live here. Thanks.

The trail gaps are really critical because rogue trails are currently having negative impact on creek. Need enough land to get most of trail farther from creek.

Improving water quality and wildlife habitat in the area surrounding Tryon Creek State Natural Area is very important to all priorities listed above, and it is difficult to separate these out from each other. By focusing on water quality and wildlife habitat, we can also enhance educational and recreational opportunities in the Tryon Creek State Natural Area and foster a greater appreciation in the surrounding area of SW Portland for the interconnectedness between our residential and business communities and the natural environment. Securing pathways and trails ultimately connecting to Tryon Creek State Park also promotes the foregoing goals.

The Friends of Tryon Creek board sees Area A as a priority.

We really want to bring the salmon back to Tryon Creek! Metro can really help.

Good work to date.



Agenda Item Number 5.8

Resolution No. 07-3840, Approving the Natural Areas Acquisition
Refinement Plan for the Columbia Slough Target Area

Metro Council Meeting
Thursday, September 6, 2007
Council Chamber

BEFORE THE METRO COUNCIL

APPROVING THE NATURAL AREAS ACQUISITION
REFINEMENT PLAN FOR THE COLUMBIA SLOUGH
TARGET AREA

RESOLUTION NO. 07-3840

Introduced by Chief Operating Officer
Michael J. Jordan, with the
concurrence of Council President
David Bragdon

WHEREAS, on March 9, 2006, the Metro Council adopted Resolution No. 06-3672B “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” recommending submission for voter approval a general obligation bond to preserve and protect natural areas, clean water, and fish and wildlife (the “2006 Natural Areas Bond Measure” or “Measure”); and

WHEREAS, at the election held on November 7, 2006, the voters approved Ballot Measure 26-80, the 2006 Natural Areas Bond Measure; and

WHEREAS, the Columbia Slough Target Area was identified in the Measure as one of 27 regional target areas for land acquisition; and

WHEREAS, as provided in the 2006 Natural Areas Bond Measure, Metro has undertaken a public refinement process to establish specific acquisition strategies, goals, objectives, and a confidential tax-lot specific acquisition target area map for each of the 27 target areas; and

WHEREAS, Metro’s refinement process included the compilation of available information about each target area; biological field visits and expert analysis of maps; interviews with key stakeholders including natural resource experts, property owners, representatives from state and local government agencies, and advocates from water quality, fish, and wildlife preservation interest groups; and eight public open houses at sites throughout the region and a “virtual” open house available via the internet, at which draft refinement plans were made available for public review and participants could share their target area priorities either in-person or electronically; and

WHEREAS, on March 1, 2007, the Council approved Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” authorizing the Metro Chief Operating Officer to acquire properties identified on a Council-approved target area “confidential refinement map;” and

WHEREAS, the Council has reviewed the draft refinement plans and considered information it has received from citizens, scientists, advocates, and state and local governments; now, therefore

BE IT RESOLVED that the Metro Council adopts the Columbia Slough Refinement Plan attached hereto as Exhibit A, including the confidential tax-lot specific map reviewed by the Council in Executive Session on September 4, 2007, and signed by Council President David Bragdon on that date, and hereby authorizes the Chief Operating Officer to acquire properties in the Columbia Slough Target Area consistent with the Council-approved Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan.

ADOPTED by the Metro Council this _____ day of _____ 2007.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

**2006 NATURAL AREAS ACQUISITION PROGRAM
COLUMBIA SLOUGH TARGET AREA REFINEMENT PLAN**

Background

The Columbia Slough is one of very few areas in North and Northeast Portland with the potential for restoring fish and wildlife habitat. There is a base of existing habitat including: Big Four Corners, Prison Pond, Little Four Corners, Smith and Bybee Wetlands, Wapato Slough and Vanport Wetlands.

The 2006 Natural Areas bond measure stated:

The Columbia Slough is one of very few areas in North and Northeast Portland with the potential for restoring fish and wildlife habitat. Acquisition along the slough will improve water quality in its critical reaches, provide trail connections to existing recreation and wildlife corridors and help complete an important section of the 40-Mile Loop Trail.

Science information indicates that natural vegetation along the Columbia Slough lowers the water temperature and improves water quality as well as protects fish and wildlife habitat. The slough provides habitat for native Chinook, coho and steelhead. Three species of freshwater mussels, increasingly rare in Oregon, inhabit several reaches throughout the slough. Mammals such as deer, beaver, river otter and Western painted turtles are more common in the slough, and about 175 bird species have been documented in the slough.

Efforts are underway to close gaps in the Columbia Slough segment of the 40-Mile Loop Trail, develop neighborhood connections to local and regional trails and increase access for paddlers on the slough.

Target Area Description

The Columbia Slough is a 19-mile long remnant of lakes, wetlands and slow-moving channels in the southern floodplain of the Columbia River. It stretches from its origin at the 102-acre Fairview Lake and the headwaters of Fairview Creek near Grant Butte in Gresham westward to the 2,000-acre Smith and Bybee Wetlands Natural Area and to its confluence with the Willamette River.

The lower slough is free-flowing, but most of the slough is contained within a system of levees and floodgates and is managed by local drainage districts. Historically, the slough absorbed flood waters from the Columbia River, but in the early 1920s levees were constructed to prevent seasonal flooding and the waterway was transformed into the channeled and highly managed system now known as the Columbia Slough.

Today, the nearly 40,000 acres of lands that drain to the Columbia Slough are heavily urbanized containing 24,000 homes and 4,500 businesses including commercial and industrial uses, the Portland International Airport and several golf courses. With development and altered water circulation, the Columbia Slough experienced serious water quality decline. However, since the elimination of Combined Sewer Overflows in 2000, and watershed-wide restoration efforts, the slough is cleaner today than it has been in more than 100 years.

In spite of its urbanized character, the Columbia Slough contains surprising wildlife and plant diversity.

Refinement Process

During the refinement process, Metro staff compiled available information about the Columbia Slough target area, analyzed maps and conducted biological field visits. Individuals were interviewed

representing various governmental agencies, property owners, interested friends groups and natural resource experts. The key concerns expressed during the interviews are summarized in Attachment 1.

Public open houses to discuss the proposed Refinement Plan were held on June 20, 2007 at the St. Johns Community Center and on June 21 at Gresham City Hall, two of eight such open houses held throughout the region. Notices of the open houses were mailed to area residents and other interested citizens. Metro also conducted a “virtual” open house by making target area informational materials, including maps, available “online” via the internet and allowing participants to share their target area priorities electronically. A total of 527 people attended the regional open houses, and the online open house had 6,363 visits from 3,419 unique visitors. More than target area 700 surveys were submitted either in person or online. Sixty-nine people completed the Columbia Slough survey. A copy of the survey questionnaire is included as Attachment 2. The map associated with the questionnaire for this target area is included as Attachment 3, and complete survey results are included as Attachment 4.

Findings

- Although the Columbia Slough has been altered through a system of levees and floodgates and the surrounding area has been heavily urbanized, the Slough remains regionally significant in terms of wildlife, plant diversity and water quality.

Water Quality

- Water quality of the Slough has improved since 2000, with the elimination of the Combined Sewer Overflows.
- Natural vegetation along the Slough lowers the water temperature and improves water quality, as well as protects fish and wildlife habitat.
- Water quality in the Columbia Slough is impaired in several respects, most notably temperature. Restoration and revegetation of the riparian zone, particularly on the south bank, can provide shade and improve the temperature regime of the slough, as well as help reduce sediment load from runoff.

Habitat

- The Columbia Slough is one of the few areas in North and Northeast Portland with the potential for restoring fish and wildlife habitat.
- The Slough provides habitat for numerous birds, such as heron, threatened bald eagles, endangered peregrine falcons, the streaked horned lark, migratory waterfowl, shorebirds and songbirds, including two sensitive species – the little willow flycatcher and the slender-billed nuthatch.
- The free-flowing Columbia Slough, with its alcoves, backwaters, wetlands and sandy beaches, provides habitat to native Chinook, Coho and steelhead.
- Three species of freshwater mussels, increasingly rare in Oregon, inhabit several reaches throughout the Slough.
- Beaver, river otter and Western painted turtles (listed sensitive-critical by Oregon Department of Fish and Wildlife) are found in the Columbia Slough.
- Significant existing habitat areas that have been identified through the refinement process include: Big 4 Corners, Prison Pond, Little Four Corners, Smith and Bybee Wetlands, Wapato Slough and Vanport Peninsula.

- Limited opportunities exist to provide additional core habitats. With the exception of golf courses and lands associated with the Portland Airport, much of the existing land is fully developed and not available for habitat. Any habitat restoration efforts on golf courses should be focused only in areas of the golf course directly adjacent to the slough riparian zone.
- Some core areas, particularly Big Four Corners, could be expanded with additional acquisitions. Further expansion would increase the habitat value of the sites and may present the best restoration opportunity in the target area.
- Several small areas, e.g., Prison Ponds and Little Four Corners, could serve as core habitat areas if they were expanded by acquisitions.
- Core habitats are absent from the middle slough. Establishment of additional core habitat in this area would benefit wildlife using the slough as a travel corridor.

Wildlife Corridors

- Travel corridors to connect the core habitats are highly desirable and increase the value of the core habitats. The slough's riparian zone is highly constrained due to extensive urbanization and it presents a severe challenge to creating a viable wildlife corridor.
- Portland's Bureau of Environmental Services has revegetated numerous portions of the slough's banks in partnership with public and private landowners.
- Several extensive sections of the slough's banks are levees maintained by the drainage districts. As such, these levees must be left open and they provide limited habitat value. Sections of the slough bank across from the levees have even greater value if vegetated for wildlife use.

Recreation

- The Columbia Slough offers regional recreational opportunities in terms of bicycle/pedestrian and water trails.
- Identified trail gaps include:
 - Extending the completed section of the Columbia Slough Trail from I-5 east towards NE 33rd Avenue then north to the existing 40-Mile Loop along Marine Drive at Bridgeton Road.
 - Completing the "Bridgeton Gap" in this section of the 40-Mile Loop (along Marine Drive) from I-5 to Bridgeton Road.
 - Extending the Columbia Slough Trail from west of NE 33rd Avenue to 158th Avenue, and from 185th east to connect with the future Gresham-Fairview Trail. In many sections, this route runs along top of a levee on the north side of the Slough.
 - Securing remaining gaps in the 40-Mile Loop along Marine Drive. This includes one east of I-205, and another connecting the Columbia Slough Trail to Blue Lake Regional Park and the future Gresham-Fairview Trail.
- Some areas of the Columbia Slough Trail do not have identified alignment, which may hamper the capacity to acquire property to help close those gaps.
- Potential connections to neighborhoods include connecting Metro's Smith and Bybee Wetlands Natural Area to the St. Johns neighborhood and providing a connection to the Peninsula Crossing Trail (at N. Portland Road).

Impact of Development Surrounding the Slough

- There is significant industrial use surrounding the Slough, including the Port of Portland's airport, which is one of the largest owners/land uses along the Slough. The Slough's watershed has been heavily impacted by this development.
- A need exists to cooperate with industrial landowners along the Slough, including the Port of Portland, to create appropriate transitions and buffer between developed land, trails and natural areas.
- There is little undeveloped land in the slough area, making acquisition challenging. The largest blocks of available, undeveloped properties consist of golf courses. There is a need to reconcile the public's desire to maintain golf courses as open space and the complexity and extent of restoration required to restore these sites to a natural state. Any habitat restoration efforts on golf courses should be focused only in areas of the golf course directly adjacent to the slough riparian zone.
- In addition to fee acquisitions, easements, dedications and donations, other voluntary property-owner agreements should be pursued in order to stretch the impact of the regional dollars spent.
- The Port of Portland's airport expansion may impact habitat along the Slough, due to FAA guidelines, which mandate avoiding the creation of new hazards within a 2-mile radius of the airport. However, because of the proposed expansion, the Port of Portland may be a potential partner, as it looks to create mitigation sites. Other potential partnerships are with the Multnomah County Drainage District and Columbia Slough Watershed Council.

Survey Results

- Sixty-nine people completed surveys about the Columbia Slough. Additional commentary was provided orally at the open house, which was consistent with the written responses. In rank order, the public priorities were:
 1. *Map area B* – Extend the completed section of the Columbia Slough Trail from I-5 east towards NE 33rd Avenue then north to the existing 40-Mile Loop along Marine Drive at Bridgeton Road.
 2. *Map area C* – Complete the “Bridgeton Gap” in this section of the 40-Mile Loop (along Marine Drive) from I-5 to Bridgeton Road.
 3. *Map area A* – Connect Metro's Smith and Bybee Wetlands Natural Area to the St. Johns neighborhood and provide a connection to the Peninsula Crossing Trail (at N. Portland Road).
 4. *Map area D* – Extend the Columbia Slough Trail from west of NE 33rd Avenue to 158th Avenue. In many sections, this route runs along top of a levee on the north side of the slough.
 5. *Map area E* – Secure remaining gaps in the 40-Mile Loop along Marine Drive. This includes one east of I-205, and another connecting the Columbia Slough Trail to Blue Lake Regional Park and the future Gresham-Fairview Trail.

Goal

Protect and enhance habitat and linkages along the Columbia Slough.

Objectives

A target area map showing the tiered objectives described below is included as Attachment 5.

Tier I Objectives

- Expand resource protection along the slough and at existing habitat areas, including Whitaker Ponds, Big Four Corners, Prison Pond, Little Four Corners, Smith and Bybee Wetlands Natural Area, Wapato Slough and Vanport Wetlands.
- Acquire property to create community connections between the St. Johns and Bridgeton neighborhoods and the Columbia Slough Trail and 40-Mile Loop Trail.
- Acquire property to close trail gaps in the Columbia Slough Trail and 40-Mile Loop Trail between NE 33rd Avenue and the future Gresham-Fairview Trail.
- Where strategic partnerships can contribute to acquisition and management, acquire other properties along the slough that with restoration will provide additional habitat connections and water quality benefits.

Tier II Objectives

- Create additional water access along the Slough.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 07-3840, APPROVING THE NATURAL AREAS ACQUISITION REFINEMENT PLAN FOR THE COLUMBIA SLOUGH TARGET AREA

Date: September 6, 2007

Prepared by: Jim Desmond
Kathleen Brennan-Hunter

BACKGROUND—REFINEMENT PROCESS

The Natural Areas Bond Measure (Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” adopted by the Metro Council March 9, 2006) provided that Metro would undertake a “Refinement Process” to “gather additional information about each individual target area and begin zeroing in on particular parcels that would be valuable to acquire” (Exhibit A to Resolution No. 06-3672B). In addition, the Natural Areas Implementation Work Plan (Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” adopted by the Metro Council on March 1, 2007) authorized the Metro Chief Operating Officer to acquire properties without further Council approval if they have been identified on a Council-approved target area “confidential refinement map.” To implement those directives, the Refinement Plans for each target area contain overall target area objectives and confidential tax-lot specific target area maps identifying priority properties for acquisition, enabling Metro staff to begin the acquisition of property and property rights as detailed in the Natural Areas Implementation Work Plan.

Additional background information, target area information, a description of the specifics of the refinement process regarding this target area, and the refinement plan’s findings, goals, and objectives are described in further detail in Exhibit A to this resolution, the Columbia Slough Target Area Refinement Plan.

ANALYSIS/INFORMATION

1. **Known Opposition**

None.

2. **Legal Antecedents**

Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” adopted on March 9, 2006.

The voters’ approval of Metro’s 2006 Natural Areas Bond Measure at the general election held on November 6, 2006.

Resolution No. 07-3766A “Authorizing the Chief Operating Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” adopted by the Metro Council on March 1, 2007, established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

3. **Anticipated Effects**

Acquisition of natural area properties in the Columbia Slough target area to achieve the goals and purposes of the 2006 Natural Areas Bond Measure.

4. **Budget Impacts**

The FY 2007-08 budget includes budgetary authority to purchase \$35 million in natural area lands, with an additional \$15.4 million in contingency, if necessary. It is estimated, based on historical spending patterns, that this authority will be sufficient to cover the anticipated acquisition activity for this fiscal year. Additional unappropriated fund balance (\$64 million) exists for land acquisition in future years, along with the authority to issue up to an additional \$102 million in General Obligation bonds in support of this program.

RECOMMENDED ACTION

Staff recommends adoption of Resolution No. 07-3840.

