



**METRO**

**Agenda**

MEETING: METRO COUNCIL WORK SESSION  
DATE: January 8, 2008  
DAY: Tuesday  
TIME: 2:00 PM  
PLACE: Metro Council Chamber

**CALL TO ORDER AND ROLL CALL**

- |                |           |   |                |
|----------------|-----------|---|----------------|
| <b>2:00 PM</b> | <b>1.</b> | <b>DISCUSSION OF AGENDA FOR COUNCIL REGULAR MEETING, JANUARY 10, 2008/ADMINISTRATIVE/CHIEF OPERATING OFFICER COMMUNICATIONS</b> |                |
| <b>2:15 PM</b> | <b>2.</b> | <b>FY 2008-09 BUDGET DISCUSSION</b>   | Stringer       |
| <b>3:15 PM</b> | <b>3.</b> | <b>BREAK</b>  |                |
| <b>3:20 PM</b> | <b>4.</b> | <b>URBAN/RURAL RESERVES RULEMAKING</b>  | Tucker         |
| <b>3:50 PM</b> | <b>5.</b> | <b>NATURAL AREAS CONSERVATION EASEMENTS AND NATURE IN NEIGHBORHOOD POLICY DIRECTION</b>   | Brennan-Hunter |
| <b>4:35 PM</b> | <b>6.</b> | <b>COUNCIL BRIEFINGS/COMMUNICATION</b>  |                |

**ADJOURN**

**URBAN/RURAL RESERVES RULEMAKING**

Metro Council Work Session  
Tuesday, January 8, 2008  
Metro Council Chamber

# METRO COUNCIL

## Work Session Worksheet

Presentation Date: January 8, 2008 Time: \_\_\_\_\_ Length: 30 min.

Presentation Title: Urban and Rural Reserves Rule

Department: Urban and Rural Reserves Administrative Rules

Presenters: Randy Tucker/Dick Benner

### **ISSUE & BACKGROUND**

LCDC will be adopting rules in January to implement SB 1011, the urban and rural reserves bill passed by the 2007 Legislature. The LCDC-appointed work group developing these rules will meet for the last time on January 7. This work session has been scheduled to ensure that staff has Council direction in order to prepare for the LCDC rule hearing on January 23.

The most contentious issue under consideration by the work group has been the circumstances under which so-called "Foundation Agricultural Lands" identified by the Oregon Department of Agriculture may be designated as urban reserves. As of January 2, compromise provisions are being developed; by the time the Council work session takes place, more information will be available as to whether these provisions will be satisfactory to Metro and to other parties.

### **OPTIONS AVAILABLE**

Staff will seek Council input for the development of testimony to be presented on January 23. Options will be presented at the work session and will depend on the outcome of the January 7 work group meeting.

### **IMPLICATIONS AND SUGGESTIONS**

At this time it is hoped that staff will be able to recommend Council support for the rule package developed by the work group. Depending on the details of that package, staff may recommend that Metro's testimony to LCDC specifically address issues including:

- The circumstances under which "Foundation Agricultural Lands" may be designated as urban reserves
- The nature of the findings required by the rule
- Language in the rule's purpose statement specifying that the objective of the rule is the designation of urban and rural reserves that "best achieve" a balance between agricultural, natural, and urban values
- Language addressing the way lands designated as urban reserve are planned and zoned when they are later brought into the UGB

### **QUESTION(S) PRESENTED FOR CONSIDERATION**

To be determined based on the outcome of the January 7 work group meeting.

LEGISLATION WOULD BE REQUIRED FOR COUNCIL ACTION  Yes  No

DRAFT IS ATTACHED  Yes  No

**NATURAL AREAS CONSERVATION EASEMENTS AND  
NATURE IN NEIGHBORHOOD POLICY DIRECTION**

Metro Council Work Session  
Tuesday, January 8, 2008  
Metro Council Chamber

# METRO COUNCIL

## Work Session Worksheet

**Presentation Date:** January 8, 2008

**Time:** 3:50 pm

**Length:** 15 minutes

**Presentation Title:** Natural Areas Program proposed resolution

**Department:** Parks and Greenspaces

**Presenters:** Councilor Harrington and Kathleen Brennan-Hunter

### ISSUE & BACKGROUND

During the refinement process the Metro Council provided policy direction to program staff regarding the relative priority between target areas which were included as part of the 1995 bond program and those which are new in 2006. The Metro Council asked program staff to focus more effort on the 2006 target areas than those from the 1995 measure, where the emphasis is primarily on closing key gaps and making important linkages.

