

A G E N D A

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**METRO**

**Agenda**

MEETING: METRO COUNCIL REGULAR MEETING  
DATE: March 21, 2002  
DAY: Thursday  
TIME: 2:00 PM  
PLACE: Metro Council Chamber

**CALL TO ORDER AND ROLL CALL**

**1. INTRODUCTIONS**

**2. CITIZEN COMMUNICATIONS**

**3. METRO TRANSITION ADVISORY TASK FORCE REPORT AND RECOMMENDATIONS**

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**4. AUDITOR COMMUNICATIONS**

- Solid Waste Hauling Contract: Metro's Consideration of Risks and Rewards of Change Order 24

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**5. CONSENT AGENDA**

- 5.1 Consideration of Minutes for the March 14, 2002 Metro Council Regular Meeting.

**6. ORDINANCES - SECOND READING**

- 6.1 **Ordinance No. 02-939**, For the Purpose of Amending Metro Code Chapter 7.01 to Amend the Metro Excise Tax to Provide Revenues for Metro's Regional Parks and Greenspaces Programs.

Solid Waste &  
Recycling/Nat'l  
Resources Com

**7. EXECUTIVE SESSION HELD PURSUANT TO ORS 192.660(1)(e). DELIBERATIONS WITH PERSONS DESIGNATED TO NEGOTIATE REAL PROPERTY TRANSACTIONS.**

- 7.1 **Resolution No. 02-3174**, For the Purpose of Authorizing the Executive Officer to Contribute towards the Purchase of the Jarvis Property in the Tryon Creek Linkages Target Area.

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## 8. COUNCILOR COMMUNICATION

### ADJOURN

#### Cable Schedule for Week of March 21, 2002

	Sunday (3/24)	Monday (3/25)	Tuesday (3/26)	Wednesday (3/27)	Thursday (3/21)	Friday (2/22)	Saturday (2/23)
<b>CHANNEL 11</b> (Community Access Network) (most of Portland area)						2:00 PM	
<b>CHANNEL 21</b> (TVCA) (Washington Co., Lake Oswego, Wilsonville)	7:00 P.M.	1:00 AM		7:00 P.M.			
<b>CHANNEL 30</b> (TVCA) (NE Washington Co. - people in Wash. Co. who get Portland TCI)	7:00 P.M.	1:00 A.M.		7:00 P.M.			
<b>CHANNEL 30</b> (CityNet 30) (most of City of Portland)	8:30 PM (previous meeting)						
<b>CHANNEL 30</b> (West Linn Cable Access) (West Linn, Rivergrove, Lake Oswego)	4:30 PM			5:30 AM	1:00 PM 5:30 PM	3:00 PM	
<b>CHANNEL 33</b> (ATT Consumer Svcs.) (Milwaukie)		10:00 AM 2:00 PM 9:00 PM					

*PLEASE NOTE THAT ALL SHOWING TIMES ARE TENTATIVE BASED ON THE INDIVIDUAL CABLE COMPANIES' SCHEDULES. PLEASE CALL THEM OR CHECK THEIR WEB SITES TO CONFIRM SHOWING TIMES.*

<i>Portland Cable Access</i>	<a href="http://www.pcatv.org">www.pcatv.org</a>	<i>(503) 288-1515</i>
<i>Tualatin Valley Cable Access</i>	<a href="http://www.tvca.org">www.tvca.org</a>	<i>(503) 629-8534</i>
<i>West Linn Cable Access</i>	<a href="http://www.ci.west-linn.or.us/CommunityServices/htmls/wltvsked.htm">www.ci.west-linn.or.us/CommunityServices/htmls/wltvsked.htm</a>	<i>(503) 722-3424</i>
<i>Milwaukie Cable Access</i>		<i>(503) 654-2266</i>

Agenda items may not be considered in the exact order. For questions about the agenda, call Clerk of the Council, Chris Billington, 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 email, fax or mail or in person to the Clerk of the Council. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

**Agenda Item Number 3.0**

**Metro Transition Advisory Task Force Report and Recommendations**

**Metro Council Meeting  
Thursday, February 21, 2002  
Metro Council Chamber**

**METRO TRANSITION ADVISORY TASK FORCE**  
**TRANSITION REPORT AND RECOMMENDATIONS**

**To:** Mike Burton, Metro Executive Officer  
Carl Hosticka, Presiding Officer  
Metro Council

**From:** Metro Transition Advisory Task Force (MTATF)

**Date:** February 25, 2002

**I. Introduction.**

In November 2000, the voters approved Measure No. 26-10, which amended the Metro home rule charter to change the Metro governing structure. Under the 1992 Metro Charter, Metro has been governed by an elected Executive Officer and a seven-member Council elected by District. This structure essentially continued Metro's previous statutory structure, except that the 1992 Charter reduced the number of councilors from thirteen to seven. The current structure is modeled after the state government: The Executive Officer is the chief administrator of the organization and has limited veto powers, similar to the governor, while legislative and policy authority resides in the Metro Council, governed by a Presiding Officer selected by the members, similar to the legislature.