Summary of Comments from Stakeholder Interviews for Columbia Slough Target Area

Stakeholder(s) Interviewed

Nancy Hendrickson, City of Portland, Bureau of Environmental Services
Susan Barthel, City of Portland, Bureau of Environmental Services
Ry Thompson, City of Portland, Bureau of Environmental Services
Deb Lev, City of Portland, Bureau of Parks and Recreation
Gregg Everhart, City of Portland, Bureau of Parks and Recreation
Bruce McClelland, Multnomah County Drainage District
Mel Huie, Metro Trails
Elaine Stewart, Metro Scientist
Troy Clark, Friends of Smith and Bybee
Chris Scarzello, City of Portland Planning
Corky Collier, Columbia Corridor Association
Pietro Ferrari, Hacienda CDC
John Gessner, City of Fairview
Larry DeVroy, Port of Portland
Linda Robinson, Citizen advocate
Robb Courtney, City of Gresham Parks
Bob Sallinger and Jim Labbe, Portland Audubon Society
Mel Stout, Walter Valenta, Barbara Walker, Portland Audubon Society

Key Themes Discussed at Stakeholder Interviews

Natural Areas & Water Quality

- Prioritize cold water inputs (Wilkes Creek)
- Restore natural vegetation along Slough
- Reduce eutrication by reducing inputs and stormwater runoff

Habitat

- Buffer established habitat areas (Big 4 Corners; Prison Pond Little 4 Corners; Smith/Bybee Lakes; Vanport / Peninsula)
- The following could be considered rare or unique habitats or plant communities:
 - Painted Turtles (BPA connection from River to Smith/Bybee lakes)
 - Streaked Horn Lark
 - Columbia Sledge Meadows
 - Wapato wetlands present along the slough
 - Fresh water mussels
 - Mud flats and tidal habitat

- The Slough also provides Habitat for:
 - Salmoid refugia (DU DATA, NOAA CRITICAL HABITAT DESIGNATION)
 - Migratory birds (migratory bird corridor between Slough to Rocky Butte)
 - Neotrophs, shorebirds, waterfowl, raptors
 - Ash and Cottonwood; BLHardwood community (NATURAL HERITAGE IDENTIFIED); Pacific willow floodplain; Oak savannah in big four corners; forested wetlands near airport)
 - Bald Eagles (Eagle nests present at Smith / Bybee lakes)
 - Great blue heron nesting colonies (Heron Rookeries present along the slough)

Access/Connectivity

- Connectivity to neighborhoods is lacking (opportunities at Cully, Smith and Bybee Wetlands)
- Additional access to Slough itself would be beneficial (Denver Bridge canoe/kayak launch; West of Fairview Lake)
- Levees are potential barriers for connections along the Slough

Trails

- Noted Gaps:
 - Columbia Slough Trail Gaps (connection to Smith and Bybee, Gresham to Fairview Trail)
 - Bridgeton Gap (40-Mile Loop)
 - Marine Drive Gap

QUESTIONNAIRE

TARGET AREA: COLUMBIA SLOUGH

In November 2006 voters directed the Metro Council to extend a regionwide program and acquire between 3,500 and 4,500 acres of additional natural areas to protect water quality and fish and wildlife habitat and to provide future generations opportunities for greater access to nature. Now it's time for the Metro Council to refine priorities in the 27 regional natural areas and trail corridors targeted for acquisition. Initial estimates are that a minimum of 50 acres of land would be protected within this target area.

The Metro Council wants your ideas and input. We've been talking with scientists, land-use experts, groups and individuals who have special knowledge about the natural resource values and community visions for these areas. With this information Metro has begun to identify the potential strategies and opportunities that will achieve the best results. Now we need to know: Do we have it right? What have we missed? What is most important to you?

2006 NATURAL AREAS BOND DESCRIPTION FOR THIS TARGET AREA

The Columbia Slough is one of very few areas in North and Northeast Portland with the potential for restoring fish and wildlife habitat. Acquisition along the slough will improve water quality in its critical reaches, provide trail connections to existing recreation and wildlife corridors and help complete an important section of the 40-Mile Loop Trail.

QUESTIONS

- The following priorities were identified in the Columbia Slough target area based on scientific information about benefits to water quality, habitat diversity, wildlife connectivity and/or restoration potential and from information provided by key stakeholders in the area. Rank in order of importance to you from 1 to 5, with 1 being the most important and 5 being the least important.**

 - _____ Connecting Metro's Smith and Bybee Wetlands Natural Area to the St. Johns neighborhood and providing a connection to the Peninsula Crossing Trail (at N. Portland Road). **(Map area A)**
 - _____ Extending the completed section of the Columbia Slough Trail from I-5 east towards NE 33rd Avenue then north to the existing 40-Mile Loop along Marine Drive at Bridgeton Road. **(Map area B)**
 - _____ Completing the "Bridgeton Gap" in this section of the 40-Mile Loop (along Marine Drive) from I-5 to Bridgeton Road. **(Map area C)**
 - _____ Extending the Columbia Slough Trail from west of NE 33rd Avenue to 158th Avenue. In many sections, this route runs along top of a levee on the north side of the slough. **(Map area D)**
 - _____ Securing remaining gaps in the 40-Mile Loop along Marine Drive. This includes one east of I-205, and another connecting the Columbia Slough Trail to Blue Lake Regional Park and the future Gresham-Fairview Trail. **(Map area E)**

2. In general, what should be emphasized in the Columbia Slough target area? Rank in order of importance to you from 1 to 4, with 1 being the most important and 4 being the least important.

- _____ Protecting lands along the Columbia Slough, connecting and expanding habitat areas for wildlife.
- _____ Providing additional water access points for canoeing and kayaking.
- _____ Closing gaps in the trail corridor along the Columbia Slough and 40-Mile Loop.
- _____ Connecting the Columbia Slough with neighboring communities and providing people with better access to nature.

3. Are there other priorities that the Metro Council should consider in the Columbia Slough target area? Please be specific.

4. Do you have suggestions about partnerships Metro should pursue or other innovative ways to leverage regional funding and enhance this natural area?

5. Are you interested in participating in Metro's Natural Areas program by selling or donating your property or selling or donating a trail or conservation easement on your property?

☐ Yes ☐ No If yes, please be sure to provide your contact information below.

6. Do you have any other comments about this target area?

☐ **Please add my name to the Columbia Slough target area mailing list for future information, public meetings and events.**

Name _____

Address _____

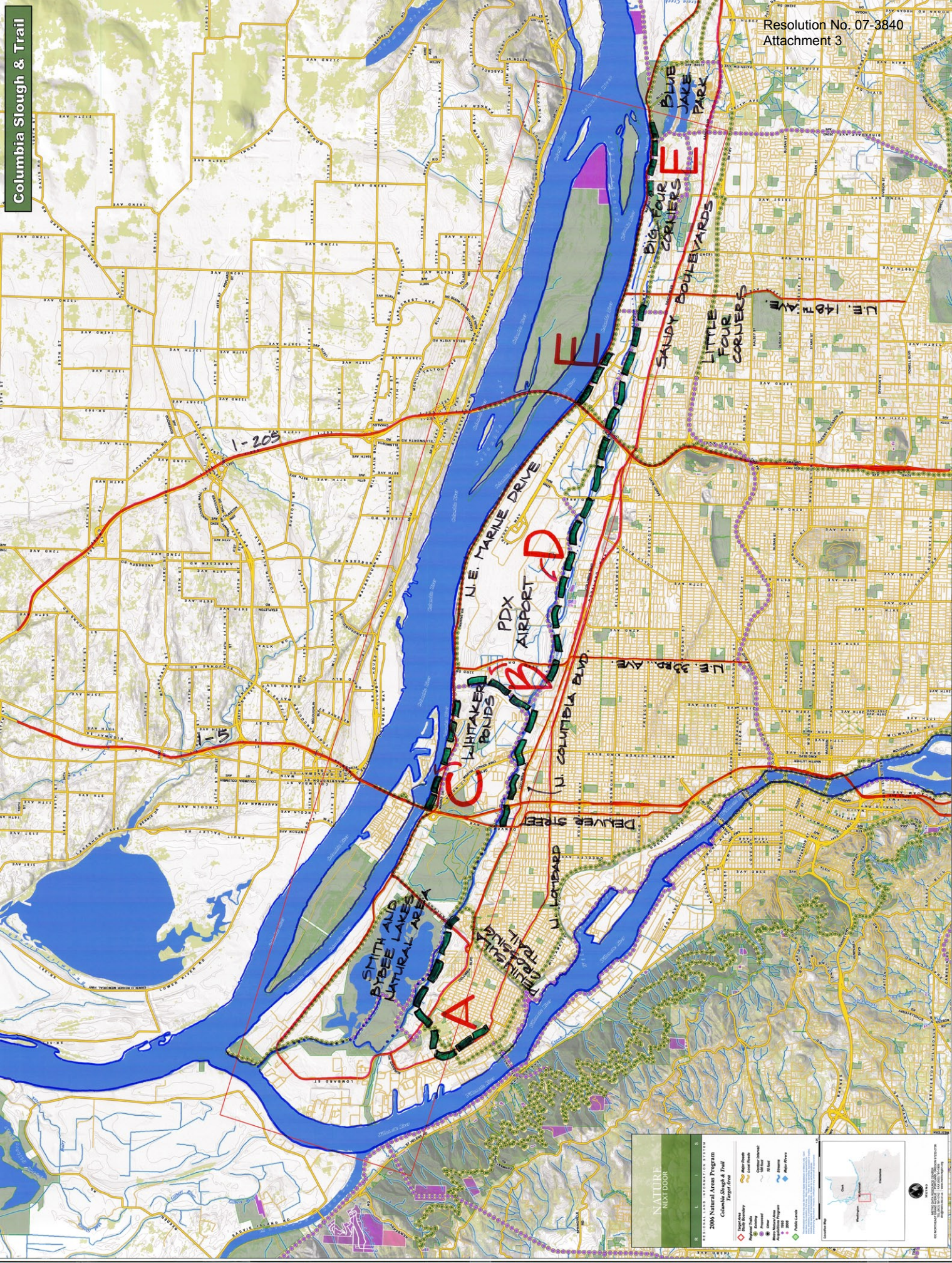
City/State/Zip _____

Phone _____

E-mail _____

**You may complete this questionnaire online at
www.metro-region.org/naturalareas**

or mail it to Metro at
600 NE Grand Avenue, Portland, OR 97232
(503) 797-1741



Columbia Slough Survey Results

1. The following priorities were identified in the Columbia Slough target area based on scientific information about benefits to water quality, habitat diversity, wildlife connectivity and/or restoration potential and from information provided by key stakeholders in the area. Rank in order of importance to you.

	most important				least important	Rating Average	Response Count
Connecting Metro's Smith and Bybee Wetlands Natural Area to the St. Johns neighborhood and providing a connection to the Peninsula Crossing Trail (at N. Portland Road). (Map area A)	30.2% (16)	11.3% (6)	22.6% (12)	11.3% (6)	24.5% (13)	2.89	53
Extending the completed section of the Columbia Slough Trail from I-5 east towards NE 33rd Avenue then north to the existing 40-Mile Loop along Marine Drive at Bridgeton Road. (Map area B)	25.9% (14)	33.3% (18)	20.4% (11)	20.4% (11)	0.0% (0)	2.35	54
Completing the "Bridgeton Gap" in this section of the 40-Mile Loop (along Marine Drive) from I-5 to Bridgeton Road. (Map area C)	34.4% (21)	21.3% (13)	21.3% (13)	14.8% (9)	8.2% (5)	2.41	61
Extending the Columbia Slough Trail from west of NE 33rd Avenue to 158th Avenue. In many sections, this route runs along top of a levee on the north side of the slough. (Map area D)	8.8% (5)	19.3% (11)	19.3% (11)	33.3% (19)	19.3% (11)	3.35	57
Securing remaining gaps in the 40-Mile Loop along Marine Drive. This includes one east of I-205, and another connecting the Columbia Slough Trail to Blue Lake Regional Park and the future Gresham-Fairview Trail. (Map area E)	15.1% (8)	13.2% (7)	15.1% (8)	13.2% (7)	43.4% (23)	3.57	53
	answered question						65
	skipped question						4

2. In general, what should be emphasized in the Columbia Slough target area? Rank in order of importance to you.

	most important			least important	Rating Average	Response Count
Protecting lands along the Columbia Slough and connecting and expanding habitat areas for wildlife.	45.0% (27)	30.0% (18)	11.7% (7)	13.3% (8)	1.93	60
Providing additional water access points for canoeing and kayaking.	5.4% (3)	16.1% (9)	26.8% (15)	51.8% (29)	3.25	56
Closing gaps in the trail corridor along the Columbia Slough and 40-Mile Loop.	47.7% (31)	24.6% (16)	18.5% (12)	9.2% (6)	1.89	65
Connecting the Columbia Slough with neighboring communities and providing people with better access to nature.	8.8% (5)	29.8% (17)	38.6% (22)	22.8% (13)	2.75	57
	answered question					66
	skipped question					3

3. Are there other priorities that the Metro Council should consider in the Columbia Slough target area? Please be specific.

Pursue expansion of the Big Four Corners site, especially property to the west to expand and buffer the natural areas already protected. Acquire more land in and around Johnson Lake to improve access for both wildlife and people. I'm not sure if the Columbia River Islands are included in this target area, but protection of both the west end of Hayden Island and protection of Government Island should also be high priorities.
Acquire headwaters of Wilkes Creek.
Unplug the slough! Return it to its former glory! Reconnect the east end with the Columbia and let water flow through the entire length. Maybe someday we'll be able to fish there again. It would also be great to improve the portages for unpowered watercraft.
Make the bike travel on the paths as safe as possible, include possible lights on Marine Drive for safer crossing or better alternatives.
Also consider that the Columbia River / Marine Drive Trail should extend to Sandy River. This will connect to Columbia River Gorge Historic Hwy as well as to coast.
ACCESS TO EXPO CENTER PARKING WILL BE NEEDED IN ORDER TO ACCOMODATE VISTORS.
Access to trails, parks/playgrounds and nature spaces for all income people - and their pets.
Not in the slough area specifically but in this north Columbia River section- west side of Hayden Island.
The one thing I noted was that there were no plans to make connections from the trail/slough into NE neighborhoods. There are some really obvious connections like the road to the airport, NE 60th, NE 33rd, etc. It seems a shame to create a trail that people have to drive to when we could easily bike there. Please include budget and emphasis on bike/ped improvements from the neighborhoods to the areas in the Columbia Slough Target area
Be able to bike the area from Bridgeton to NE 33rd on Marine Dr.
Create a bicycle lane on 82nd Ave that connects to the slough trail and allows quick easy access to residents of Central NE Portland (West of I-205).

Purchase property to keep wildlife/wetland areas protected.
Completing trail networks for bikes/peds is essential to surviving the post petroleum economy.
Purchase property to keep it natural for wildlife and wetland protection. Nesting mallards, blue heron, quail, etc.
Supporting access to environmental education sites.
Acquisition of ecologically significant property South of NE Cornfoot Rd on both sides (E&W) of NE Alderwood could be high priority.
Continued restoration of Smith and Bybee.
Headwaters of Wilkes Creek.
Leverage other \$ in community - public and private.
A corridor path the length of the slough would be a tremendous bike connection to residential and industrial areas.
Acquire green space/vacant land especially adjacent to currently owned public land.
Keep as much green space as possible for people to enjoy, trees make oxygen, etc.
1) Access to Whitaker Ponds from Columbia Blvd. 2) Colwood between sloughs.
Trail connections to both Yellow Line (Kenton, Delta Park, Expo Center) and Red Line MAX stations in the area (Cascade and Mt. Hood Avenue).
Support enviro ed programs for adults and kids. From my experience VERY few people know what the slough is, even those in the watershed. Its value as the last vestige of a network of sloughs and the fish and wildlife habitat it provides are definitely not understood by the general public. Although heavily managed and altered from its original state its historic, cultural, and natural value are VERY high and I think the public would embrace learning more about these values.
Riparian restoration with adequate beaver protection is crucial. There have been a number of plantings along the slough over the years that used inadequate beaver protection (plastic sleeves) and these plantings have fared poorly. In some cases the beaver have completely clearcut the areas and the work and money spent are lost. Another point noted in these lost plantings is the need to vary tree species. The beaver prefer cottonwoods and will wipe out a solely cottonwood planting. Mixing in other tree species and using adequate metal planting guards will insure longterm, successful riparian restoration.
Acquisition of trail right-of-way is essential before opportunities are lost forever.
I would like you to consider BLUE HERON MEADOWS AND WETLANDS in your target areas. This property is in a flood plain and is home to numerous BLUE HERONS, EGRETS, EAGLES, HAWKS, AND OTHER MIGRATING BIRDS ALL YEAR LONG. This area is also home to numerous other species of animals. all winter, during our rainy season, it is very wet and flooded at times giving a home to the above mentioned birds, etc. It will be a big loss to Portland area residents to lose this area to homes instead of making it a protected area, such as many others have been. It could be a beautiful park with walking trails etc, forever available to enhance the city. There are becoming fewer and fewer open spaces, with the wildlife having no place to go. Once this property is built upon, it will lost forever.
Protecting existing wetland areas from development - both private and public should be a number one priority. In East Columbia neighborhood there are two large parcels (40 acres) that have been targeted for housing development by the owners. They border the Columbia Slough, are habitat to wildlife and provide important drainage for the area.
Signage for canoe/kayakers.