If the proposed legislation is adopted the Council intent will be formalized for future Councilors during the life of the Natural areas program.

### OPTIONS AVAILABLE

The Metro Council may decide to proceed with this resolution or they may decline to proceed.

### IMPLICATIONS AND SUGGESTIONS

Since this direction was provided during the refinement process, program staff is already implementing the adopted refinement plans consistent with this policy decision.

If the proposed legislation is adopted the Council intent will be formalized for future Councilors during the life of the Natural areas program.

### QUESTION(S) PRESENTED FOR CONSIDERATION

Does the Metro Council want to formalize this policy direction by proceeding with the proposed resolution?

**LEGISLATION WOULD BE REQUIRED FOR COUNCIL ACTION**     Yes     No

**DRAFT IS ATTACHED**     Yes     No

BEFORE THE METRO COUNCIL

ESTABLISHING A GOAL FOR THE NATURAL  
AREAS PROGRAM TO PRIORITIZE THE  
ACQUISITION OF PROPERTIES WITHIN THE  
TEN NEW TARGET AREAS

RESOLUTION NO. 08-3888

Introduced by Councilor Kathryn  
Harrington

WHEREAS, in May 1995 the voters of the Metro region approved a \$135.6 million Open Spaces, Parks and Streams Bond Measure (1995 Open Spaces Bond Measure) with a stated goal of acquiring land in 14 target areas and along six trails and greenways; and

WHEREAS, the 1995 Open Spaces Bond Measure program resulted in the acquisition of over 8,100 acres (3,278 hectares) of open spaces in the target areas and trails and greenways, protecting 74 miles (119 kilometers) of stream and river frontage and greatly surpassing the 6,000-acre (2,428 hectares) minimum acquisition goal identified in the 1995 Open Spaces Bond Measure; and

WHEREAS, on November 7, 2006, the voters of the Metro region approved Ballot Measure 26-80 (the “2006 Natural Areas Bond Measure”), authorizing Metro to sell \$227.4 million of general obligation bonds to fund natural area acquisition and water quality protection in 20 identified regional target areas and along seven trails and greenways (the “regional share”), a local share program to provide funds for local projects undertaken by cities, counties, and other park providers in the region (the “local share”), and a capital grants program to fund neighborhood natural area restoration projects (the “Nature in Neighborhoods Capital Grants Program”); and

WHEREAS, of the \$227.4 million of bond proceeds, \$168.4 million was dedicated toward regional acquisitions in the 20 identified target areas and along the seven identified trails and greenways, \$44 million was dedicated toward local share projects, \$15 million was dedicated toward the Nature in Neighborhoods Capital Grants Program; and

WHEREAS, the Metro Council determined that ten of the 20 regional target areas identified in the 2006 Natural Areas Bond Measure are the same as the 14 regional target areas identified in the 1995 Open Spaces Bond Measure, and ten of the 2006 target areas were not identified as 1995 target areas (the “new target areas”), as identified on Exhibit A to this resolution (note that some new target areas do overlap with 1995 target areas); and

WHEREAS, Metro has completed a public refinement process and the Metro Council has adopted resolutions to establish specific acquisition strategies, goals, objectives, and a confidential tax-lot specific acquisition target area map for each of the 2006 target areas and trails and greenways (the “target area refinement plans”); and

WHEREAS, in developing the 2006 Bond Measure and approving the target area

refinement plans, the Metro Council relied on a working assumption that, of the regional share proceeds that were to be spent within the twenty target areas, approximately 70 to 80 percent of those funds would be spent on the acquisition of properties within the ten new target areas; and

WHEREAS, the Metro Council desires to establish a goal of spending not less than 70 percent and not more than 80 percent of 2006 Natural Area Bond Measure regional share proceeds toward the acquisition of properties within the ten new regional target areas; now therefore

BE IT RESOLVED that the Metro Council establishes a goal to spend not less than 70 percent and not more than 80 percent of the regional share of 2006 Natural Areas Bond Measure proceeds toward the acquisition of properties within the ten new target areas, as identified on Exhibit A to this resolution. Metro staff shall track the total amount of such proceeds spent in new and old target areas and shall annually report such amounts to the Metro Council and the Natural Areas Program Performance Oversight Committee.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_  
2008.