There has long been a concern that this structure causes unnecessary friction between the Council and the Executive Officer, complicating Metro's ability to move forward and to speak with one voice. In the summer of 2000, the Executive Officer and the Council proposed changing this structure and appointed former Governor Barbara Roberts to conduct a public process on whether the structure should be changed and how. Measure No. 26-10 resulted from this process.

Effective January 6, 2003, Metro will be governed by a seven-member Council, six elected by district, and one, the Council President, elected regionwide. The Executive Officer position is abolished and is replaced by a "Chief Operating Officer" ("COO") appointed by the Council President subject to confirmation by the Council. The new structure is similar to the elected council/professional manager form of government found in most cities and in Washington County. In addition, the general counsel position becomes a charter office entitled "Metro Attorney." The Metro Attorney is also appointed by the Council President, subject to confirmation by the Council.

As with a constitution, the purpose of a home rule charter is to establish the general governance structure, but not the details. In November 2001, the Executive Officer and Council created the Metro Transition Advisory Task Force ("MTATF") and charged it with developing a transition plan and recommendations to implement the new structure. The Council appointed

twelve members with significant experience at various levels of government and business.<sup>1</sup> This report is the culmination of that process. Unless stated otherwise, the following recommendations were consensus recommendations of the task force.

## **II. Summary of Recommendations.**

- A. Role and authority of the Council President vis-à-vis the Council.**
  - 1. Any two or more councilors should be able to compel the Council President to place an item on the agenda.**
  - 2. Council confirmation should be required for all committee appointments.**
  - 3. The full Council should be involved in all aspects of the selection and confirmation process for hiring the COO and the Metro Attorney.**
  - 4. The full Council should be involved in a decision to terminate the COO or the Metro Attorney.**
  
- B. Authority and duties of the COO.**
  - 1. The Council should adopt a modified version of the International City Managers Association ("ICMA") model council-manager ordinance and delegate full administrative authority over the organization to the COO.**
  - 2. The Council and Executive Office staff should be combined into one unit reporting to and managed by the COO, but subject to Council participation in the assignment and review of individual staff members assigned to each councilor.**
  
- C. Authority and duties of the Metro Attorney.**
  
- D. Transition.**
  - 1. The Council should adopt the necessary ordinance amendments immediately, to be effective January 6, 2003.**
  - 2. The Council should decide on the projected staffing changes during the FY 02-03 Budget Process.**

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<sup>1</sup> MTATF members are Jeff Alden, MTATF vice chair, former Managing Partner of Stoel Rives LLP; Gary Blackmer, current elected Auditor of the City of Portland and formerly Multnomah County Auditor; Jeffrey G. Condit, MTATF chair, an attorney with Miller Nash LLP and formerly Lake Oswego City Attorney and Benton County Counsel; Rob Drake, Mayor of Beaverton; Rick Gustafson, vice president, Shiels Oblatz Johnsen, the first Metro Executive Officer and former legislator; Judie Hammerstad, Mayor of Lake Oswego and former Clackamas County Commissioner and legislator; J. W. (Matt) Hennessee, president/CEO of Quiktrak and former city manager and state executive; Larry Hilderbrand, former member of The Oregonian Editorial Board; Michael Jordan, chair of the Clackamas County Board of Commissioners and former Canby City Manager; Ted Kyle, chair of the Metro Committee for Citizen Involvement, program manager of the Clackamas County Water Environment Services and former West Linn city councilor; Donald McClave, president/CEO of the Portland Metropolitan Chamber of Commerce; and Felicia Trader, former executive director of the Portland Development Commission, former director of the Portland Department of Transportation, and former deputy Secretary of State.

3. **The Council should begin recruitment for the COO as soon as possible, subject to ensuring that the members of the 2003 Metro Council can participate in all of the key decisions during the process.**
4. **The COO and Metro Attorney should be hired on Contract.**
5. **The Council and the Executive Office should communicate frequently with staff during the transition as decisions are made and should appoint a staff person to be the contact person for staff questions.**

**E. Other Recommendations.**

1. **The Council should eliminate the Council standing committee structure.**
2. **The Council should formally review the success of the restructuring on a scheduled basis. The review should involve the Council President, the Council, the COO and the Department Directors.**
3. **Council charter committees such as MCCI and MPAC and other policy committees should report directly to the Council President and the Metro Council.**

**III. Analysis of Recommendations.**

**A. Role and authority of the Council President vis-à-vis the Council.**

The revised Charter generally provides that the Council President assumes the role currently performed by the Presiding Officer and effectively becomes a full-time position,<sup>2</sup> but is otherwise the first among equals. The Council President has greater political stature as the only member elected regionwide, and is granted a few limited additional powers not currently enjoyed by the Presiding Officer. MTATF has several recommendations to limit conflicts between the new Council President and the rest of the Council.

1. **Any two or more councilors should be able to compel the Council President to place an item on the agenda.**

**Analysis:** The new Charter provides that the Council President sets the agenda "subject to the general rules of the Council." Charter Section 16(4)(b). Generally those rules are set forth in Code Chapter 2.01. The new Charter clearly intends that the Council President have the same authority to preside over the Council as the current Presiding Officer. The Task Force was concerned that because the Council President will be elected regionwide and not by the Council, a conflict could arise if the rest of the Council perceives that the Council President is controlling Council business through the agenda-setting power. MTATF recommends amending Section 2.01.060 (b) to provide that the Council President be required to place an item on the agenda if so requested by two or more councilors. (Chapter 2.01 also requires conforming amendments to reflect the new structure.)