4. Do you have suggestions about partnerships Metro should pursue or other innovative ways to leverage regional funding and enhance this natural area? If so, please specify.

Work with City of Portland, Mult Co Drainage District and others (including Trust for Public Land) to acquire as much of the Colwood Golf Course as possible in order to retain it as open space, with part of it restored as habitat, some available for passive recreation and some to be developed later for more active recreation. [The golf course is in the Cully Neighborhood, where the City plans to purchase land for active recreation.]

Does restoring salmon spawning grounds get any kind of state or federal funding? I'm sure that improving the portages would have the support of those users, tho they're not too organized.

Port of Portland could help at Aluminum factory site. Also on their large parcel just south and west of Marine Drive at NE 33rd.

Partnership with schools, city day camps, wildlife groups.

Additional emphasis on existing business & industry.

For the Hayden piece - think TNC, Columbia River Keepers, Clark County, Audubon, Columbia Crossing, City of Vancouver, OR and WA State. This is a very important piece of property. Leverage some political pressure from others and some matching resources. This piece of land is important. For the rest of the plan near the Columbia - perhaps some of the industrial businesses should be part of the mix. The pollution (air/noise/etc.) impacts of these industries could use some mitigation and it wouldn't hurt to have them sponsor some of the community access trailheads, etc. Those of us who live in this area have to deal with these impacts. All we see are the higher rates of asthma.

Work with I-5 bridge group to fund Bridgton Connections.

The connection to the Columbia Slough Watershed Council's Action Plan and the City of Portland's Columbia Slough Action Plan is appreciated.

Using experienced staff with BES reveg program to help manage it.

Fund a fundraiser to complete a TRAIL SYSTEM. Closing(?) the gaps make it a joke.

DOC, City, County funds/in kind services, TNC, TPL, and other non-profit funds. Develop agreements to maximize pvt \$.

Partner with the Multnomah Drainage Districts to build trails on existing lands.

Get federal funding.

Property owners along the slough should be encouraged to help in the success of riparian restoration projects. They can help finance or, at the very least, water, weed and care for the plantings on their property. How to get property owners involved through incentives or public acknowledgement is a critical task that needs attention.

Join with active neighborhood associations who are working to maintain the wetlands in their area. East Columbia neighborhood is partnering with Portland Parks and Metro to restore our only park. Private landowners in the neighborhood - Blue Heron Meadows - work to maintain their wetlands and even won an award 2 years ago from the Columbia Slough Watershed Council for stewardship. Wetland areas we work to maintain are now threatened by a housing development being proposed. Adjacent to that proposed development several private landowners are proposing smaller housing developments. Across NE 13th from that development is another large land parcel bordered by the Slough that has been proposed for development several times in the past few years. If Metro were to purchase these lands and work with the existing infrastructure of neighbors in maintaining them it would be a great benefit for the area.

Perhaps contact some of the businesses that are located near the slough for funds or partnership.

5. Do you have any other comments about this target area? If so, please specify.

Look at possible acquisition of properties between Whitaker Ponds and Johnson Lake, to create a larger habitat node in that area. Also create better corridors into and out of that area for both wildlife and (including a better connection to both the I-205 and Marine Drive bike paths. Look at ways to establish a wildlife corridor between the Slough and Rocky Butte. Regarding trails in the Columbia Slough watershed, priority should be given to separating the bike path from the roadway along Marine Drive. It's hard to tell from the map and the descriptions in the first question above exactly where those gaps are, but this hazardous situation needs to be addressed. Linking Smith & Bybee with the Cross Peninsula Trail should also be a priority.

I lead people out to various chunks of the Slough bike path all the time. When people see this area, they're surprised -- nobody knows it's there! Completing the loop will be huge for getting Portland to see the beauty of the Slough.

I can't choose. I want it all. Section E along Marine Drive is decent enough to ride a bike on but the trailhead for Blue Lake Park/Gresham-Fairview trail connecting to the Marine Drive path is necessary.

Both the Columbia River and Slough are severely degraded. Although habitat can be somewhat improved, there is such a large population next to this area, that access for people on and along the water should be a priority.

How does this fit in with plans for expansion of the Portland International Airport? Have you reviewed their Wildlife Hazard Management Plan? It seems that efforts to enhance wildlife habitat near PDX would result in increased wildlife/aircraft conflicts. Just a thought.

PRESENT GREEN SPACE EAST OF NORTH HARBOR MARIOTT SHOULD BE RESTRICTED AS TO HOW MANY "CONDOS" WILL BE ALLOWED TO BE BUILT.

Thanks for all you do.

Bridgeton Gap trail completion I feel is worthwhile for these reasons: recreational bicycling and walking on the trail, access to river views, access from the Bridgeton Neighborhood to light rail transit and to Hayden Island shopping, and promotion of bicycling and walking as transit alternatives.

We appreciate Metro's focus on the Columbia Slough Watershed! A walking path (or sidewalk) from NE Columbia Blvd. to Whitaker Ponds on NE 47th Ave (< 1/4 mile) would provide safe access to a natural area from a Tri-Met bus stop for thousands of visitors.

Bridgeton Trail! Willamette Greenway!

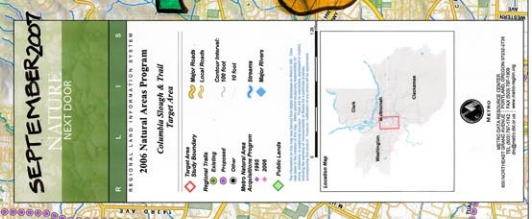
Wilkes Creek protection. Funding for Gresham-Springwater Trail.

Please note, my "wheelchair" is a recumbent tricycle. It is 24" wide! The paths are not always wide enough.

Expand current natural areas

Trail connectivity to Interstate MAX Yellow Line from both Marine Drive and Columbia Slough (now incomplete) segments of the 40-Mile Loop Trail are key to the success of alternate transportation in the N Portland area.

It is an important area with many ecosystems that need careful attention and protection.



Agenda Item Number 5.9

Resolution No. 07-3841, Approving the Natural Areas Acquisition
Refinement Plan for the Springwater Corridor Target Area

Metro Council Meeting
Thursday, September 6, 2007
Council Chamber

BEFORE THE METRO COUNCIL

APPROVING THE NATURAL AREAS ACQUISITION
REFINEMENT PLAN FOR THE SPRINGWATER
CORRIDOR TARGET AREA

RESOLUTION NO. 07-3841

Introduced by Chief Operating Officer
Michael J. Jordan, with the
concurrence of Council President
David Bragdon

WHEREAS, on March 9, 2006, the Metro Council adopted Resolution No. 06-3672B “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” recommending submission for voter approval a general obligation bond to preserve and protect natural areas, clean water, and fish and wildlife (the “2006 Natural Areas Bond Measure” or “Measure”); and

WHEREAS, at the election held on November 7, 2006, the voters approved Ballot Measure 26-80, the 2006 Natural Areas Bond Measure; and

WHEREAS, the Springwater Corridor Target Area was identified in the Measure as one of 27 regional target areas for land acquisition, building on the success of land acquisitions pursuant to Metro’s 1995 Open Spaces Bond Measure Program; and

WHEREAS, as provided in the 2006 Natural Areas Bond Measure, Metro has undertaken a public refinement process to establish specific acquisition strategies, goals, objectives, and a confidential tax-lot specific acquisition target area map for each of the 27 target areas; and

WHEREAS, Metro’s refinement process included the compilation of available information about each target area; biological field visits and expert analysis of maps; interviews with key stakeholders including natural resource experts, property owners, representatives from state and local government agencies, and advocates from water quality, fish, and wildlife preservation interest groups; and eight public open houses at sites throughout the region and a “virtual” open house available via the internet, at which draft refinement plans were made available for public review and participants could share their target area priorities either in-person or electronically; and

WHEREAS, on March 1, 2007, the Council approved Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” authorizing the Metro Chief Operating Officer to acquire properties identified on a Council-approved target area “confidential refinement map;” and

WHEREAS, the Council has reviewed the draft refinement plans and considered information it has received from citizens, scientists, advocates, and state and local governments; now, therefore

BE IT RESOLVED that the Metro Council adopts the Springwater Corridor Refinement Plan attached hereto as Exhibit A, including the confidential tax-lot specific map reviewed by the Council in Executive Session on September 4, 2007, and signed by Council President David Bragdon on that date, and hereby authorizes the Chief Operating Officer to acquire properties in the Springwater Corridor Target Area consistent with the Council-approved Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan.

ADOPTED by the Metro Council this _____ day of _____ 2007.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

**2006 NATURAL AREAS ACQUISITION PROGRAM
SPRINGWATER CORRIDOR TARGET AREA REFINEMENT PLAN**

Background

The 1995 refinement goals were to link OMSI and the Springwater Corridor by acquiring key parcels and easements along the Willamette River and continue implementation of the Willamette River Greenway vision. Metro acquired 57 acres and led the development of the Springwater on the Willamette Trail, significantly achieving these goals.

The 2006 Natural Areas bond measure stated:

Funding will complete the 1-mile corridor between the existing Springwater on the Willamette Trail and the Three Bridges project at Southeast 19th Avenue in Portland. This will provide the final connection of the Springwater Corridor between downtown Portland east through Milwaukie and Gresham to Boring.

Since the Springwater Trail target area remains well defined with information available from the 1995 bond measure, a public survey was not conducted. Information about the Springwater Trail and a map were available at the Open Houses and on the web site.

Target Area Description

The Springwater Corridor is the major southeast segment of the 40-Mile Loop Trail, which was inspired by John Charles Olmsted's 1903 plan for a parkway and boulevard loop connecting park sites in the Portland area. The name stuck, even though the 40-Mile Loop Trail now comprises more than 140 miles linking wetlands, buttes, fields and pastures, neighborhoods and parks throughout Multnomah County.

The Springwater Corridor's "Three Bridges" project was completed in the fall of 2006 with the construction of bridges over McLoughlin Boulevard, the Southern and Union Pacific railroads and Johnson Creek. The main trail provides a major east-west link from Boring, following Johnson Creek to its end in Southeast Portland just short of a connection to the remainder of the trail along the Willamette River. When the last two remaining gaps (the Springwater segment and the Willamette Trail segment) are finished, it will be one of the country's great urban trails with more than 20 continuous miles, from the Steel Bridge in Portland east through Milwaukie and Gresham to Boring, separated from motorized vehicles.

Refinement Process

During the refinement process, Metro staff compiled available information about the Springwater Corridor target area. A representative from the City of Milwaukie was interviewed; the key concerns expressed during that interview are summarized in Attachment 1.

A public open house to discuss the proposed Refinement Plan was held on June 13, 2007 at Metro Regional Center, one of eight such open houses held throughout the region. Notices of the open houses were mailed to area residents and other interested citizens. Metro also conducted a "virtual" open house by making target area informational materials, including maps, available "online" via the internet and allowing participants to share their target area priorities electronically. A total of 527 people attended the regional open houses, and the online open house had 6,363 visits from 3,419 unique visitors. Since the Springwater Trail target area remains well defined with information available from the 1995 bond measure, a public survey was not conducted. Information about the Springwater Trail and a map (Attachment 2) were available at the open houses and on the web site.

Findings

- The 1995 refinement goals were to link OMSI and the Springwater Corridor by acquiring key parcels and easements along the Willamette River and continue implementation of the Willamette River Greenway vision. Metro acquired 57 acres and led the development of the Springwater on the Willamette Trail, significantly achieving these goals with the exception of two gaps: one along the Willamette River which is presently being explored as part of the Willamette River Greenway target area and the gap between SE Umatilla and SE 19th (the “Springwater Corridor Gap”).
- The Springwater Corridor Gap is the last remaining gap in a regional trail linking downtown Portland to the community of Boring. The gap area falls within an active rail right-of-way between SE Umatilla Street and SE 19th Avenue at SE Ochoco Street, approximately a 1-mile long gap in the Springwater Corridor.
- An Intergovernmental Agreement between the City of Portland and Metro defines each party’s commitment and roles in closing the Springwater Corridor Gap. A study conducted by Alta Planning + Design was completed in November 2005 to determine the optimal alignment and estimate costs for the Springwater Corridor Gap.
- Multiple bridge location/design options are currently being considered by Multnomah County for the Sellwood Bridge replacement. Several of these options, if initiated, would impact trail alignment.

Goals

Complete the 1-mile corridor between the existing Springwater on the Willamette Trail and the Three Bridges project at SE 19th Avenue in Portland. This will provide the final connection of the Springwater Corridor between downtown Portland east through Milwaukie and Gresham to Boring.

Objectives

Tier I Objective

- Acquire property necessary to complete the one-mile corridor gap between the existing Springwater on the Willamette Trail and the Three Bridges project on SE 19th Avenue in Portland.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 07-3841, APPROVING THE NATURAL AREAS ACQUISITION REFINEMENT PLAN FOR THE SPRINGWATER CORRIDOR TARGET AREA

Date: September 6, 2007

Prepared by: Jim Desmond
Kathleen Brennan-Hunter

BACKGROUND—REFINEMENT PROCESS

The Natural Areas Bond Measure (Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” adopted by the Metro Council March 9, 2006) provided that Metro would undertake a “Refinement Process” to “gather additional information about each individual target area and begin zeroing in on particular parcels that would be valuable to acquire” (Exhibit A to Resolution No. 06-3672B). In addition, the Natural Areas Implementation Work Plan (Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” adopted by the Metro Council on March 1, 2007) authorized the Metro Chief Operating Officer to acquire properties without further Council approval if they have been identified on a Council-approved target area “confidential refinement map.” To implement those directives, the Refinement Plans for each target area contain overall target area objectives and confidential tax-lot specific target area maps identifying priority properties for acquisition, enabling Metro staff to begin the acquisition of property and property rights as detailed in the Natural Areas Implementation Work Plan.

Additional background information, target area information, a description of the specifics of the refinement process regarding this target area, and the refinement plan’s findings, goals, and objectives are described in further detail in Exhibit A to this resolution, the Springwater Corridor Target Area Refinement Plan.

ANALYSIS/INFORMATION

1. **Known Opposition**

None.

2. **Legal Antecedents**

Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” adopted on March 9, 2006.

The voters’ approval of Metro’s 2006 Natural Areas Bond Measure at the general election held on November 6, 2006.

Resolution No. 07-3766A “Authorizing the Chief Operating Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” adopted by the Metro Council on March 1, 2007, established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

3. **Anticipated Effects**

Acquisition of natural area properties in the Springwater Corridor target area to achieve the goals and purposes of the 2006 Natural Areas Bond Measure.

4. **Budget Impacts**

The FY 2007-08 budget includes budgetary authority to purchase \$35 million in natural area lands, with an additional \$15.4 million in contingency, if necessary. It is estimated, based on historical spending patterns, that this authority will be sufficient to cover the anticipated acquisition activity for this fiscal year. Additional unappropriated fund balance (\$64 million) exists for land acquisition in future years, along with the authority to issue up to an additional \$102 million in General Obligation bonds in support of this program.

RECOMMENDED ACTION

Staff recommends adoption of Resolution No. 07-3841.