\_\_\_\_\_  
David Bragdon, Council President

Approved as to Form:

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

**EXHIBIT A TO RESOLUTION NO. 08-3888**

**2006 Natural Areas Bond Measure Target Areas**

New Target Areas

Abernethy and Newell Creeks  
Chehalem Ridgetop to Refuge  
Clackamas River Bluffs and Greenway  
Columbia Slough  
Deep Creek and Tributaries  
Johnson Creek and Watershed  
Lower Tualatin Headwaters  
Rock Creek Headwaters  
Stafford Basin  
Wapato Lake

Old Target Areas

Clear Creek  
Cooper Mountain  
Dairy and McKay Creeks Confluence  
East Buttes  
Forest Park Connections  
Killin Wetlands  
Sandy River Gorge  
Tonquin Geologic Area  
Tryon Creek Linkages  
Willamette Narrows and Canemah Bluff

Trails and Greenways (not subject to this resolution)

Cazadero Trail  
Fanno Creek Linkages  
Gresham-Fairview Trail  
Springwater Corridor  
Tualatin River Greenway  
Westside Trail  
Willamette River Greenway

# **METRO COUNCIL**

## **Work Session Worksheet**

**Presentation Date:** January 8, 2008

**Time:** 3:50 pm

**Length:** 30 minutes

**Presentation Title:** Natural Areas Program conservation easement

**Department:** Parks and Greenspaces

**Presenters:** Kathleen Brennan-Hunter

### **ISSUE & BACKGROUND**

The Natural Areas bond program anticipates acquisition of conservation easements when they are the appropriate tool for a particular transaction or target area, and within certain target areas which have an agricultural land base (as directed in Resolution 06-3727, “For the Purpose of Establishing Metro Council Policy Regarding the Acquisition of Rural Agricultural Land Pursuant to the 2006 Natural Areas Acquisition and Water Quality Protection Bond Measure”).

Program staff would like to gain information regarding the Metro Council’s perspective prior to drafting any proposed conservation easement guidelines.

### **OPTIONS AVAILABLE**

N/A

### **IMPLICATIONS AND SUGGESTIONS**

The Natural Areas Implementation Work Plan, adopted by the Metro Council on March 1, 2007 (Resolution 07-3766A), includes acquisition parameters and due diligence guidelines for fee title transactions. Provided that an acquisition complies with these provisions, the Metro Council has delegated authority to the Chief Operating Officer to close on fee title acquisitions of property without the Metro Council having to individually approve each purchase. Staff only needs to return to Council for approval of an acquisition when staff encounters circumstances outside of the pre-approved acquisition parameters and due diligence guidelines but still believes the acquisition is in Metro’s best interests (“unusual circumstances”). This approach streamlines Metro’s acquisition process, allowing Metro generally to close on its purchases quickly, and thereby makes Metro a more attractive buyer to potential willing sellers. The Work Plan, however, does not provide any similar specific parameters or guidelines to help streamline the acquisition process for conservation easements, which commonly involve negotiation, drafting, and due diligence requirements different from those involved in an ordinary fee simple purchase. In fact, Metro Code Section 10.03.060, adopted in 1997 in compliance with the state law of that time, requires the Metro Council to hold a public hearing prior to the acquisition or acceptance of any conservation easement. State law was amended in 1999 to provide an exception to that hearing requirement for Metro’s bond-financed acquisition program.

The purpose of this work session discussion is to address issues related to Metro's acquisition of conservation easements and determine whether the Metro Council would like the COO and Metro Attorney to prepare Code amendments and Work Plan provisions to clarify and streamline Metro's conservation easement acquisition program. During this work session, staff will briefly review the attached background on conservation easements and will then focus the presentation on a few key issues to gain information regarding the Metro Council's perspective prior to drafting any proposed conservation easement guidelines. The goal is to determine how staff should proceed in developing a conservation easement acquisition strategy and program that will best achieve the Metro Council's goals for the Natural Areas Acquisition Program.

If the Metro Council directs program staff to proceed the next step is to develop proposed guidelines to be included in the Implementation Work Plan. Staff would schedule time at a subsequent work session to review and discuss those specific guidelines with the Metro Council.

**QUESTION(S) PRESENTED FOR CONSIDERATION**

Should staff amend the Code and the Natural Areas Implementation Work Plan to streamline Metro's procedures for the acquisition of conservation easements?