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<sup>2</sup> Interestingly, nothing in the new charter requires the Council President to treat the position as a full-time job. The salary increase from two-thirds to the full salary of a circuit court judge suggests an expectation that the person elected will serve full time in the office.

**2. Council confirmation should be required for all committee appointments.**

**Analysis:** Charter Section 16(4)(b) states that the "Council President appoints all members of the committees, commissions and boards created by rules of the Council." General Counsel Dan Cooper informed the committee that the purpose of this section was not to eliminate Council confirmation authority, but rather to allow the Council to decide on a case-by-case basis whether to require confirmation. MTATF recommends that the members of all committees that report to the Council be subject to confirmation by the Council. It was the experience of several task force members that committees not subject to confirmation were either beholden to the person who appointed them or perceived to be beholden and were thus less effective.

**3. The full Council should be involved in the selection and confirmation process for hiring the COO and the Metro Attorney.**

**Analysis:** Charter Sections 26(1) and (2) provide that the Council President appoints the COO and the Metro Attorney "subject to confirmation by the Council." The Charter is silent about how much involvement the full Council should have in the selection process. Because it is critical that both appointed officers have the trust and support of the full Council, MTATF recommends that the full Council be involved in the entire process, from deciding on the job description, to screening the candidates, to final selection. The voters were told that one of the chief reasons for the change was to reduce the institutionalized level of friction that exists between the Executive Office and the Council. If the Council President were to exclude the rest of the Council from the selection process for these two most important Metro offices, conflict is likely to continue and the effectiveness of the appointed officers will be compromised. As a practical matter, if the Council's role is limited to voting up or down on the final candidate, the selection process is also likely to take much longer. MTATF recommends that Metro Code Title II, either in Chapter 2.01 or the chapters dealing with the COO and the Metro Attorney, be amended to provide for Council participation in the full process.

MTATF also recommends that the Council provide for meaningful staff participation in the selection process for at least the COO, perhaps by appointing a staff committee to interview the finalists and make recommendations to the Council.

**4. The full Council should be involved in a decision to terminate the COO or the Metro Attorney.**

**Analysis:** Charter Sections 26(1) and (2) provide that the COO and Metro Attorney "serve at the pleasure of the Council" and are "subject to removal by the Council President with concurrence of the Council." Dan Cooper clarified that the intent of this section was to provide that the COO and Metro Attorney were "at will" positions, but that a termination decision requires approval of both the Council President and a majority of the Council: No four councilors can vote to terminate the officer without the approval of the Council President and the Council President cannot terminate without getting three or more votes from the Council. The purpose of this language was to ensure that the appointed officers are responsive to both the Council President and the full Council, and to provide some protection to the appointed officers from precipitous removal due to the politics du jour. MTATF recommends that the full Council

be involved in the removal decision, but believes that this will necessarily occur by operation of Charter Section 26 without the need for any additional language in the Code.

**B. Authority and duties of the COO.**

The title "Chief Operating Officer" suggests that the COO will be the administrative head of Metro. The Explanatory Statement for Measure 26-10 told the voters that the COO will "undertake administrative functions that the Executive Officer now performs." Charter Section 26-1, however, requires the Council to create the office and "specifically establish" its duties and responsibilities by ordinance. Section 26(3) specifically empowers the Council to create other offices that do not report directly to the COO. The Charter therefore gives the Council significant discretion over how much administrative authority to delegate to the COO.

- 1. The Council should adopt a modified version of the International City Managers Association ("ICMA") model council-manager ordinance and delegate full administrative authority over the organization to the COO.**

**Analysis:** MTATF believes that one of the chief benefits of the change is the ability for the Council to hire a professional manager to run the organization. MTATF recommends that all departments and staff, except for the offices of Metro Attorney and Auditor, be under the direction and control of the COO. (Council staffing produced some dissenting opinions and is specifically discussed below). Several Task Force members expressed some concern that transferring this much authority to the COO could result in an organization that was too staff driven, could create accountability problems, and could diminish the stature of the Council President. The Task Force agreed that none of us intend a structure where the COO is actually driving the policy of the region by controlling information or access to the Council. The majority of the members felt, however, that there are enough checks and balances in the structure to prevent this from happening, and that the administrative and operational benefits to the organization are worth giving full delegation a try. The majority felt that professional management will free the Council to focus on regional policy matters, and that the relative authority of the Council President and the Council over the COO would ensure a responsive government and maintain a cooperative balance of authority between the Council President and rest of the Council. The Committee also felt that having a full time Council President in the office would make it very difficult for a COO to effectively control information to the Council. Several members pointed to Washington County as an example because it is most similar to the new Metro structure: Washington County has a full-time chair elected countywide and four part-time Commissioners elected by district, but full administrative authority is vested by ordinance in the County Administrator. In spite of this delegation of authority, the Commission under current chair Tom Brian and former chair Bonnie Hayes has consistently and clearly been at the helm of the ship of state and the political authority of the Washington County Chair is unquestioned. Finally, because the powers of the COO are contained in ordinance, rather than in the Charter, any COO is going to be mindful of the fact that any abuse of power could subject the COO to the swift and permanent reduction of his or her authority. This is the Council's ultimate guarantee of authority.