Summary of Comments from Stakeholder Interviews for Springwater Corridor Target Area

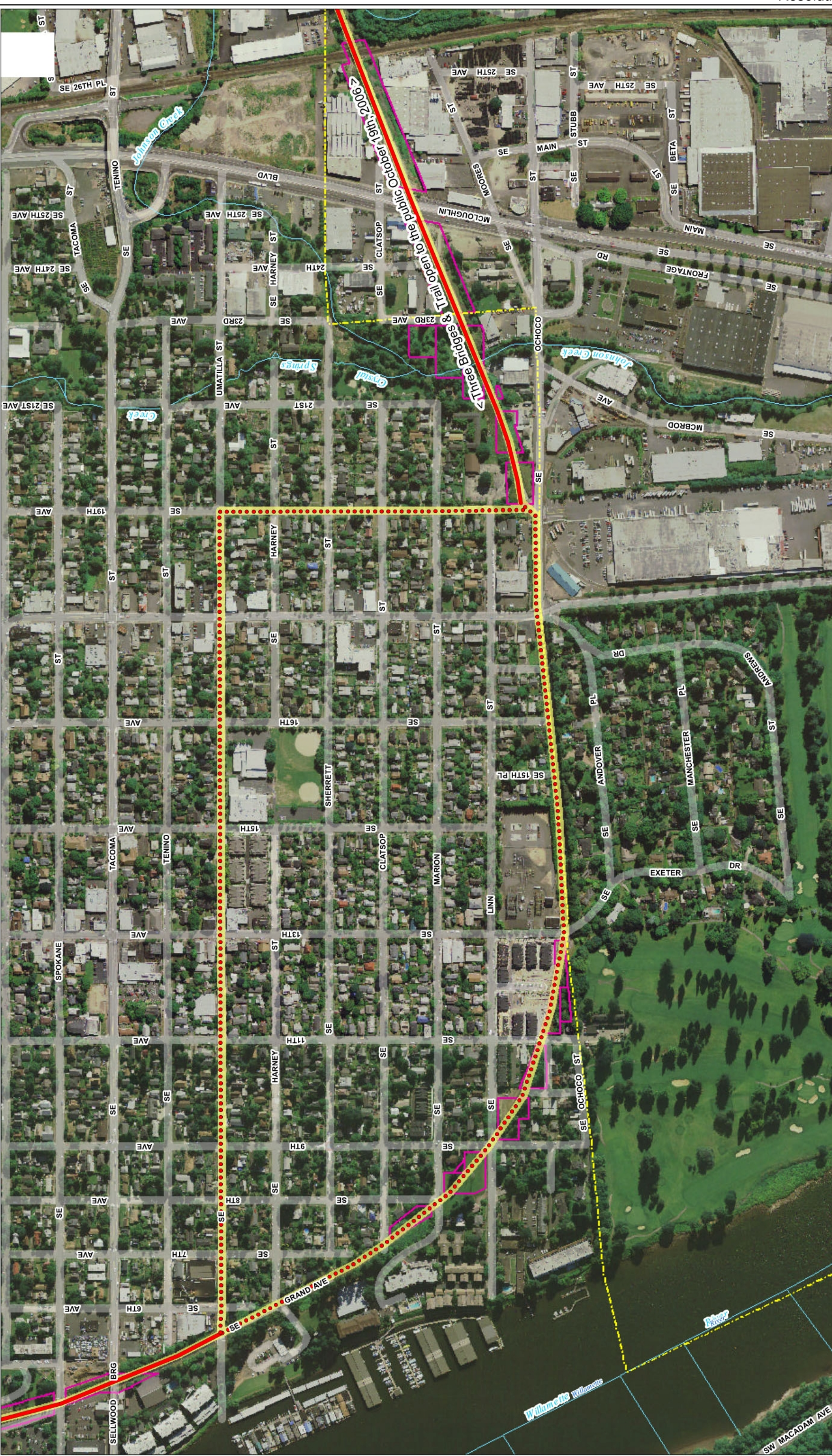
Stakeholder(s) Interviewed

Katie Mangle, Planning Director, City of Milwaukie

Key Themes Discussed

Connections to Springwater Corridor

- The City of Milwaukie failed to secure grant funding to link sidewalk and bike lane improvements on SE 17th Street to the future SWC trail. This would have included funds for a sidewalk on the south side of Ochoco between SE 17th and SE 19th Streets to address concerns voiced by Dick Samuels.
- The Goodwill development paid approximately \$58,000 as funds in lieu of sidewalk development on their property (was to be used as a grant match), this could be used towards corridor development in the vicinity of Goodwill.



Proposed trail alignments are conceptual

Ortho-Rectified Digital Imagery

Pixxures, Inc - July 2006
The information on this map was derived from digital databases on Metro's GIS. Care was taken in the creation of this map. Metro cannot accept any responsibility for errors, omissions, or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.

Parks and Open Space
600 Northeast Grand Avenue
Portland, Oregon 97232-2736
TEL (503) 797-1742
www.metro-region.org



Springwater Corridor
Sellwood Gap & Three Bridges Area
including Alternate Route
(SE Umatilla to SE 19th)

Agenda Item Number 5.10

Resolution No. 07-3842, Approving the Natural Areas Acquisition
Refinement Plan for the Sandy River Gorge Target Area

Metro Council Meeting
Thursday, September 6, 2007
Council Chamber

BEFORE THE METRO COUNCIL

APPROVING THE NATURAL AREAS ACQUISITION
REFINEMENT PLAN FOR THE SANDY RIVER
GORGE TARGET AREA

RESOLUTION NO. 07-3842

Introduced by Chief Operating Officer
Michael J. Jordan, with the
concurrence of Council President
David Bragdon

WHEREAS, on March 9, 2006, the Metro Council adopted Resolution No. 06-3672B “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” recommending submission for voter approval a general obligation bond to preserve and protect natural areas, clean water, and fish and wildlife (the “2006 Natural Areas Bond Measure” or “Measure”); and

WHEREAS, at the election held on November 7, 2006, the voters approved Ballot Measure 26-80, the 2006 Natural Areas Bond Measure; and

WHEREAS, the Sandy River Gorge Target Area was identified in the Measure as one of 27 regional target areas for land acquisition, building on the success of land acquisitions in the Sandy River Gorge Target Area pursuant to Metro’s 1995 Open Spaces Bond Measure Program; and

WHEREAS, as provided in the 2006 Natural Areas Bond Measure, Metro has undertaken a public refinement process to establish specific acquisition strategies, goals, objectives, and a confidential tax-lot specific acquisition target area map for each of the 27 target areas; and

WHEREAS, Metro’s refinement process included the compilation of available information about each target area; biological field visits and expert analysis of maps; interviews with key stakeholders including natural resource experts, property owners, representatives from state and local government agencies, and advocates from water quality, fish, and wildlife preservation interest groups; and eight public open houses at sites throughout the region and a “virtual” open house available via the internet, at which draft refinement plans were made available for public review and participants could share their target area priorities either in-person or electronically; and

WHEREAS, on March 1, 2007, the Council approved Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” authorizing the Metro Chief Operating Officer to acquire properties identified on a Council-approved target area “confidential refinement map;” and

WHEREAS, the Council has reviewed the draft refinement plans and considered information it has received from citizens, scientists, advocates, and state and local governments; now, therefore

BE IT RESOLVED that the Metro Council adopts the Sandy River Gorge Refinement Plan attached hereto as Exhibit A, including the confidential tax-lot specific map reviewed by the Council in Executive Session on September 4, 2007, and signed by Council President David Bragdon on that date, and hereby authorizes the Chief Operating Officer to acquire properties in the Sandy River Gorge Target Area consistent with the Council-approved Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan.

ADOPTED by the Metro Council this _____ day of _____ 2007.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

**2006 NATURAL AREAS ACQUISITION PROGRAM
SANDY RIVER GORGE TARGET AREA REFINEMENT PLAN**

Background

The 1995 refinement goals focused on complementing the federal management plan for the Wild and Scenic Sandy River to protect biological linkages along the wild and scenic section of the Sandy River and major tributaries for the protection of fish and wildlife habitat, water quality, geologic, scenic and recreation values. Great progress was made, and 1,082 acres were purchased in the target area, exceeding the original 800-acre goal. Metro's Oxbow Regional Park and surrounding lands protected with the 1995 bond measure provide an important biological refuge for fish and wildlife traveling between the park, the Sandy River and federal lands to the east along streams (Gordon, Buck and Trout) and upland corridors. Since the last bond measure, a committed group of partners has undertaken planning, acquisition and management activities in this same area of the river that are in keeping with this goal.

The 2006 bond stated:

Acquisitions along this wild and scenic waterway and its tributaries will provide important fish and wildlife habitat and water-quality benefits.

Given the significant investment of 1995 regional bond funds, the existing base of publicly owned land, and the relatively low threat when compared with other parts of the region, the primary consideration within this target area is acquisition of only the most essential lands for fish and wildlife habitat.

Target Area Description

The Sandy River cuts a 55-mile serpentine swath from Mt. Hood to the Columbia River. Sediment from a 1790s Mt. Hood eruption was still being flushed down the river by the time Lewis and Clark arrived in 1805 and found the river to be "formed entirely of quicksand." That once impassable sandy river bears little resemblance to the narrow, fairly deep lower river of today, noted for its many oxbows, lush forests sweeping down to the waterline, and populations of native salmon, steelhead and smelt.

A 12.5-mile stretch of the river – from Dodge Park downstream to the Stark Street Bridge – wends its way through 800-foot-high basalt and sandstone canyons known as the Sandy River Gorge. A rich canopy of Douglas fir, western red cedar and alder help harbor large wildlife including elk, black bear, deer and cougar. Oxbow Regional Park, within the Sandy River gorge, is one of the region's premier nature parks offering recreational opportunities, environmental education programs, as well as rare access so close to the city to an ancient forest, ridges and ravines carved by volcanic and glacial flows. This portion of the river is designated both a State Scenic Waterway and a National Wild and Scenic River.

A key protection strategy that has picked up steam in the past decade is the acquisition and donation of land in the Sandy River basin. Portland General Electric (PGE), in an agreement with Western Rivers Conservancy, plans to dismantle Marmot Dam in 2007, the Little Sandy Dam in 2008, donate its water rights to the public and contribute more than 1,500 acres of its related lands. Metro owns and manages more than 2,200 acres, including Oxbow Regional Park. Smaller, strategic acquisitions have been made by The Nature Conservancy which has protected 435 acres in the Gorge between Dodge and Oxbow parks.

Refinement Process

During the refinement process, Metro staff compiled available information about the Sandy River Gorge target area, analyzed maps and conducted biological field visits. Individuals were interviewed representing various governmental agencies, property owners, interested friends groups and natural resource experts. The key concerns expressed during the interviews are summarized in Attachment 1.

A public open house to discuss the proposed Refinement Plan was held on June 21, 2007 at Gresham City Hall, one of eight such open houses held throughout the region. Notices of the open houses were mailed to area residents and other interested citizens. Metro also conducted a “virtual” open house by making target area informational materials, including maps, available “online” via the internet and allowing participants to share their target area priorities electronically. A total of 527 people attended the regional open houses, and the online open house had 6,363 visits from 3,419 unique visitors. More than 700 target area surveys were submitted either in person or online. Ten people completed the Sandy River Gorge survey. A copy of the survey questionnaire is included as Attachment 2. The map associated with the questionnaire for this target area is included as Attachment 3, and complete survey results are included as Attachment 4.

Findings

Lower Sandy River Watershed – 12.5-mile stretch of federally and state designated Wild and Scenic River between Dodge Park (RM 18.5) and Stark St. Bridge (RM 6)

- Protecting the Sandy River’s lower reaches is a priority in preserving fall and spring Chinook salmon populations.
- Wildlife habitat would be enhanced by completing gaps in public ownership upstream and downstream of Oxbow Regional Park.
- An area adjacent to the Sandy River approximately one mile north of its confluence with Walker Creek has high water quality and valuable fish habitat, including potential side channel spawning areas.
- The area supports wildlife corridors highly used by large mammals such as deer, cougar, elk and black bear extending to Mt. Hood and the Cascades.
- New planning, acquisition and management efforts are underway along the main stem and tributaries with the following organizations: Bureau of Land Management, Portland General Electric, Sandy River Basin Partners Group, City of Portland Bureau of Water Works (Habitat Conservation Plan), Western Rivers Conservancy, and The Nature Conservancy.

Gordon Creek (enters Wild and Scenic Section of Sandy River in vicinity of Oxbow Park)

- The only free-flowing, unobstructed tributary in the Lower Sandy watershed, Gordon Creek is an important spawning area for threatened Sandy River fall Chinook and winter steelhead.
- Public ownership in the upper areas of Gordon Creek represents the only opportunity in the metro region to connect higher elevation federal forest lands to large protected riparian tracts at lower elevations.
- Preserving connections east to the Sandy River and west to federal lands could succeed in retaining critical corridors for large mammals such as bear and deer.

Buck Creek (enters Wild and Scenic Section of Sandy River in vicinity of Oxbow Park)

- Buck Creek is important for steelhead and salmon productivity, but a culvert affects fish passage.

Trout Creek (enters Wild and Scenic Section of Sandy River in vicinity of Oxbow Park)

- An area west of Groce Road and Trout Creek to the east bank of the Sandy River has very high value fish habitat and water quality.

Mainstem Sandy River from Stark St. Bridge downstream to Confluence with Columbia River

- Several public partners are actively pursuing opportunities for habitat restoration, greenways, trails, and public recreation in this area. Strong partnership potential exists to support efforts (primarily through staff assistance, not acquisition) by other public agencies.

Survey Results

- 10 people completed the Sandy River Gorge survey. Additional commentary was provided orally at the open house, most of which was consistent with the written responses. In rank order, the public priorities were:
 1. *Map area D* – Support efforts by other public agencies to restore habitat and create regional trails in the lower reach of the Sandy River (from Stark Street to the Sandy River's confluence with the Columbia River).
 2. *Map area C* – Protect forest habitat areas along the Sandy River and fill in gaps in public ownership.
 3. *Map area B* – Preserve a continuous wildlife corridor that supports movement by large mammals such as bear, cougar and elk by protecting additional lands in the Gordon Creek basin that connect to the Mt. Hood National Forest and other federal lands to the east.
 4. *Map area A* – Protect the highly productive fish habitat along Gordon Creek to currently protected public lands.

Goals

- Protect biological linkages by acquiring essential properties along the Sandy River and its tributaries for the protection of fish and wildlife habitat and water quality benefits.
- Pursue partnerships throughout the target area to achieve objectives and maximize the leveraging of regional bond funds.

Objectives

A target area map showing the tiered objectives described below is included as Attachment 5.

Tier I Objective

- Protect the highly productive fish habitat along Gordon Creek adjacent to currently protected public lands.

Tier II Objective

- Protect forest habitat areas along the Sandy River and fill in the gaps in public ownership between Dodge Park and Stark St. Bridge.

Partnership Objectives

- Work with existing groups (including the City of Portland Water Bureau, the Sandy River Basin Partners group, The Nature Conservancy, Western Rivers Conservancy, BLM, and PGE) to leverage regional bond funds to the maximum extent possible to achieve Tier I priorities and to preserve a continuous wildlife corridor connecting the Gordon Creek basin with federal lands to the east.
- Support efforts by other public agencies to restore habitat and create regional trails in the lower reach of the Sandy River (from Stark Street to the Sandy River's confluence with the Columbia River).

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 07-3842, APPROVING THE NATURAL AREAS ACQUISITION REFINEMENT PLAN FOR THE SANDY RIVER GORGE TARGET AREA

Date: September 6, 2007

Prepared by: Jim Desmond
Kathleen Brennan-Hunter

BACKGROUND—REFINEMENT PROCESS

The Natural Areas Bond Measure (Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” adopted by the Metro Council March 9, 2006) provided that Metro would undertake a “Refinement Process” to “gather additional information about each individual target area and begin zeroing in on particular parcels that would be valuable to acquire” (Exhibit A to Resolution No. 06-3672B). In addition, the Natural Areas Implementation Work Plan (Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” adopted by the Metro Council on March 1, 2007) authorized the Metro Chief Operating Officer to acquire properties without further Council approval if they have been identified on a Council-approved target area “confidential refinement map.” To implement those directives, the Refinement Plans for each target area contain overall target area objectives and confidential tax-lot specific target area maps identifying priority properties for acquisition, enabling Metro staff to begin the acquisition of property and property rights as detailed in the Natural Areas Implementation Work Plan.

Additional background information, target area information, a description of the specifics of the refinement process regarding this target area, and the refinement plan’s findings, goals, and objectives are described in further detail in Exhibit A to this resolution, the Sandy River Gorge Target Area Refinement Plan.

ANALYSIS/INFORMATION

1. **Known Opposition**

None.

2. **Legal Antecedents**

Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” adopted on March 9, 2006.

The voters’ approval of Metro’s 2006 Natural Areas Bond Measure at the general election held on November 6, 2006.

Resolution No. 07-3766A “Authorizing the Chief Operating Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” adopted by the Metro Council on March 1, 2007, established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

3. **Anticipated Effects**

Acquisition of natural area properties in the Sandy River Gorge target area to achieve the goals and purposes of the 2006 Natural Areas Bond Measure.

4. **Budget Impacts**

The FY 2007-08 budget includes budgetary authority to purchase \$35 million in natural area lands, with an additional \$15.4 million in contingency, if necessary. It is estimated, based on historical spending patterns, that this authority will be sufficient to cover the anticipated acquisition activity for this fiscal year. Additional unappropriated fund balance (\$64 million) exists for land acquisition in future years, along with the authority to issue up to an additional \$102 million in General Obligation bonds in support of this program.

RECOMMENDED ACTION

Staff recommends adoption of Resolution No. 07-3842.