**LEGISLATION WOULD BE REQUIRED FOR COUNCIL ACTION**     Yes     No

**DRAFT IS ATTACHED**     Yes     No

Department Director/Head Approval \_\_\_\_\_

Chief Operating Officer Approval \_\_\_\_\_

## CONSERVATION EASEMENTS

### A. General Description

- Legal agreement, recorded against real property (but non-possessory real property).
- Authorized by state law (ORS 271.715 to 271.795)
- Only a landowner may grant a CE.
- CE can permanently impose on a landowner both (a) limits on development or other uses and (b) affirmative obligations, such as for maintenance.
- “Holder” means an owner of a CE, which may only be a government, charitable entity, or Indian tribe (i.e., private individuals may not be holders).
- CE can be sold or donated to a holder.
- Some CE’s identify a third-party authorized to enforce the CE (may only be a government or charitable entity).
- CE does not absolve landowner from traditional owner responsibilities, such as property tax payments or maintenance.
- Landowner may freely sell or transfer its property, but the property will continue to be subject to the CE’s restrictions.
- May provide landowner with federal tax claim of charitable contribution if all/part of value of CE is donated.

### B. Purposes and “Conservation Values”

- CE identifies the purposes and specific “conservation values” it intends to protect—the clearer the statement of conservation values, the easier it is to interpret, thereby avoiding potential future conflicts.
- CE may be placed over a portion of the property where resources needing protection are located—not over entire parcel.
- CE purposes can include:
  - Retaining or protecting natural, scenic, or open space values/resources of property;
  - Ensuring property’s availability for agricultural, forest, recreational, or open space use;
  - Maintaining or enhancing air or water quality; and
  - Preserving the historical, architectural, archaeological, or cultural aspects of property.

### C. Enforcement

Holder is responsible to enforce. This responsibility generally includes:

- Establishing initial comprehensive “baseline” documentation, which documents the conservation values of the property, including developing maps, taking photos, and obtaining adequate descriptions of the property's characteristics;
- Monitoring the use of the land on a regular, consistent basis (level of monitoring negotiated and established in the document—minimum would include at least annual); and
- Legal enforcement, if necessary.

#### D. Drafting Issues

- Mortgages and Subordination of Liens--landowner must get consent from any mortgage holder(s) and all existing lien holders must agree to subordinate their liens to the easement to avoid the risk of future extinguishment.
- Identifying and negotiating specific reserved rights and prohibited uses.
- Access. How much will be permitted? Continuum from public, to accompanied, to Holder only, to limited Holder access.

#### E. CE Pro's and Cons

##### Pros:

- + Protects land and retains conservation values long-term, regardless of what happens to the grantor.
- + Landowner retains ownership of the land and property remains private (\*\*don't we pay some of the assessments on fee title??) on local tax dockets.
- + May be less expensive than fee purchase (both because area protected may be smaller than entire parcel and because uses prohibited are less than total ownership)
- + Flexibility and diversity—restrictions are particular to each easement and an easement can be tailored to the particular situation of the individual property and landowner.

##### Cons:

- Due diligence costs generally equivalent to fee title
- Variability in easement terms could result in interpretation/understanding problems over time.
- Future costs for holder to annually monitor and to potentially enforce easement terms.
- Potential risk of abandonment: easement holder's failure to enforce restrictions could result in termination of the easement.
- Creates ongoing relationship with landowner and subsequent owners of property, which requires dedicated staff time.
- Risk of violation of the terms of the conservation easement may require significant legal time. This is generally more significant with second-generation landowners.

	<b>CONSERVATION EASEMENT</b>	<b>FEE TITLE</b>
Land acquisition costs	Generally 40-90% of the fee title value depending on the restrictions; donations possible	Market value (less any landowner donation)
Negotiation	Easement terms must be negotiated to be property specific; landowner retains ownership so negotiations will be more intensive than fee in nearly every case	Some transactions are heavily negotiated; other willing sellers accept standard terms without excessive negotiations
Due diligence direct costs	Generally the same as fee title	Generally \$9,000 to 12,000 per transaction
Stabilization	Report establishing baseline natural resource condition of property; must include photos, maps, and documentation of the property's conservation values; must be done before closing and with approval of landowners, so more difficult than typical stabilization report	Stabilization report which identifies actions immediately necessary such as building/removing fences, removing structures, restoring vegetation, etc.; identifies some long term management issues (which are not bond funded)
Long term management	<ul style="list-style-type: none"> <li>• Fewer direct management costs or long term responsibilities (only if negotiated, see public access and restoration items, below)</li> <li>• Monitoring and stewarding the conservation easement at least annually to ensure landowner compliance with CE terms. Requires dedicated staff time.</li> <li>• Potential future enforcement/litigation costs</li> </ul>	<ul style="list-style-type: none"> <li>• Full management responsibility unless managed through IGA with local jurisdiction</li> <li>• Costs vary</li> </ul>
Public access	None unless negotiated (continuum from full access, to accompanied access such as for educational purposes, to full staff access, to limited staff access for monitoring only); can be difficult to negotiate	All options available
Restoration opportunities	None unless negotiated	All options available