MTATF also felt that vesting full administrative authority in the COO would reduce potential personnel problems and provide an important gatekeeping role between staff and the Council: The COO would assure that adequate staffing exists to support the varying needs of



each councilor, provide a more direct line of communication between staff and the Council than currently exists, and, at the same time, provide some protection to staff from excessive interference by individual councilors. These latter two issues were raised by staff as reported by Majorie Hamann and Mary Heffernan in their February 6, 2002, report.

MTATF went through the powers and duties list in the ICMA draft ordinance. Attachment A is a revised version of that ordinance drafted by Chair Condit reflecting those discussions, with commentary in footnotes. If, after implementation, this structure does not produce the outcome that we expect – a dynamic Council-driven organization moving forward with one voice – the Council can and should make mid-course corrections.

- 2. The Council and Executive Office staff should be combined into one unit reporting to and managed by the COO, but subject to Council participation in the assignment and review of individual staff members assigned to each councilor.**

**Analysis:** Who should be responsible for managing Council staff was the most debated issue MTATF addressed, and one of the few issues where we did not reach consensus. Everyone agreed that the Council's and COO's need for staffing would not necessarily change significantly under the new structure. The Council will continue to need support staff to handle constituent matters and document preparation, the Council President is likely to need more support than the Presiding Officer, and the COO will need a similar level of staffing as the Executive Officer. The majority of MTATF felt that merging staff under the COO was the most effective way to provide these services. The majority believes that this is the best method to eliminate duplicative positions as the voters were promised, provide for effective professional management, enable the most efficient allocation of staff resources, and eliminate the "us" versus "them" mentality noted in the Hamann/Heffernan Report.

Dissenting members expressed concern about whether councilors could count on the support and the loyalty of staff assigned to them by the COO. Everyone agreed that the ability of councilors to rely on their staff was important, and the majority suggested that the councilors be involved with the assignment of staff to them and the performance evaluation of that staff member. The majority felt that the authority of the Council President and the Council over the COO, together with a councilor's involvement in the assignment and evaluation of staff members assigned to him or her, would ensure responsive and responsible staff. The majority felt that giving each Councilor his or her own staff position to hire and fire would not be efficient based on Councilor testimony that the level of individual support needed varied widely from councilor to councilor, could create staff resentment, could result in cronyism, and could create avoidable personnel and other legal problems.

One member felt that the Council President should hire, fire, and manage Council staff. He believed that this would give the Council President additional stature and provide a needed independence from the COO. The majority was concerned that this was a recipe for conflict between the Council President and the Council, and could create even greater loyalty issues with the regard to the rest of the Council. Moreover, it could create conflict and loyalty issues between staff managed by the Council President and staff managed by the COO. Finally, it would reduce the flexibility of the COO to alter staffing levels as needed to respond to

permanent or periodic fluctuations in the workloads of individual councilors and of the Council as a whole.

The Hamann/Heffernan Report indicates that the entire organization is ready and wants to become the "Council's staff" under the Council's chief staffer, the COO. The majority of MTATF believes that the Council should give the recommended structure a chance to work. We believe that it will be perceived as a significant vote of confidence by the Metro staff. If it doesn't prove effective, it can be changed.

With respect to the assignment of staff to individual councilors, MTATF recommends that the Council consider the model used by most professional firms for the assignment of secretarial support to professional service providers. This model has been successfully utilized by both law firms and accounting firms throughout the country. The significant aspects of the model would be: (1) each councilor would be assigned a portion of the time of a specific staff member; (2) each councilor would have the right to approve the staff member(s) assigned to him or her; (3) staff members assigned to each councilor might also be assigned to one or more other councilors (which recognizes the fact that different councilors may have different permanent or periodic needs for staff support depending on each councilor's specific workload); (4) staff members whose workload permits them to take on additional work would be expected to assist other staff members who have too much work (such "backup" responsibilities are formally assigned by many professional service firms); (5) if a councilor is dissatisfied with either the performance of or working relationship with a staff member assigned to him or her, the COO (or designee) would work with the staff member and councilor to determine if the problem can be rectified and, if not, would assign a new staff member to the councilor; and (6) each councilor would participate in the periodic formal review process of each staff member who has performed work for him or her during the evaluation period. This model would assure adequate staffing for the needs of individual councilors, avoid overstaffing, provide flexibility for transient staffing needs, and assure that councilors had staff who were loyal and responsive to the councilor's individual needs.

Each councilor currently has an expense account that has been used in the past to contract with a consultant to do some specialized research when the councilor perceived that he or she could not get support for such research from a majority of the Council. The MTATF recommends that this opportunity continue so that councilors in the minority have a significant but limited ability to independently develop information to support their proposals.