Summary of Comments from Stakeholder Interviews for Sandy River Gorge Target Area

Stakeholder(s) Interviewed

Todd Alsbury, Oregon Department of Fish and Wildlife
Angie Kimpo, Metro, Ecologist
Robb Courtney, Gresham Parks
Virginia Bowers, Three Rivers Land Conservancy
Jim Labbe, Portland Audubon
Jack Wiles, Oregon State Parks, Regional Supervisor
Jonathan Soll, The Nature Conservancy
Janet Senior, City of Portland Water Bureau
John Borge, Principal Planner, Clackamas County
Bill Doran, Metro, Oxbow Park Ranger
Chris Hagel, Metro, Ranger
Steve Kucas, City of Portland Water Bureau
Russ Plaeger, Sandy River Basin Watershed
Richard Faith, Planning Director, City of Troutdale

Key Themes Discussed

Water Quality

- Trout Creek and Gordon Creek have good water quality and are important fish production tributaries.

Wildlife Habitat

- Gordon Creek offers an opportunity to link the Sandy River Gorge with upper elevation USFS and BLM ownerships. This link would preserve a big game (bear, elk) corridor.
- Forest land is not protected from harvesting.

Land Use / Urban / Rural Form

- Metro could play an important role in the area north of Stark Street Bridge to the confluence with the Columbia River. This effort should focus on supporting other public agencies in greenway acquisition, habitat restoration and trail development, and other recreational / educational opportunities.

Miscellaneous Comments

- Metro should focus on consolidation of existing ownerships in Wild and Scenic section. There is a diverse opinion whether to focus acquisition efforts on riparian areas or forested upland headwater areas that have less land use protection measures.
- Coordination with other agencies will be a key to maximize acquisition potentials. It was suggested that an informal association for sharing information and developing partnership relationships should be organized.

QUESTIONNAIRE

TARGET AREA: SANDY RIVER GORGE

In November 2006 voters directed the Metro Council to extend a regionwide program and acquire between 3,500 and 4,500 acres of additional natural areas to protect water quality and fish and wildlife habitat and to provide future generations opportunities for greater access to nature. Now it's time for the Metro Council to refine priorities in the 27 regional natural areas and trail corridors targeted for acquisition. The 1995 acreage goal for this target area was 808 and Metro has acquired 1,082 acres to date. The 2006 program will provide additional funding for protection goals in this target area.

The Metro Council wants your ideas and input. We've been talking with scientists, land-use experts, groups and individuals who have special knowledge about the natural resource values and community visions for these areas. With this information Metro has begun to identify the potential strategies and opportunities that will achieve the best results. Now we need to know: Do we have it right? What have we missed? What is most important to you?

2006 NATURAL AREAS BOND DESCRIPTION FOR THIS TARGET AREA

Acquisitions along this wild and scenic waterway and its tributaries will provide important fish and wildlife habitat and water-quality benefits.

QUESTIONS

1. **The following priorities were identified in the Sandy River Gorge target area based on scientific information about benefits to water quality, habitat diversity, wildlife connectivity and/or restoration potential and from information provided by key stakeholders in the area. Rank in order of importance to you from 1 to 4, with 1 being the most important and 4 being the least important.**
 - _____ Protecting the highly productive fish habitat along Gordon Creek to currently protected public lands. **(Map area A)**
 - _____ Preserving a continuous wildlife corridor that supports movement by large mammals such as bear, cougar and elk by protecting additional lands in the Gordon Creek basin that connect to the Mt. Hood National Forest and other federal lands to the east. **(Map area B)**
 - _____ Protecting forest habitat areas along the Sandy River and filling in gaps in public ownership. **(Map area C)**
 - _____ Supporting efforts by other public agencies to restore habitat and create trails in the lower reach of the Sandy River (from Stark Street to the Sandy River's confluence with the Columbia River). **(Map area D)**
2. **In general, what should be emphasized in the Sandy River Gorge target area? Rank in order of importance to you from 1 to 4, with 1 being the most important and 4 being the least important.**
 - _____ Protecting lands along the river and its tributaries to protect fish habitat and water quality.
 - _____ Protecting upland forests to protect fish and wildlife habitat and water quality.
 - _____ Preserving a large wildlife corridor connecting the Sandy River Gorge to the Mount Hood National Forest.

_____ Providing additional public access, recreation and conservation education opportunities.

3. **Are there other priorities that the Metro Council should consider in the Sandy River Gorge target area? Please be specific.**

4. **Do you have suggestions about partnerships Metro should pursue or other innovative ways to leverage regional funding and enhance this natural area?**

5. **Are you interested in participating in Metro's Natural Areas program by selling or donating your property or selling or donating a conservation easement on your property?**

☐ Yes ☐ No If yes, please be sure to provide your contact information below.

6. **Do you have any other comments about this target area?**

☐ **Please add my name to the Sandy River Gorge target area mailing list for future information, public meetings and events.**

Name _____

Address _____

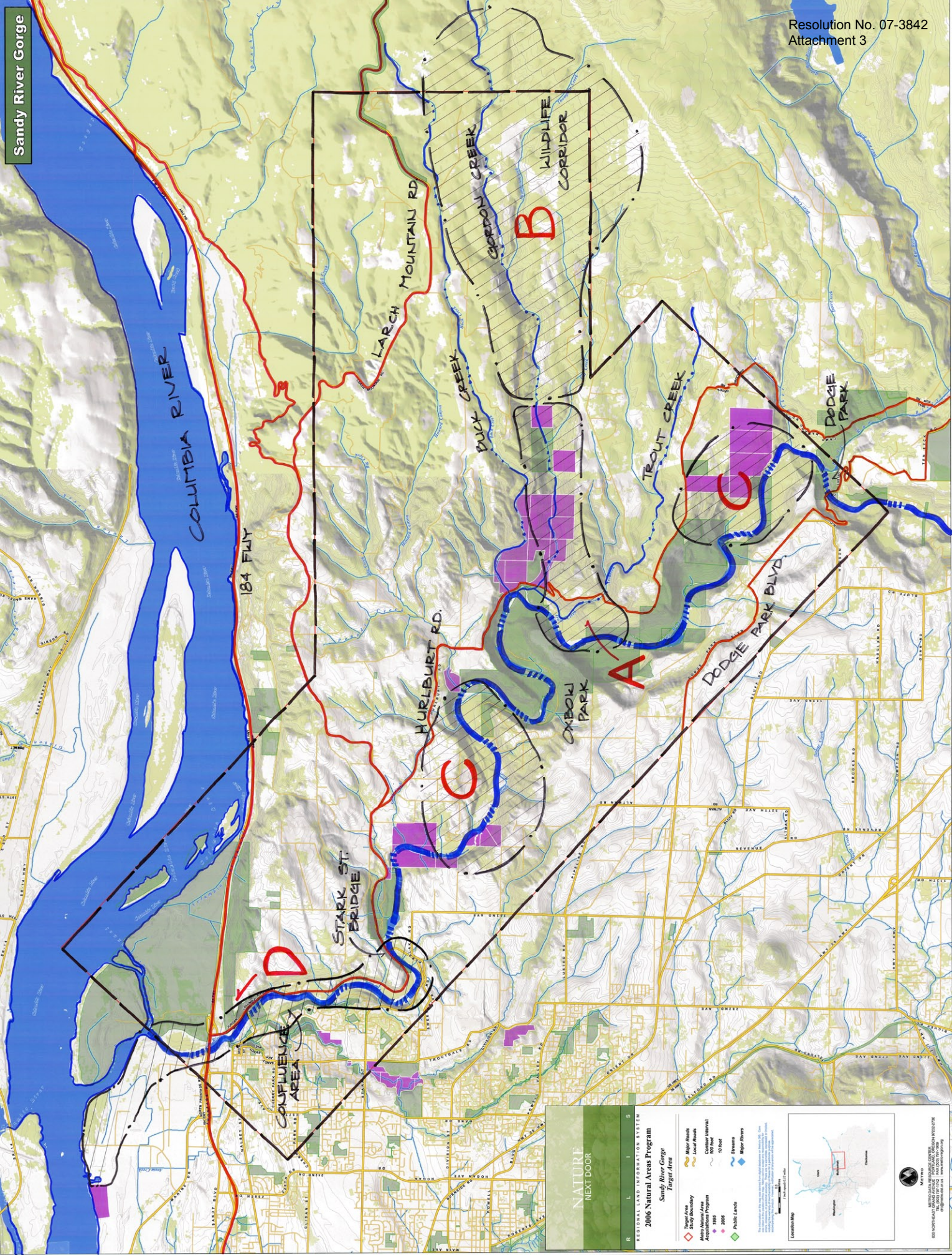
City/State/Zip _____

Phone _____

E-mail _____

**You may complete this questionnaire online at
www.metro-region.org/naturalareas**

or mail it to Metro at
600 NE Grand Avenue, Portland, OR 97232
(503) 797-1741



Sandy River Gorge Survey Results

1. The following priorities were identified in the Sandy River Gorge target area based on scientific information about benefits to water quality, habitat diversity, wildlife connectivity and/or restoration potential and from information provided by key stakeholders in the area. Rank in order of importance to you.

	most important			least important	Rating Average	Response Count
Protecting the highly productive fish habitat along Gordon Creek to currently protected public lands. (Map area A)	12.5% (1)	0.0% (0)	37.5% (3)	50.0% (4)	3.25	8
Preserving a continuous wildlife corridor that supports movement by large mammals such as bear, cougar and elk by protecting additional lands in the Gordon Creek basin that connect to the Mt. Hood National Forest and other federal lands to the east. (Map area B)	33.3% (3)	11.1% (1)	22.2% (2)	33.3% (3)	2.56	9
Protecting forest habitat areas along the Sandy River and filling in gaps in public ownership. (Map area C)	12.5% (1)	62.5% (5)	12.5% (1)	12.5% (1)	2.25	8
Supporting efforts by other public agencies to restore habitat and create trails in the lower reach of the Sandy River (from Stark Street to the Sandy River's confluence with the Columbia River). (Map area D)	50.0% (4)	25.0% (2)	25.0% (2)	0.0% (0)	1.75	8
	answered question					9
	skipped question					2

2. In general, what should be emphasized in the Sandy River Gorge target area? Rank in order of importance to you.

	most important			least important	Rating Average	Response Count
Protecting lands along the river and its tributaries to protect fish habitat and water quality.	50.0% (4)	37.5% (3)	0.0% (0)	12.5% (1)	1.75	8
Protecting upland forests to protect fish and wildlife habitat and water quality.	22.2% (2)	33.3% (3)	44.4% (4)	0.0% (0)	2.22	9
Preserving a large wildlife corridor connecting the Sandy River Gorge to the Mount Hood National Forest.	25.0% (2)	0.0% (0)	50.0% (4)	25.0% (2)	2.75	8
Providing additional public access, recreation and conservation education opportunities.	22.2% (2)	22.2% (2)	0.0% (0)	55.6% (5)	2.89	9
	answered question					10
	skipped question					1

3. Are there other priorities that the Metro Council should consider in the Sandy River Gorge target area? Please be specific.

I am hoping that the extension of area D downstream along the Columbia represents the opportunity to have 40-ML trail on top of levee. This would allow connection to Sandy and Columbia River Gorge. Also consider the potential trail between Sandy and Dodge Park, south of C.

A bike/ped bridge across the Sandy River should be a Metro priority now that funding has fallen through for a bike/ped crossing as part of the I-84 bridge replacement project. An opportunity exists to link downtown Troutdale, Depot Park, and points West with Lewis & Clark State Park, Sandy River Delta and points East.

Trail and restoration work on the East side of the Sandy from the HCRH steel bridge across the Sandy North to the confluence with the Columbia.

Public Access

Need wildlife corridor connecting Col Gorge and Sandy River - from Rooster Rock over Women's Forum to Knerium Creek-Big Creek - Sandy Canyon.

4. Do you have suggestions about partnerships Metro should pursue or other innovative ways to leverage regional funding and enhance this natural area? If so, please specify.

Metro should be a partner in the Sandy River Connections Project, collaborating with the USFS, ODOT, OPRD, City of Troutdale, Multnomah County, Port of Portland and user groups to better link the region's open space and trail facilities. Funding sources should be pooled in order to maximize funding and political support.

There is a group called the "Sandy River Connection Group" made up of 12-15 groups/agencies (several not-for-profit) included that would make excellent ready made partners. The group already has a vision plan.

Engage with Sandy River Basin Partners and help fund Sandy River Watershed Council.

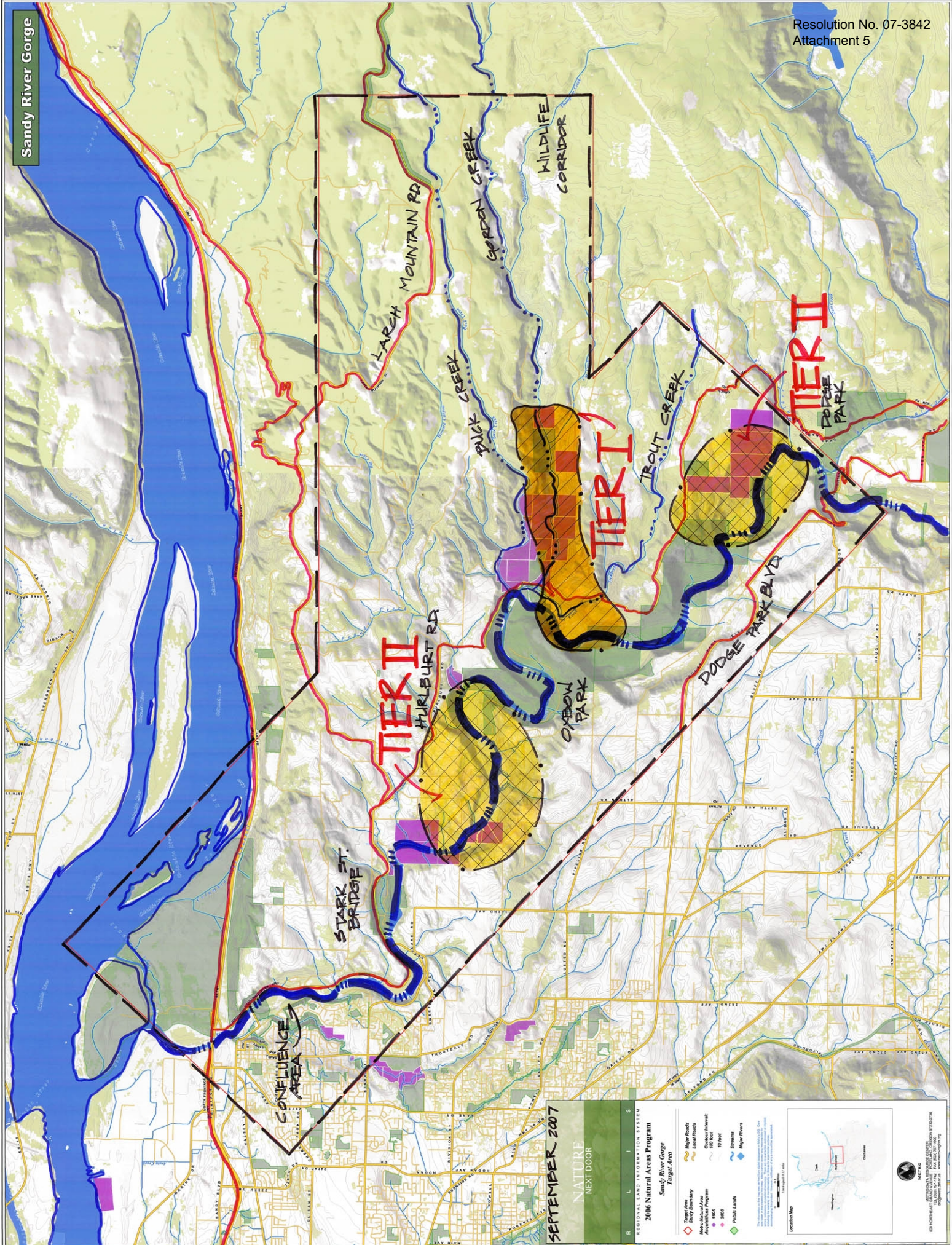
Conservation easement and tax incentives to keep natural areas.

5. Do you have any other comments about this target area? If so, please specify.

Staff at Multnomah Co. Land Use Planning are generally supportive of Metro proposals in the Sandy River watershed. Better coordination is needed between Metro and local and state agencies to maximize funding and political support.

It's a great area and deserves to be the #1 focus in the Metro Area. Metro has already acquired/protected key section of the Sandy, and now is the time to follow up!!

I already commented on the areas before I notice the interest to sell or conservation easement on my property.



Agenda Item Number 5.11

Resolution No. 07-3843, Approving the Natural Areas Acquisition
Refinement Plan for the Clear Creek Target Area

Metro Council Meeting
Thursday, September 6, 2007
Council Chamber

BEFORE THE METRO COUNCIL

APPROVING THE NATURAL AREAS ACQUISITION
REFINEMENT PLAN FOR THE CLEAR CREEK
TARGET AREA

RESOLUTION NO. 07-3843

Introduced by Chief Operating Officer
Michael J. Jordan, with the
concurrence of Council President
David Bragdon

WHEREAS, on March 9, 2006, the Metro Council adopted Resolution No. 06-3672B “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” recommending submission for voter approval a general obligation bond to preserve and protect natural areas, clean water, and fish and wildlife (the “2006 Natural Areas Bond Measure” or “Measure”); and

WHEREAS, at the election held on November 7, 2006, the voters approved Ballot Measure 26-80, the 2006 Natural Areas Bond Measure; and

WHEREAS, the Clear Creek Target Area was identified in the Measure as one of 27 regional target areas for land acquisition, building on the success of land acquisitions in the Clear Creek Canyon Target Area pursuant to Metro’s 1995 Open Spaces Bond Measure Program; and

WHEREAS, as provided in the 2006 Natural Areas Bond Measure, Metro has undertaken a public refinement process to establish specific acquisition strategies, goals, objectives, and a confidential tax-lot specific acquisition target area map for each of the 27 target areas; and

WHEREAS, Metro’s refinement process included the compilation of available information about each target area; biological field visits and expert analysis of maps; interviews with key stakeholders including natural resource experts, property owners, representatives from state and local government agencies, and advocates from water quality, fish, and wildlife preservation interest groups; and eight public open houses at sites throughout the region and a “virtual” open house available via the internet, at which draft refinement plans were made available for public review and participants could share their target area priorities either in-person or electronically; and

WHEREAS, on March 1, 2007, the Council approved Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” authorizing the Metro Chief Operating Officer to acquire properties identified on a Council-approved target area “confidential refinement map;” and

WHEREAS, the Council has reviewed the draft refinement plans and considered information it has received from citizens, scientists, advocates, and state and local governments; now, therefore

BE IT RESOLVED that the Metro Council adopts the Clear Creek Refinement Plan attached hereto as Exhibit A, including the confidential tax-lot specific map reviewed by the Council in Executive Session on September 4, 2007, and signed by Council President David Bragdon on that date, and hereby authorizes the Chief Operating Officer to acquire properties in the Clear Creek Target Area consistent with the Council-approved Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan.

ADOPTED by the Metro Council this _____ day of _____ 2007.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

**2006 NATURAL AREAS ACQUISITION PROGRAM
CLEAR CREEK TARGET AREA REFINEMENT PLAN**

Background

The 1995 refinement goals for Clear Creek included establishing a 343-acre natural preserve area within Clear Creek's lower basin to protect its unique natural features including water quality, fish habitat, uplands and riparian habitat. The original goals were largely met, with 520 acres acquired adjacent to the creek as well as some wet prairie remnants that form a series of benches along one side of a largely intact, key reach of the creek. These lands could provide an opportunity for a regionally significant nature park in the near future. Ongoing restoration efforts throughout the property will allow the public to experience natural systems that historically were distributed throughout the region.

The 2006 Natural Areas bond measured stated:

Supporting the most abundant salmon populations in the lower Clackamas River, Clear Creek remains a premier large creek in the metropolitan region. Completing key acquisitions in and surrounding Clear Creek public lands will protect the public investment made to date in establishing a significant regional natural area.

Clear Creek supports many varieties of fish and Clear Creek Canyon's diverse habitat (steep forested ravines to wet prairies) supports varied wildlife. Established science shows the key importance of intact riparian areas for water quality and quantity protection, wildlife habitat, and maintenance of overall watershed health. Of all the 1995 target areas, this one should be the highest priority given its potential to become a regional natural area park.

Target Area Description

Clear Creek Canyon begins south of Carver on Clear Creek, a free-flowing tributary to the Clackamas River. Clear Creek is a premier large creek supporting the most abundant salmon populations in the lower Clackamas River and is home to the last significant run of late-run coho in the lower Columbia River Basin. The stream supports 11 different varieties of fish, including rainbow trout and endangered fall Chinook and coho salmon, steelhead and threatened coastal cutthroat trout. Clear Creek Canyon's mature riparian forests, wooded canyon walls, ravines, terraced uplands, open meadows, ponds, springs and wetlands provide diverse wildlife habitat, including some rare plant species. More than 100 species of wildlife are found at Clear Creek, including coyotes, cougar, blacktail deer, elk, and 76 species of birds. Clear Creek also contributes to water quality for municipal drinking water intakes that serve approximately 200,000 people.

Refinement Process

During the refinement process, Metro staff compiled available information about the Clear Creek target area, analyzed maps and conducted biological field visits. Individuals were interviewed representing various governmental agencies, property owners, interested friends groups and natural resource experts. The key concerns expressed during the interviews are summarized in Attachment 1.

A public open house to discuss the proposed Refinement Plan was held on June 25, 2007 at Boring Middle School, one of eight such open houses held throughout the region. Notices of the open houses were mailed to area residents and other interested citizens. Metro also conducted a "virtual" open house by making target area informational materials, including maps, available "online" via the internet and allowing participants to share their target area priorities electronically. A total of 527 people attended the regional open houses, and the online open house had 6,363 visits from 3,419 unique visitors. More than 700 target surveys were submitted either in person or online. Eleven people responded to the Clear Creek

survey. A copy of the survey questionnaire is included as Attachment 2. The map associated with the questionnaire for this target area is included as Attachment 3, and complete survey results are included as Attachment 4.

Findings

- Clear Creek is a highly productive fish habitat.
- The cliffs and riparian areas adjacent to Clear Creek holdings need to be protected.
- The “wet prairie” habitat in the Clear Creek area is unique and should be protected.
- Clear Creek has an infestation of False Brome Grass, which can dominate and degrade the forest habitat. Wildlife links to other areas should be limited since deer are the primary means that the False Brome Grass is spread.
- Metro should help control invasive weeds (Knotweed) on adjacent mainstream banks and upstream tributaries.
- The area surrounding Clear Creek is designated for Exclusive Farm Use (EFU). In the foreseeable future, urbanization pressures will be limited with the exception of a number of measure 37 claims.
- Clear Creek is classified as a principal River Class Stream and has a 100’ set-back with a 75% vegetation retention requirement.
- New property purchases should be contiguous with existing Metro property ownerships. Large blocks of properties offer more comprehensive restoration potential and are easier to manage.
- The property acquired as part of the 1995 bond measure is a very high quality creek-side habitat and scenic landscape with diverse landscape features. These parcels form the core of a location that has the potential to become an outstanding nature park. Some key acquisitions could enhance access, improve its potential as a nature park, and consolidate rare wet prairie holdings.
- Although 1995 goals were largely met for this target area, it is such an important location and has such potential as a park that it should be a very high priority for continued acquisitions.
- 11 people responded to the Clear Creek survey. Additional commentary was provided orally at the open house, most of which was consistent with the written responses. In rank order, the public priorities were:
 1. *Map area C* – Protect steeply sloped ravines and forests along the west side of Clear Creek for water quality and fish habitat benefits.
 2. *Map area B* – Protect other areas along Clear Creek adjacent to currently protected natural areas for water quality and fish habitat benefits.
 3. *Map area A* – Protect upland wet prairie and forested areas to preserve rare and unique habitat types adjacent to already protected natural areas.

Goals

- Protect the water quality and fish and wildlife habitat of Clear Creek and Clear Creek Canyon.
- Protect the public investment made to date in establishing a significant, publicly accessible regional natural area.

Objectives

A target area map showing the tiered objectives described below is included as Attachment 5.

Tier I Objective

- Acquire property essential to the establishment and management of a publicly accessible regionally significant natural area.

Tier II Objectives

- Protect wet prairie and forested areas to preserve rare and unique habitat types adjacent to already protected natural areas.
- Protect steeply sloped ravines and forests along the west side of Clear Creek for water quality and fish habitat benefits.

Partnership Objectives

- Work with partners both for long-term operations and management and restoration. Potential partners include Clackamas County, PGE, Oregon Wildlife Heritage Foundation, Springwater Environmental School and Clackamas County Forestry Program.
- Work with private landowners to explore opportunities for conservation easements.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 07-3843, APPROVING THE NATURAL AREAS ACQUISITION REFINEMENT PLAN FOR THE CLEAR CREEK TARGET AREA

Date: September 6, 2007

Prepared by: Jim Desmond
Kathleen Brennan-Hunter

BACKGROUND—REFINEMENT PROCESS

The Natural Areas Bond Measure (Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” adopted by the Metro Council March 9, 2006) provided that Metro would undertake a “Refinement Process” to “gather additional information about each individual target area and begin zeroing in on particular parcels that would be valuable to acquire” (Exhibit A to Resolution No. 06-3672B). In addition, the Natural Areas Implementation Work Plan (Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” adopted by the Metro Council on March 1, 2007) authorized the Metro Chief Operating Officer to acquire properties without further Council approval if they have been identified on a Council-approved target area “confidential refinement map.” To implement those directives, the Refinement Plans for each target area contain overall target area objectives and confidential tax-lot specific target area maps identifying priority properties for acquisition, enabling Metro staff to begin the acquisition of property and property rights as detailed in the Natural Areas Implementation Work Plan.

Additional background information, target area information, a description of the specifics of the refinement process regarding this target area, and the refinement plan’s findings, goals, and objectives are described in further detail in Exhibit A to this resolution, the Clear Creek Target Area Refinement Plan.

ANALYSIS/INFORMATION

1. **Known Opposition**

None.

2. **Legal Antecedents**

Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” adopted on March 9, 2006.

The voters’ approval of Metro’s 2006 Natural Areas Bond Measure at the general election held on November 6, 2006.

Resolution No. 07-3766A “Authorizing the Chief Operating Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” adopted by the Metro Council on March 1, 2007, established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

3. **Anticipated Effects**

Acquisition of natural area properties in the Clear Creek target area to achieve the goals and purposes of the 2006 Natural Areas Bond Measure.

4. **Budget Impacts**

The FY 2007-08 budget includes budgetary authority to purchase \$35 million in natural area lands, with an additional \$15.4 million in contingency, if necessary. It is estimated, based on historical spending patterns, that this authority will be sufficient to cover the anticipated acquisition activity for this fiscal year. Additional unappropriated fund balance (\$64 million) exists for land acquisition in future years, along with the authority to issue up to an additional \$102 million in General Obligation bonds in support of this program.

RECOMMENDED ACTION

Staff recommends adoption of Resolution No. 07-3843.

Summary of Comments from Stakeholder Interviews for Clear Creek Target Area

Stakeholder(s) Interviewed

John Borge, Principal Planner, Clackamas County
Ray Valone, Metro
Andy Cotugno, Metro
Laura Herbon, Walker Macy
Ben Johnson, Walker Macy
Jayne Cronlund, Three Rivers Land Conservancy
Jacqueline A. Tommas, Resident

Key Themes Discussed

Water Quality

- Clear Creek is a highly productive fish habitat.
- The cliffs and riparian areas adjacent to Clear Creek holdings need to be protected.

Wildlife Habitat

- The “wet prairie” habitat in the Clear Creek area is unique and should be protected.
- Clear Creek has an infestation of False Brohm Grass which can dominate and degrade the forest habitat. Wildlife links to other a should be limited since deer are the primary means that the False Brohm Grass is spread.
- Metro should help control invasive weeds (Knottweed) on adjacent mainstream banks and upstream tributaries.

Land Use / Urban / Rural Form

- The area surrounding Clear Creek is designated for Exclusive Farm Use (EFU). In the foreseeable future, urbanization pressures will be limited with the exception of a number of measure 37 claims.
- Clear Creek is classified as a principal River Class Stream and has a 100’ set-back with a 75% vegetation retention requirement.

Miscellaneous Comments

- A potential partnership is with the Three Rivers Land Conservancy. New property purchases should be contiguous with existing Metro property ownerships. Large blocks of properties offer more comprehensive restoration potential and are easier to manage.

QUESTIONNAIRE

TARGET AREA: CLEAR CREEK CANYON

In November 2006 voters directed the Metro Council to extend a regionwide program and acquire between 3,500 and 4,500 acres of additional natural areas to protect water quality and fish and wildlife habitat and to provide future generations opportunities for greater access to nature. Now it's time for the Metro Council to refine priorities in the 27 regional natural areas and trail corridors targeted for acquisition. The 1995 acreage goal for this target area was 343 and Metro has acquired 519 acres to date. The 2006 program will provide additional funding for protection goals in this target area.

The Metro Council wants your ideas and input. We've been talking with scientists, land-use experts, groups and individuals who have special knowledge about the natural resource values and community visions for these areas. With this information Metro has begun to identify the potential strategies and opportunities that will achieve the best results. Now we need to know: Do we have it right? What have we missed? What is most important to you?

2006 NATURAL AREAS BOND DESCRIPTION FOR THIS TARGET AREA

Supporting the most abundant salmon populations in the lower Clackamas River, Clear Creek remains a premier large creek in the metropolitan region. Completing key acquisitions in and surrounding Clear Creek public lands will protect the public investment made to date in establishing a significant regional natural area.

QUESTIONS

1. **The following priorities were identified in the Clear Creek Canyon target area based on scientific information about benefits to water quality, habitat diversity, wildlife connectivity and/or restoration potential and from information provided by key stakeholders in the area. Rank in order of importance to you from 1 to 3, with 1 being the most important and 3 being the least important.**
 - _____ Protecting upland wet prairie and forested areas to preserve rare and unique habitat types adjacent to already protected natural areas. **(Map area A)**
 - _____ Protecting other areas along Clear Creek adjacent to currently protected natural areas for water quality and fish habitat benefits. **(Map area B)**
 - _____ Protecting steeply sloped ravines and forests along the west side of Clear Creek for water quality and fish habitat benefits. **(Map area C)**
2. **In general, what should be emphasized in the Clear Creek Canyon target area? Rank in order of importance to you from 1 to 4, with 1 being the most important and 4 being the least important.**
 - _____ Protecting and restoring fish habitat.
 - _____ Protecting and restoring upland forest areas to protect water quality.
 - _____ Protecting and restoring rare habitat types and native plants such as wet meadows and wildflowers.
 - _____ Protecting upland forest areas adjacent to already protected areas for habitat and water quality benefits.

3. Are there other priorities that the Metro Council should consider in the Clear Creek Canyon target area? Please be specific.

4. Do you have suggestions about partnerships Metro should pursue or other innovative ways to leverage regional funding and enhance this natural area?

5. Are you interested in participating in Metro's Natural Areas program by selling or donating your property or selling or donating a conservation easement on your property?

☐ Yes ☐ No If yes, please be sure to provide your contact information below.