### **C. Authority and duties of the Metro Attorney.**

The Metro General Counsel's office is neither an executive nor a Council office under the current structure. Chapter 2.08 provides that the general counsel be appointed by the Executive Officer subject to confirmation by the Council, and can be removed either by the Executive Officer or by majority vote of the Council. Chapter 2.08 can simply be amended to change the title of the office to Metro Attorney and alter the appointment and removal process, and otherwise can remain the same.

**D. Transition.**

- 1. The Council should adopt the necessary ordinance amendments immediately, to be effective January 6, 2003.**

**Analysis:** The Hamann/Heffernan Report indicates a substantial amount of staff fear and uncertainty about the future. For this reason, and because it will be necessary in order to begin recruitment of the COO, MTATF recommends that the Metro Council adopt the necessary Code amendments to implement the new structure as soon as possible. The effective date can be delayed until January 6, 2003, but adopting the changes now will provide certainty and give departments and staff enough time to plan for the change. It will also provide certainty to candidates for COO, which will aid the recruitment process.

- 2. The Council should decide on the projected staffing changes during the FY 02-03 Budget Process.**

**Analysis:** MTATF did not believe that we should try to determine what positions should be eliminated or what staffing levels should be assigned under the recommended combined COO/Council staff regime, but we recommend that the Council address this issue in the budget process. This will be necessary in order to ensure that sufficient funding will be available and will give staff whose positions may be eliminated or changed six months to make decisions. It will also give time for the Council and the Executive Officer to address some of the potential changes through attrition or transfer.

- 3. The Council should begin recruitment for the COO as soon as possible, subject to ensuring that the members of the 2003 Metro Council can participate in all of the key decisions during the process.**

**Analysis:** MTATF agreed that, ideally, the new COO should start work as close to January 6, 2003, as possible. But we also agreed that it was even more important for the persons who will be serving as Council President and councilors in 2003 to participate in all of the key decisions leading up to appointment. Given current filing status, it is possible that the races could all be decided in May. If so, then the process should begin immediately thereafter. Certain steps can begin earlier, such as enacting the COO ordinance, drafting a position description based on the ordinance, doing a compensation study, hiring a recruitment firm (if the Council so chooses), advertising, and even doing an initial screening. A secondary screening, selection and interviewing of finalists, and selection of a tentative COO needs to be done by the members of the 2003 Council and most particularly by the Council President-elect. The COO cannot be formally appointed until after the Council President and new Council takes office. If there is a necessary delay past January 6, 2003, the Council should appoint an acting COO until the permanent COO can take office.

- 4. The COO and Metro Attorney should be hired on Contract.**

**Analysis:** Both the COO and Metro Attorney serve at the pleasure of the Council and so should be hired on contract, which is becoming the most typical method for hiring city managers. Such contracts are typically for an indefinite term and provide for termination at will, terms and conditions of employment, and severance.

5. **The Council and the Executive Office should communicate frequently with staff during the transition as decisions are made and should appoint a staff person to be the contact person for staff questions.**

**Analysis:** One of the core issues identified in the Hamann/Heffernan Report was the need to actively involve staff in the transition by clearly communicating the decisions, the timelines, and the process. MTATF recommends that the Council and Executive Officer implement all of the suggestions in Attachment B to the Hamann/Heffernan Report.

**E. Other Recommendations.**

1. **The Council should eliminate the Council standing committee structure.**

**Analysis:** As of January 6, 2003, the last vestiges of the legislative model will disappear. The Council standing committee structure was necessary to get any work done when there were thirteen Metro councilors. With a seven-member Council, many have criticized the committee structure as needlessly delaying decisions and creating unnecessary staffing expense. Since doling out committee memberships and chairships will no longer be needed as the primary coin for election as presiding officer, MTATF recommends that the Council abolish all standing committees and meet as a Council of the whole. If there is need for a greater level of process, the Council can hold informal sessions or workshops to get input. From time to time, certain projects or issues may arise that would benefit from the focused attention of a Council subcommittee; when this occurs, we recommend that the Council President appoint a Council task force with specific goals and a sunset date.

2. **The Council should formally review the success of the restructuring on a scheduled basis. The review should involve the Council President, the Council, the COO and the Department Directors.**

**Analysis:** Although MTATF did not agree on a specific time table, it did agree that a regular, scheduled review, not less than semiannually, should occur, at least during the first several years of the new structure to ensure that goals of the restructure have been met and/or to consider any mid-course corrections that should be made.

3. **Council charter committees such as MCCI and MPAC and other policy committees should report directly to the Council President and the Metro Council.**

**Analysis:** The Metro Policy Advisory Committee ("MPAC") and the Metro Committee for Citizen Involvement ("MCCI") are Metro Charter standing advisory committees. Currently these committees report to both the Executive Officer and to the Metro Council. MPAC is staffed by the Executive Office and MCCI is staffed by the Council Office. MTATF recommends that these two committees (and any policy advisory committees) report directly to the Council President and Metro Council, and that staffing be provided by the combined central administrative staff as described in Section III.B.2.

#### **IV. Conclusion**

The members of MTATF appreciate the opportunity to serve and wish the organization all success during the transition.