6. Do you have any other comments about this target area?

☐ **Please add my name to the Clear Creek Canyon target area mailing list for future information, public meetings and events.**

Name _____

Address _____

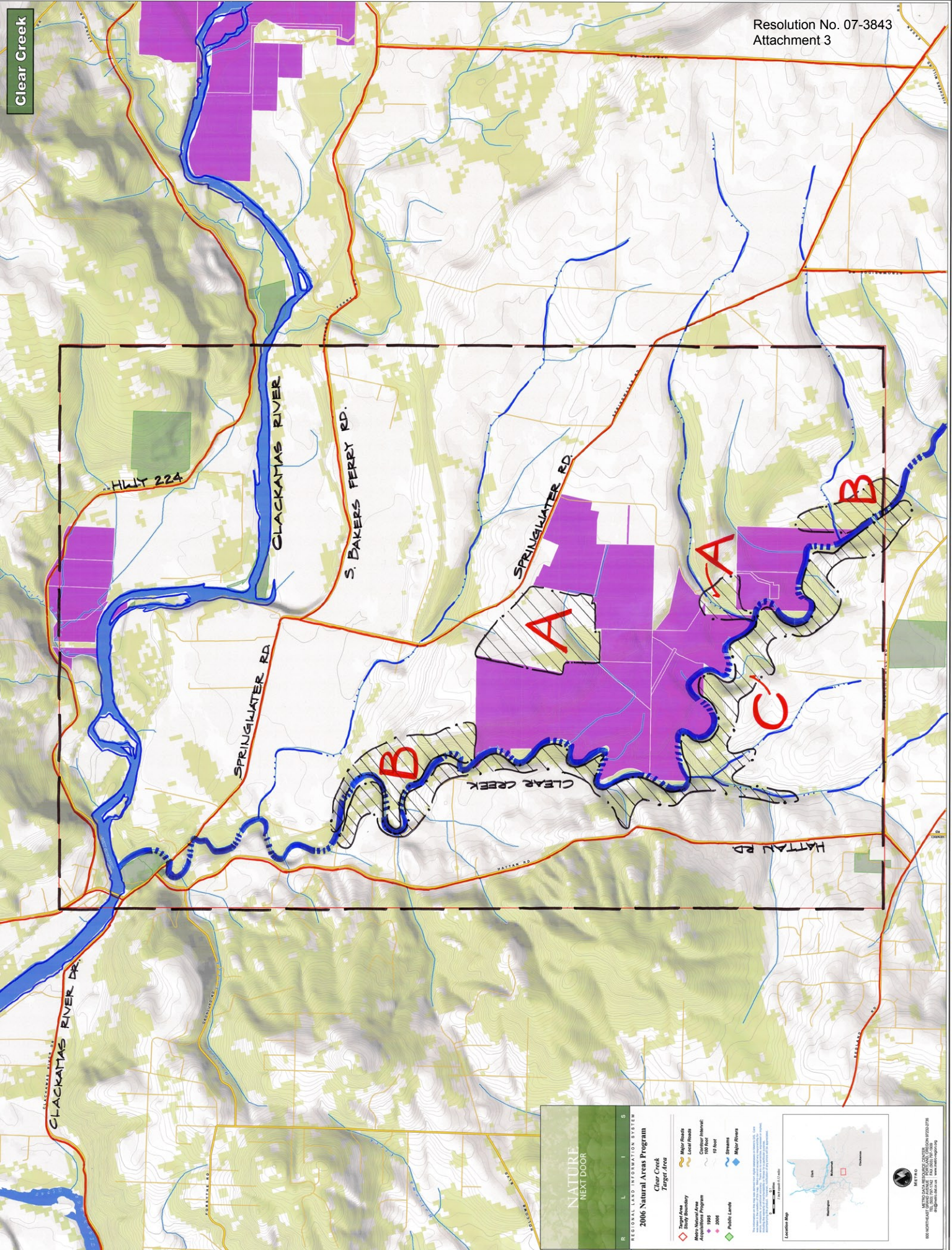
City/State/Zip _____

Phone _____

E-mail _____

**You may complete this questionnaire online at
www.metro-region.org/naturalareas**

or mail it to Metro at
600 NE Grand Avenue, Portland, OR 97232
(503) 797-1741



**NATURE
NEXT DOOR**

REGIONAL LAND INFORMATION SYSTEM

2006 Natural Areas Program

Clear Creek
Target Area

Legend

- Target Area
- Study Boundary
- Major Roads
- Land Roads
- County Interval:
- 100 foot
- 50 foot
- 2006
- Streams
- Public Lands
- Major Rivers

Location Map

100 NORTH EAST DRIVE SUITE 200 PORTLAND, OREGON 97202-2796
503.944.1000
www.metroregional.gov

Clear Creek Survey Results

1. The following priorities were identified in the Clear Creek Canyon target area based on scientific information about benefits to water quality, habitat diversity, wildlife connectivity and/or restoration potential and from information provided by key stakeholders in the area. Rank in order of importance to you.

	most important		least important	Rating Average	Response Count
Protecting upland wet prairie and forested areas to preserve rare and unique habitat types adjacent to already protected natural areas. (Map area A)	18.2% (2)	27.3% (3)	54.5% (6)	2.36	11
Protecting other areas along Clear Creek adjacent to currently protected natural areas for water quality and fish habitat benefits. (Map area B)	18.2% (2)	63.6% (7)	18.2% (2)	2.00	11
Protecting steeply sloped ravines and forests along the west side of Clear Creek for water quality and fish habitat benefits. (Map area C)	60.0% (6)	10.0% (1)	30.0% (3)	1.70	10
	answered question				11
	skipped question				0

2. In general, what should be emphasized in the Clear Creek Canyon target area? Rank in order of importance to you.

	most important			least important	Rating Average	Response Count
Protecting and restoring fish habitat.	40.0% (4)	10.0% (1)	40.0% (4)	10.0% (1)	2.20	10
Protecting and restoring upland forest areas to protect water quality.	30.0% (3)	30.0% (3)	10.0% (1)	30.0% (3)	2.40	10
Protecting and restoring rare habitat types and native plants such as wet meadows and wildflowers.	10.0% (1)	40.0% (4)	20.0% (2)	30.0% (3)	2.70	10
Protecting upland forest areas adjacent to already protected areas for habitat and water quality benefits.	20.0% (2)	20.0% (2)	30.0% (3)	30.0% (3)	2.70	10
	answered question					10
	skipped question					1

3. Are there other priorities that the Metro Council should consider in the Clear Creek Canyon target area? Please be specific.

Greenbelt between communities so they keep their own identity.

4. Do you have suggestions about partnerships Metro should pursue or other innovative ways to leverage regional funding and enhance this natural area? If so, please specify.

Continue to work with the Clackamas River Basin Council and the Soil and Water District.

Partner with local farms to preserve them also.

Personal business donations.

5. Do you have any other comments about this target area? If so, please specify.

None of this will accomplish what is needed unless the serious pollution problems caused by the overgrazing by water buffalo is controlled, as they will cause more and more pollution.

Questions 1 and 2 are hard to answer as fish, wetlands forests and uplands are all important. Metro should look to protecting all of this habitat.

Solving problems with livestock nearby.

SEPTEMBER 2007

NATURE
NEXT DOOR

2006 Natural Areas Program

Clear Creek
Target Area

- Target Area Boundary
- Major Roads
- Local Roads
- County Highways
- 100 Foot
- 10 Feet
- Streams
- Major Rivers
- Public Lands

Scale: 1 inch = 1 mile

Source: USGS, 2000

Map Date: 9/12/07

Map by: [illegible]

Map for: [illegible]

Map of: [illegible]

Map of: [illegible]

Map of: [illegible]

Map of: [illegible]

Map of: [illegible]

Map of: [illegible]

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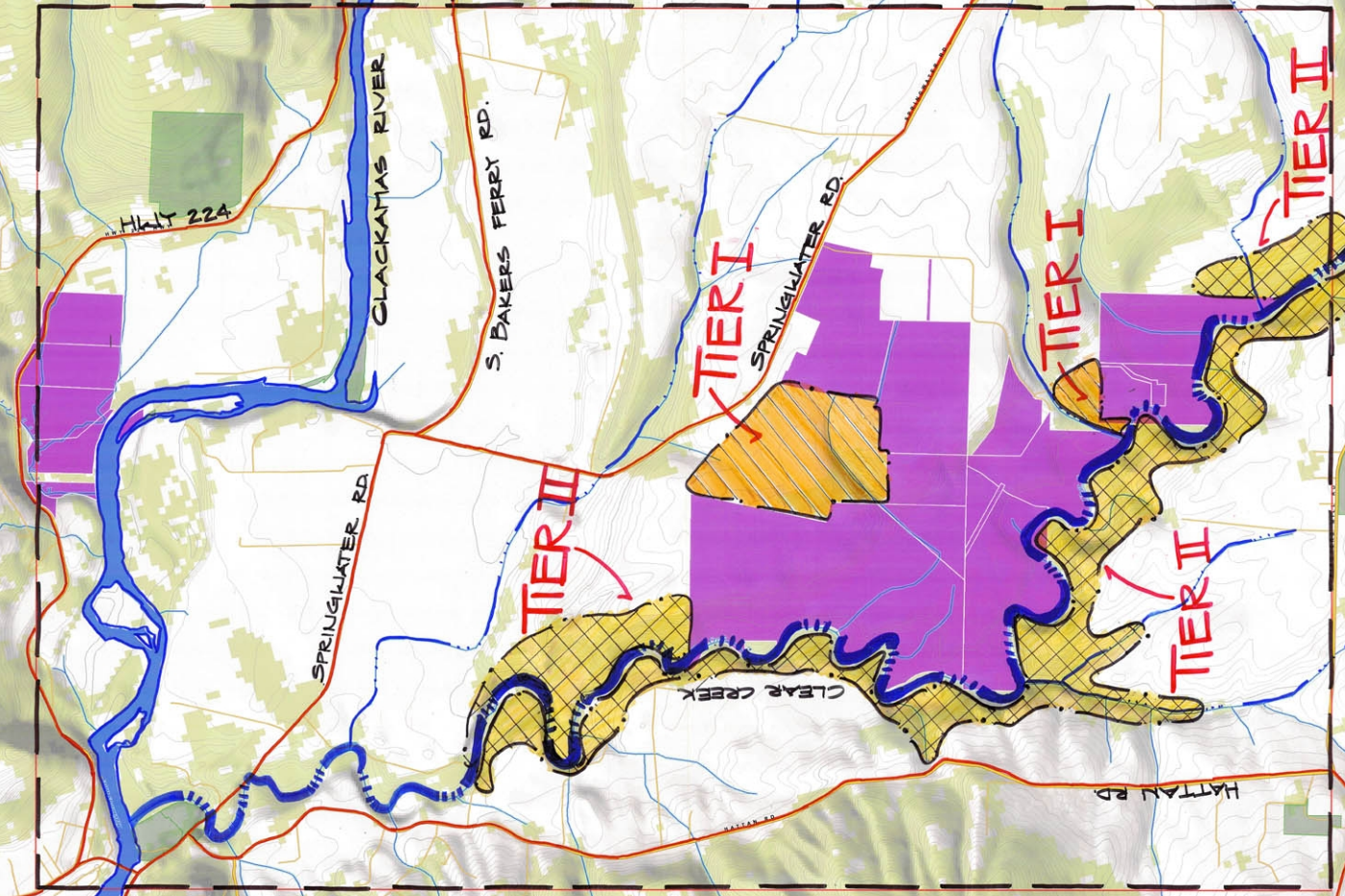
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Agenda Item Number 5.12

Resolution No. 07-3858, Approving the Natural Areas Acquisition
Refinement Plan for the Willamette Narrows and Canemah Bluffs
Target Area

Metro Council Meeting
Thursday, September 6, 2007
Council Chamber

BEFORE THE METRO COUNCIL

APPROVING THE NATURAL AREAS ACQUISITION
REFINEMENT PLAN FOR THE WILLAMETTE
NARROWS AND CANEMAH BLUFF TARGET AREA

RESOLUTION NO. 07-3858

Introduced by Chief Operating Officer
Michael J. Jordan, with the
concurrence of Council President
David Bragdon

WHEREAS, on March 9, 2006, the Metro Council adopted Resolution No. 06-3672B “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” recommending submission for voter approval a general obligation bond to preserve and protect natural areas, clean water, and fish and wildlife (the “2006 Natural Areas Bond Measure” or “Measure”); and

WHEREAS, at the election held on November 7, 2006, the voters approved Ballot Measure 26-80, the 2006 Natural Areas Bond Measure; and

WHEREAS, the Willamette Narrows and Canemah Bluff Target Area was identified in the Measure as one of 27 regional target areas for land acquisition, building on the success of land acquisitions pursuant to Metro’s 1995 Open Spaces Bond Measure Program; and

WHEREAS, as provided in the 2006 Natural Areas Bond Measure, Metro has undertaken a public refinement process to establish specific acquisition strategies, goals, objectives, and a confidential tax-lot specific acquisition target area map for each of the 27 target areas; and

WHEREAS, Metro’s refinement process included the compilation of available information about each target area; biological field visits and expert analysis of maps; interviews with key stakeholders including natural resource experts, property owners, representatives from state and local government agencies, and advocates from water quality, fish, and wildlife preservation interest groups; and eight public open houses at sites throughout the region and a “virtual” open house available via the internet, at which draft refinement plans were made available for public review and participants could share their target area priorities either in-person or electronically; and

WHEREAS, on March 1, 2007, the Council approved Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” authorizing the Metro Chief Operating Officer to acquire properties identified on a Council-approved target area “confidential refinement map;” and

WHEREAS, the Council has reviewed the draft refinement plans and considered information it has received from citizens, scientists, advocates, and state and local governments; now, therefore

BE IT RESOLVED that the Metro Council adopts the Willamette Narrows and Canemah Bluff Refinement Plan attached hereto as Exhibit A, including the confidential tax-lot specific map reviewed by the Council in Executive Session on September 4, 2007, and signed by Council President David Bragdon on that date, and hereby authorizes the Chief Operating Officer to acquire properties in the Willamette Narrows and Canemah Bluff Target Area consistent with the Council-approved Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan.

ADOPTED by the Metro Council this _____ day of _____ 2007.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

**2006 NATURAL AREAS ACQUISITION PROGRAM
WILLAMETTE NARROWS AND CANEMAH BLUFF TARGET AREA REFINEMENT PLAN**

Background

In 1995 the refinement goals for the Willamette Narrows and Canemah Bluff were included within the broader Willamette River Greenway. For the Willamette Narrows, the successful acquisition of 472 acres acquired far exceeded the initial 75-acre goal. In the Canemah Bluff, the initial acreage goal was 390, with a final acquisition total of 134 acres. Refinement plan goals focused on fens, ponds and small drainages and acquiring and protecting islands in the Willamette River. The 606 acres that have been protected by Metro in this area are located along the eastern and western banks of the Willamette River. Protected areas include some small islands in the Willamette River as well as a very important peat fen. Due to their proximity and similar natural resource values, the Willamette Narrows and Canemah Bluff target areas were combined for the 2006 bond.

The 2006 Natural Areas bond measure stated:

Descending the Willamette River, this greenway forms the corridor gateway to Willamette Falls, Oregon City, and urbanizing areas of the lower Willamette River. Flowing through islands and past steep Bluff, this portion of the river retains a sense of wildness like no other reach of the lower river. The narrows provide high quality wildlife and important fish habitat.

The science information recognized that this unique area is under pressure from increased development. Oregon white oak and rare wildflower habitats exist in the area. River habitat values are high because of the diverse topography that includes steep Bluff and plateaus.

Target Area Description

Just south of West Linn, at its confluence with the Tualatin River, the Willamette River flows through a stretch of steep cliffs and rocky islands called the Willamette Narrows. Upland Bluff offer views of the river, trees and huge basalt rocks, while lower portions offer sandy beach access to the river. Although the area is just minutes from West Linn and Oregon City to the north and Wilsonville to the west, it can feel untouched and remote. The Willamette Narrows is home to deer, coyote, frogs, salamanders, osprey, owls, heron, woodpeckers and numerous songbirds. In the future, it will offer access to people for an extraordinary natural area experience close to home. Many of the region's most unique plant species, including the rare Delphinium (leucophaeum) and the culturally significant camas, are found on these sites. The oak woodland and upland prairie habitats found here in abundance have nearly disappeared in other areas of the Willamette Valley.

The protected Peach Cove Fen located in this area is believed to be the only wetland of its kind remaining in the Willamette Valley. The 20-acre shallow lake and associated emergent marsh sit in a depression scoured in bedrock by the Bretz (aka Missoula) Floods thousands of years ago. A floating peat mat rises and falls as the lake level fluctuates with seasonal rains.

Refinement Process

During the refinement process, Metro staff compiled available information about the Willamette Narrows and Canemah Bluff target area, analyzed maps and conducted biological field visits. Individuals were interviewed representing various government agencies, property owners, interested friends groups and natural resource experts. The key concerns expressed during the interviews are summarized in Attachment 1.

A public open house to discuss the proposed Refinement Plan was held on June 18, 2007 at the Athey Creek Middle School Commons, one of eight such open houses held throughout the region. Notices of the

open houses were mailed to area residents and other interested citizens. Metro also conducted a “virtual” open house by making target area informational materials, including maps, available “online” via the internet and allowing participants to share their target area priorities electronically. A total of 527 people attended the regional open houses, and the online open house had 6,363 visits from 3,419 unique visitors. More than 700 target surveys were submitted either in person or online. Twenty-two people completed surveys about Willamette Narrows and Canemah Bluff. A copy of the survey questionnaire is included as Attachment 2. The map associated with the questionnaire for this target area is included as Attachment 3, and complete survey results are included as Attachment 4.

Findings

- The Willamette Narrows/Canemah Bluff area contains large, contiguous forests and a diverse system of wetlands, fens, small drainages, rock outcrops and basalt cliffs.
- Among several rare species of note is the white rock larkspur, a state-listed endangered plant species that occurs here and only six other places in the world.
- The steep river Bluff and plateaus in the target area are relatively unique within the region. The shallow soils of the rocky plateaus support wet meadows and Oregon white oak-Pacific madrone woodlands. Oak-madrone habitats are also found on a group of basalt islands within the target area, which have been preserved for conservation purposes.
- The islands and the large expanse of forested land along both river banks provides unique scenic values, creating some of the most dramatic river views in the northern Willamette Valley from vantage points in West Linn and Oregon City, and along the Interstate 205 corridor.
- Significantly more land within the target area is now in public hands, compared with a decade ago. The area has seen relatively low impacts from development, due in part to past Metro acquisition efforts, as well as the area’s steep slopes and other physical constraints. Nevertheless, development pressures have increased as land values throughout the area have risen, and numerous Measure 37 claims have been filed in the area.
- The existing base of public lands in this target area provides an opportunity to establish a publicly accessible regional natural area.
- The area identified for acquisition and protection is a regionally significant natural and cultural resource, due to biological, geologic, and scenic values. Stakeholders and the public have emphasized the ecological benefits of aggregating parcels and completing connections to and between protected natural areas.
- Twenty-two people completed surveys about Willamette Narrows and Canemah Bluff. Additional commentary was provided orally at the open house, most of which was consistent with the written responses. In rank order, the public priorities were:
 1. *Map area A* – Protect large blocks of forested areas along the west side of the Willamette River from Willow Island to the Oregon Golf Club.
 2. *Map area B* – Protect scenic views of the Canemah Bluff.
 3. *Map area C* – Provide recreational access and/or rest stops for canoeing and kayaking from Rock Island to Fish Eddy.