## ATTACHMENT A

### DRAFT METRO CODE AMENDMENT ESTABLISHING OFFICE OF CHIEF OPERATING OFFICER, BASED ON ICMA MODEL COUNCIL/MANAGER ORDINANCE

#### CHAPTER 2.20

#### CHIEF OPERATING OFFICER

##### 2.20.010 Creation of Office.

The office of ~~city manager~~ Chief Operating Officer is hereby created pursuant to Metro Charter Chapter V, Section 26.

##### 2.20.020 Appointment of City Manager and Removal.

~~\_\_\_\_\_ (a) The city manager~~ Chief Operating Officer shall be appointed by majority vote of the city council for an indefinite term by the Council President subject to confirmation by the Council. The Council President shall involve the Council in all aspects of the hiring process.<sup>1</sup> ~~The manager~~ Chief Operating Officer shall be chosen by the council solely on the basis of executive and administrative qualifications with special reference to actual experience in or knowledge of accepted practice in respect to the duties of the office hereinafter set forth in this Chapter. At the time of this appointment, the appointee need not be a resident of the city Metro or the state, but during the ~~manager~~ Chief Operating Officer's tenure of office, shall reside within ~~the city Metro's corporate boundaries.~~<sup>2</sup> No Council member shall receive such appointment during the term for which the Council member shall have been elected nor within one year after the expiration of the Council member's term.

~~\_\_\_\_\_ (b) The Chief Operating Officer serves at the pleasure of the Council and is subject to removal by the Council President with the concurrence of the Council. The city council may remove the city manager at any time by a majority vote of its members. If requested, a public hearing shall be granted by the council within 30 days following notice of removal. During the interim, the council may suspend the manager from duty, but shall continue the manager's salary and, if the removal becomes final, shall pay said salary for six calendar months following final removal date.~~<sup>3</sup>

##### 2.20.030 Power and Duties of the City Manager Chief Operating Officer.

The ~~city manager~~ Chief Operating Officer shall be the chief administrative officer of ~~the city Metro~~, may head one or more departments, and shall be responsible to the ~~city Metro~~ eCouncil for the proper administration of all affairs of ~~the city Metro~~. To that end, except as otherwise provided by Charter or ordinance, the ~~manager~~ Chief Operating Officer shall have the power and shall be required to:

<sup>1</sup> See recommendation III.A.3, above.

<sup>2</sup> A residency requirement may be unnecessary given the size of the region.

<sup>3</sup> I deleted the existing language because a public hearing requirement is unnecessary. The Council is required by the Public Meetings Law to vote to terminate in a public session. ORS 192.600 et seq. The Council may discuss the termination in executive session, but the COO has the right to require the Council to hold such discussions in public session. See ORS 192.660(1)(b). Although a six-month severance package is fairly standard, this should be negotiated as part of the contract.

(a) Appoint, and, when necessary for the good of the service, suspend supervise, discipline, or remove all officers and employees of Metro, the city except as otherwise provided by the city charter or law. The city managerChief Operating Officer may authorize the head of a department or office to appoint, suspendsupervise, discipline, or remove subordinates in such department or office.

(b) Prepare the budget annually and submit it to the Metro eCouncil together with a message describing the important features and be responsible for its administration after adoption.

(c) Prepare and submit to the eCouncil as of the end of the fiscal year a complete report on the finances and administrative activities of the city eCouncil for the preceding year.<sup>4</sup>

(d) Keep the Metro eCouncil advised of the financial condition and future needs of the cityMetro, and make such recommendations as may be deemed desirable.

(d) Recommend to the governing bodyMetro Council a standard schedule of pay for each appointed office and position in cityMetro service, including minimum, intermediate, and maximum rates.

(f) Recommend to the governing body (from time to time),Metro Council adoption of such measures as may be deemed necessary or expedient for the health, safety, or welfare of the community region or for the improvement of administrative services.

(g) Direct and supervise the administration of all departments, offices, and agencies of the cityMetro, except for the offices of Metro Auditor and Metro Attorney, as otherwise provided by this charter or by law.

(h) Consolidate or combine offices, positions, departments, or units under his/her the Chief Operating Officer's jurisdiction, with the approval of the cityMetro eCouncil. The city managerChief Operating Officer may be the head of one or more departments.

(i) Attend all meetings of the cityMetro eCouncil unless excused there from by the Council President, and may take part in the discussion of all matters coming before the eCouncil. The managerChief Operating Officer shall be entitled to notice of all regular and special meetings of the eCouncil.

(i) Supervise the purchase of all materials, supplies, and equipment for which funds are provided in the budget; and let contracts necessary for operation or maintenance of the cityMetro services pursuant to Metro Code Title II Chapter 2.04 (Metro Contract Policies) for amounts up to and including \$ \_\_\_\_\_, receive sealed bids for the purchases or contracts in excess of \$ \_\_\_\_\_ and present them to the council.

(k) Shall, after authorization from the Council, conduct all aspects of real property transactions on behalf of the Metro Council.

(l) See Work with the Metro Attorney to ensure that all laws and ordinances are duly enforced.