Goal

Acquisition of strategic additions in the Willamette Narrows and Canemah Bluff target area will protect the unique biological, geological and scenic values of this area and allow for a publicly accessible regional natural area to be established.

Objectives

A target area map showing the tiered objectives described below is included as Attachment 5.

Tier I Objectives

- Acquire property adjacent to existing public holdings that are essential to the establishment and management of a publicly accessible regionally significant natural area.
- Prioritize acquisition of unique landscape forms (kolks, fens, rock outcrops) and rare plant communities (oak woodland, prairie, isolated wetlands).
- Secure protection of remaining gaps in riparian areas on the west bank of the Willamette River between existing public holdings and Peach Cove fen.
- Acquire lands to extend public ownership of forested Bluff and protect scenic views of Canemah Bluff from the river and nearby publicly owned lands.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 07-3858, APPROVING THE NATURAL AREAS ACQUISITION REFINEMENT PLAN FOR THE WILLAMETTE NARROWS AND CANEMAH BLUFF TARGET AREA

Date: September 6, 2007

Prepared by: Jim Desmond
Kathleen Brennan-Hunter

BACKGROUND—REFINEMENT PROCESS

The Natural Areas Bond Measure (Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” adopted by the Metro Council March 9, 2006) provided that Metro would undertake a “Refinement Process” to “gather additional information about each individual target area and begin zeroing in on particular parcels that would be valuable to acquire” (Exhibit A to Resolution No. 06-3672B). In addition, the Natural Areas Implementation Work Plan (Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” adopted by the Metro Council on March 1, 2007) authorized the Metro Chief Operating Officer to acquire properties without further Council approval if they have been identified on a Council-approved target area “confidential refinement map.” To implement those directives, the Refinement Plans for each target area contain overall target area objectives and confidential tax-lot specific target area maps identifying priority properties for acquisition, enabling Metro staff to begin the acquisition of property and property rights as detailed in the Natural Areas Implementation Work Plan.

Additional background information, target area information, a description of the specifics of the refinement process regarding this target area, and the refinement plan’s findings, goals, and objectives are described in further detail in Exhibit A to this resolution, the Willamette Narrows and Canemah Bluff Target Area Refinement Plan.

ANALYSIS/INFORMATION

1. **Known Opposition**

None.

2. **Legal Antecedents**

Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” adopted on March 9, 2006.

The voters’ approval of Metro’s 2006 Natural Areas Bond Measure at the general election held on November 6, 2006.

Resolution No. 07-3766A “Authorizing the Chief Operating Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” adopted by the Metro Council on March 1, 2007, established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

3. **Anticipated Effects**

Acquisition of natural area properties in the Willamette Narrows and Canemah Bluff target area to achieve the goals and purposes of the 2006 Natural Areas Bond Measure.

4. **Budget Impacts**

The FY 2007-08 budget includes budgetary authority to purchase \$35 million in natural area lands, with an additional \$15.4 million in contingency, if necessary. It is estimated, based on historical spending patterns, that this authority will be sufficient to cover the anticipated acquisition activity for this fiscal year. Additional unappropriated fund balance (\$64 million) exists for land acquisition in future years, along with the authority to issue up to an additional \$102 million in General Obligation bonds in support of this program.

RECOMMENDED ACTION

Staff recommends adoption of Resolution No. 07-3858.

Summary of Comments from Stakeholder Interviews for Willamette Narrows and Canemah Bluff Target Area

Stakeholder(s) Interviewed

Jim Labbe, Portland Audubon Society
Bob Sallinger, Portland Audubon Society
M G Devereux, Oregon State Parks and Recreation Dept.
Doug Neely, City of Oregon City
Alice Norris, City of Oregon City
Ken Worcester, City of West Linn
John Christy, Oregon Natural Heritage Information Center

Key Themes Discussed

Link or aggregate existing holdings

- 1995 bond acquisitions were very successful (469 acres). 2006 bond should build on that base.
- Contiguous forested areas with connections to riparian areas.
- Areas of particular importance that were mentioned by stakeholders include:
 - The steep, rocky bluffs on the east side of the river.
 - Forested areas along the west side of the river.
 - Fens, ponds and drainages throughout the target area.

Emphasize land with rare or diverse plant communities

- White rock larkspur is a state-listed species, is within the target area and should be protected.
- Presence of rare Oregon white oak – Pacific madrone habitat.
- Riparian values are high. Focus on river-related ecology.
- Fens, ponds, and drainages also contribute to unique habitat for plants and wildlife.

Prioritize riparian corridor

- Value of target area is related to Willamette River. Unusual stretch of the lower river for its topography and natural state.
- Both river banks have high scenic value as viewed from the water and from opposite banks. Canemah Bluff is especially scenic and unique as viewed from the west.
- Plant communities and wildlife are unique for this section of the lower Willamette.

Miscellaneous Comments

- Pressure from residential development is increasing.
- Access to natural areas should be allowed where it is feasible.
- Biodiversity is highest priority
- Could serve dual purpose as trail connections between scattered open spaces and wildlife corridors.

QUESTIONNAIRE

TARGET AREA: WILLAMETTE NARROWS AND CANEMAH BLUFFS

In November 2006 voters directed the Metro Council to extend a regionwide program and acquire between 3,500 and 4,500 acres of additional natural areas to protect water quality and fish and wildlife habitat and to provide future generations opportunities for greater access to nature. Now it's time for the Metro Council to refine priorities in the 27 regional natural areas and trail corridors targeted for acquisition. Metro has acquired 472 acres in this target area since 1995. The 2006 program will provide additional funding for protection goals in this target area.

The Metro Council wants your ideas and input. We've been talking with scientists, land-use experts, groups and individuals who have special knowledge about the natural resource values and community visions for these areas. With this information Metro has begun to identify the potential strategies and opportunities that will achieve the best results. Now we need to know: Do we have it right? What have we missed? What is most important to you?

2006 NATURAL AREAS BOND DESCRIPTION FOR THIS TARGET AREA

Descending the Willamette River, this greenway forms the corridor gateway to Willamette Falls, Oregon City and urbanizing areas of the lower Willamette River. Flowing through islands and past steep bluffs, this portion of the river retains a sense of wildness like no other reach of the lower river. The narrows provide high quality wildlife and important fish habitat.

QUESTIONS

1. **The following priorities were identified in the Willamette Narrows and Canemah Bluffs target area based on scientific information about benefits to water quality, habitat diversity, wildlife connectivity and/or restoration potential and from information provided by key stakeholders in the area. Rank in order of importance to you from 1 to 3, with 1 being the most important and 3 being the least important.**

- _____ Protecting large blocks of forested areas along the west side of the Willamette River from Willow Island to the Oregon Golf Club. (**Map area A**)
- _____ Protecting scenic views of the Canemah Bluffs. (**Map area B**)
- _____ Providing recreational access and/or rest stops for canoeing and kayaking from Rock Island to Fish Eddy. (**Map area C**)

2. **In general, what should be emphasized in the Willamette Narrows and Canemah Bluffs target area? Rank in order of importance to you from 1 to 5, with 1 being the most important and 5 being the least important.**

- _____ Protecting rare or unique plant communities (e.g., Oregon white oak, white rock larkspur, sphagnum bog).
- _____ Securing trail corridors for walking and hiking.
- _____ Protecting historic, archeological and cultural resources.
- _____ Protecting the area's scenic values and important views.
- _____ Providing access to the Willamette River for recreation and wildlife watching.

3. Are there other priorities that the Metro Council should consider in the Willamette Narrows and Canemah Bluffs target area? Please be specific.
4. Do you have suggestions about partnerships Metro should pursue or other innovative ways to leverage regional funding and enhance this natural area?
5. Are you interested in participating in Metro's Natural Areas program by selling or donating your property or selling or donating a conservation easement on your property?
- ☐ Yes ☐ No If yes, please be sure to provide your contact information below.
6. Do you have any other comments about this target area?

- ☐ Please add my name to the Willamette Narrows and Canemah Bluffs target area mailing list for future information, public meetings and events.

Name _____

Address _____

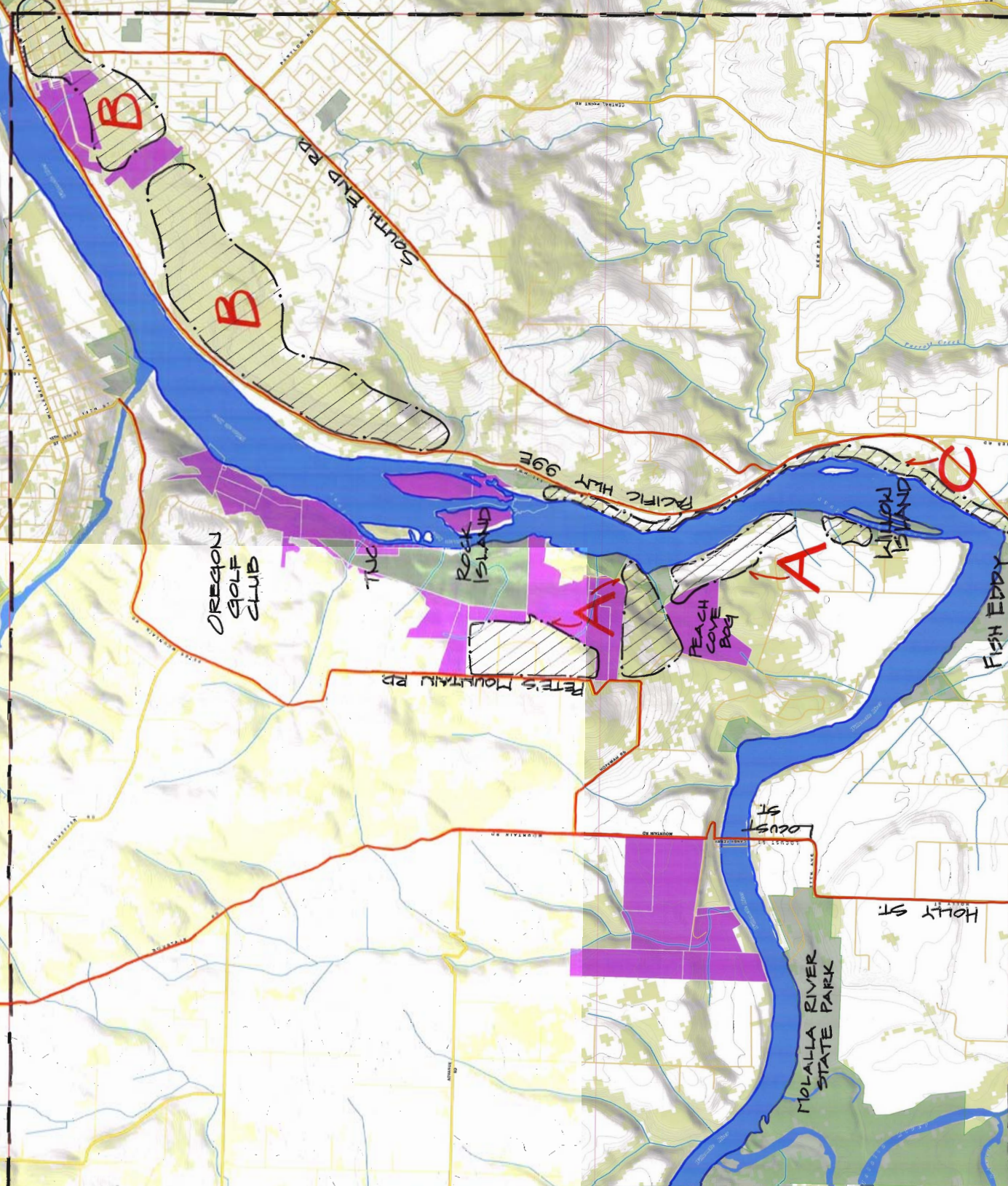
City/State/Zip _____

Phone _____

E-mail _____

**You may complete this questionnaire online at
www.metro-region.org/naturalareas**

or mail it to Metro at
600 NE Grand Avenue, Portland, OR 97232
(503) 797-1741



NATURE NEXT DOOR

REGIONAL LAND INFORMATION SYSTEM

2006 Natural Areas Program

Willamette Narrows & Canemah Bluff

Target Area

Legend:

- Major Roads
- Local Roads
- County Boundary
- Acquisition Program
- Public Lands
- Major River
- Major Road
- County Boundary
- Acquisition Program
- Public Lands
- Major River

Location Map:

Scale:

North Arrow:

Metadata:

DATE: 10/10/07
DRAWN BY: [Name]
CHECKED BY: [Name]
APPROVED BY: [Name]

Willamette Narrows and Canemah Bluff Survey Results

1. The following priorities were identified in the Willamette Narrows and Canemah Bluffs target area based on scientific information about benefits to water quality, habitat diversity, wildlife connectivity and/or restoration potential and from information provided by key stakeholders in the area. Rank in order of importance to you.

	most important		least important	Rating Average	Response Count
Protecting large blocks of forested areas along the west side of the Willamette River from Willow Island to the Oregon Golf Club. (Map area A)	68.4% (13)	10.5% (2)	21.1% (4)	1.53	19
Protecting scenic views of the Canemah Bluffs. (Map area B)	15.0% (3)	55.0% (11)	30.0% (6)	2.15	20
Providing recreational access and/or rest stops for canoeing and kayaking from Rock Island to Fish Eddy. (Map area C)	20.0% (4)	30.0% (6)	50.0% (10)	2.30	20
	answered question				20
	skipped question				2

2. In general, what should be emphasized in the Willamette Narrows and Canemah Bluffs target area? Rank in order of importance to you.

	most important				least important	Rating Average	Response Count
Protecting rare or unique plant communities (e.g., Oregon white oak, white rock larkspur, sphagnum bog).	45.0% (9)	5.0% (1)	20.0% (4)	15.0% (3)	15.0% (3)	2.50	20
Securing trail corridors for walking and hiking.	30.0% (6)	20.0% (4)	15.0% (3)	15.0% (3)	20.0% (4)	2.75	20
Protecting historic, archeological and cultural resources.	9.5% (2)	38.1% (8)	9.5% (2)	4.8% (1)	38.1% (8)	3.24	21
Protecting the area's scenic values and important views.	19.0% (4)	14.3% (3)	42.9% (9)	14.3% (3)	9.5% (2)	2.81	21
Providing access to the Willamette River for recreation and wildlife watching.	5.3% (1)	26.3% (5)	10.5% (2)	47.4% (9)	10.5% (2)	3.32	19
	answered question						22
	skipped question						0

3. Are there other priorities that the Metro Council should consider in this target area? If so, please specify.

Water quality protection.

Connecting trails and making the land available for public use.

Bike camping. Leave Portland on bike and camp at Molalla State Park or Champoeg.

Protecting water resources and natural trees and vegetation in historic Canemah Bluff is important. On property associated with 202 5th Avenue there are lots next to Ganong Street and a natural wetlands pond that should be acquired and saved. Metro's William Eadie knows about this opportunity. The associated property (6 1/2 acres) to the south that includes a big meadow and all of the land that feed the old Historic Canemah Water Works should be acquired too.

Narrows: It is a sensitive area and too many people will destroy it so Metro needs to be careful by keeping it protected from damage of the public.

4. Do you have suggestions about partnerships Metro should pursue or other innovative ways to leverage regional funding and enhance this natural area? If so, please specify.

Nature Conservancy.

Native American Tribes??? They have lots of history here.

Nature Neighborhood Challenge Grants could be used to acquire some of this land.

5. Do you have any other comments about this target area? If so, please specify.

Lovely area- hope this area high on your list.. :)

None of the priorities are really least important.

I like the idea of the continuous acquisition along the Willamette River. Also, I would like the wildlife corridors that run into the Willamette Narrows to be protected.

This area is extraordinary, rare and precious. The Metro-owned area(s) should be enlarged and protected. Once hiking trails are put through, invasive weeds will follow.