(m) Investigate the affairs of the cityMetro or any Metro department or division thereof. Investigate all complaints in relation to matters concerning the administration of the government of the

<sup>4</sup> I deleted this requirement because this is the function of the Metro Auditor and is otherwise required by the Municipal Audit Law, ORS Chapter 297.

cityMetro and in regard to Metro services maintained by the public utilities in the city, and see that all franchises, permits, and privileges granted by the cityMetro are faithfully observed.

\_\_\_\_\_ (n) Devote his/her entire full time to the discharge of all official duties.

\_\_\_\_\_ (o) Perform such other duties as may be required by the eCouncil, not inconsistent with the cityMetro eCharter, law, or eOrdinances.

**2.20.040 Council Not to Interfere with Appointments or Removals.**

Neither the eCouncil nor any of its members shall direct or request the appointment of any person to, or removal from, office by the ~~city manager~~Chief Operating Officer or any of the ~~manager's~~Chief Operating Officer's subordinates, or in any manner take part in the appointment or removal of officers and employees in the administrative services of the cityMetro. Nothing in this section shall prevent the Council President or individual councilors from participating with the Chief Operating Officer in the assignment and performance review of Council staff. The Metro Council shall direct staff resources through the Chief Operating Officer. Except for the purpose of inquiry, the council and its members shall deal with the administration solely through the city manager and neither the council nor any member thereof shall give orders to any subordinates of the city manager, either publicly or privately.

**2.20.050 Emergencies.**

In case of accident, disaster, or other circumstance creating a public emergency, the ~~city manager~~Chief Operating Officer may award contracts and make purchases for the purpose of meeting ~~said the~~ emergency; but the ~~manager~~Chief Operating Officer shall file promptly with the eCouncil a certificate showing such emergency and the necessity for such action, together with an itemized account of all expenditures.

**2.20.060 Bond.**

The ~~city manager~~Chief Operating Officer shall furnish a surety bond to be approved by the eCouncil, said bond to be conditioned on the faithful performance of all the ~~manager's~~Chief Operating Officer's duties. The premium of the bond shall be paid by the cityMetro.<sup>5</sup>

**2.20.070 Compensation.**

The ~~city manager~~Chief Operating Officer shall receive such compensation as the eCouncil shall fix from time to time by ~~ordinance or resolution~~contract.

**2.20.080 Vacancy.**

Any vacancy in the office of the ~~city manager~~Chief Operating Officer shall be filled with all due speed. During any vacancy or incapacity, the Council President may appoint an acting Chief Operating Officer subject to confirmation by the Council. within 60 days after the effective date of such vacancy.

<sup>5</sup> Such a bond may not be necessary given the Tort Claims Act requirement of local governments to defend and indemnify their officers, agents, and employees. Metro should check with its insurance provider to determine whether a bond is necessary.



Agenda Item Number 4.0

**Solid Waste Hauling Contract: Metro's Consideration of Risks and Rewards of Change Order 24**

Auditor's Report

Metro Council Meeting  
Thursday, February 21, 2002  
Metro Council Chamber

**METRO**

**Regional Environmental Management**

***Solid Waste Hauling Contract:  
Metro's Consideration of Risks and Rewards  
of Change Order 24***

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**March 2002**

**A Report by the Office of the Auditor**



**METRO**

**PEOPLE PLACES  
OPEN SPACES**

**Alexis Dow, CPA**  
**Metro Auditor**

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**METRO**  
**OFFICE OF THE AUDITOR**

March 8, 2002

To the Metro Council and Executive Officer:

During 2000 and 2001, Portland-area news media published a number of stories about Metro's solid waste hauler's financial difficulties and potential inability to fulfill contract requirements. Given the degree of attention that has surrounded these issues, we chose to review the decision-making process that led to Change Order 24, the contract modification in which Metro agreed to advance the contractor nearly \$6.6 million in exchange for reduced fees and other considerations over the ten and one-half years remaining on the contract. We also report on what has happened in almost three years since the decision was made.

Overall, we found that Metro officials made a fully informed decision to agree to Change Order 24 in May 1999. In the nearly three years that have passed since Change Order 24 was signed, the contract has been carried out in all material aspects and financial savings have been accruing to Metro.

We appreciate the cooperation and assistance provided by Metro management and staff during this review.

Very truly yours,

Alexis Dow, CPA  
Metro Auditor

Auditor: Joe Gibbons

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## Executive Summary

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Each year, a private firm operating under contract with Metro makes about 22,000 trips transporting about 657,000 tons of solid waste from Metro's two waste transfer stations to the Columbia Ridge Landfill near Arlington, Oregon. During 2000 and 2001, Portland-area news media published a number of stories about the contractor's financial difficulties and potential inability to fulfill contract requirements. The issues reported were potentially damaging to Metro, not only because they raised the specter of garbage not being delivered in a timely manner to the Arlington landfill, but because Metro took significant risks when it modified the contract in May 1999. At that time, and before services were performed, Metro agreed to advance the contractor nearly \$6.6 million in exchange for reduced fees and other considerations over the ten and one-half years remaining on the contract. The contract modification is known as Change Order 24.

Given the degree of attention that has surrounded these issues, we chose to review the decision-making process that led to Change Order 24, as well as to report on what has happened in the more than two years since the decision was made. We found the following with regard to the decision and its consequences:

- Metro officials made a fully informed and apparently reasonable decision to agree to Change Order 24 in May 1999.
  - ✦ Metro managers and the Council were fully aware that if the contractor defaulted or demonstrated other operational problems, Metro would face considerable added expense. For example, in the event of contractor default or related problems, Metro would likely: 1 – experience significant legal and arbitration obligations, 2 – be forced to hire a temporary hauler, and 3 – expend additional effort and funds to award another contract, in which case hauling costs might not be as favorable as with Change Order 24.
  - ✦ Metro took appropriate steps to mitigate risks by requiring that the contractor provide financial and operational protections in the event of default.
  - ✦ Metro negotiated contract savings in return for prepaying some contract expenses and turning over a retainage account early.
- Almost three years have passed since Change Order 24 was signed, and the contract has been carried out in all material aspects.
  - ✦ The potential risks considered in 1999 have not come to pass, even though some uncertainty about financial stability continued into 2001. Metro's subsequent Change Orders led to even more financial safeguards in case of default.
  - ✦ The ongoing financial savings foreseen in 1999 have been accruing to Metro, and non-monetary benefits, such as fewer traffic backups and improved safety, have been realized as well.
  - ✦ Solid waste has continued to move to Arlington without interruption.

# Introduction and Background

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## Why the Auditor's Office Reviewed Issues Related to Change Order 24

- During 2000 and 2001 Portland media raised concerns regarding how well Metro:
  - + managed its waste hauling contractor
  - + protected the interests of the public in dealing with the contractor
  - + considered potential problems in agreeing to Change Order 24.
- The public may have a continuing perception that certain issues remain problematic (for example, contract problems may cause rates to rise or may mean that trash will not be hauled).
- Unlike Metro managers and policy makers, who have first-hand knowledge about these issues, the public may be less informed, including knowing about the updated status of the contract.
- The Auditor reports to public.

## Audit Objectives

- Determine if Metro officials made an informed decision in May 1999 to enter into Change Order 24 and to accept a certain level of risk in exchange for certain benefits in revising the waste-hauling contract.
- Report to the public on the current status of the contract and other issues of public interest.

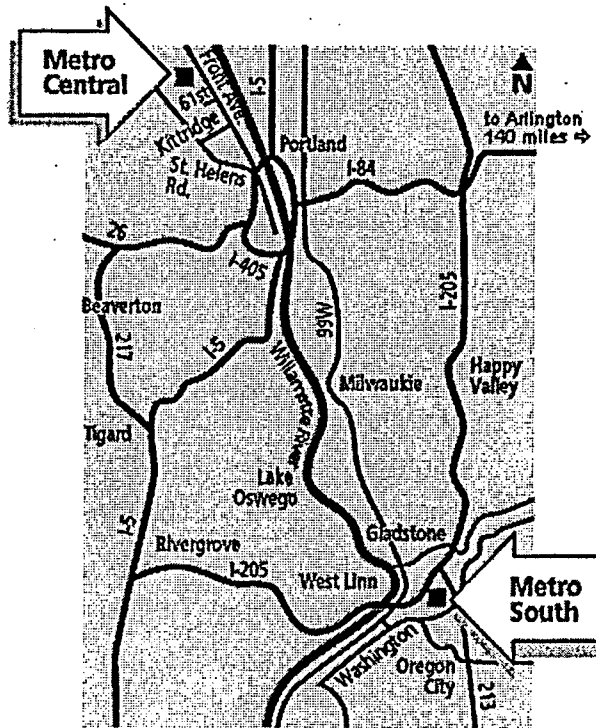
## Audit Scope and Methodology

To address objectives, we:

- developed a questionnaire for key Metro Regional Environmental Management (REM) and Office of General Counsel (OGC) officials regarding waste hauling contract issues, emphasizing Change Order 24 issues and subsequent events
- gathered, reviewed and discussed relevant REM and OGC documentation
- discussed documentation and reconciled certain matters with REM managers, OGC and a manager at Mellon Bank, the bank that issued a letter of credit as a contract condition that would help Metro mitigate expenses in the event of contractor default
- analyzed other evidence to determine if Metro officials made an informed decision to accept risk in exchange for benefits
- inspected Metro South Station with REM management to discuss and observe differences in operations since Change Order 24
- attempted to discuss issues with the Metro consultant who analyzed the contractor's financial condition, but phone calls were not returned
- evaluated current status of waste hauling contract
- evaluated evidence to determine if additional audit work would be needed
- performed work in accordance with generally accepted government audit standards.

## Background – Metro’s Solid Waste Hauling Contract

- In 1989 Metro entered into a 20-year trash-hauling contract for transporting regional solid waste from Metro’s two transfer stations (South and Central) 140 miles to the Columbia Ridge Landfill near Arlington, Oregon. Appendix A summarizes the contract's chronology of important events.
- The contract has many detailed provisions and conditions, essentially requiring that:
  - ✦ the contractor’s personnel and equipment conform with specific requirements
  - ✦ Metro have certain rights and remedies for contractor performance and defaults
  - ✦ Metro retain up to \$2.5 million of contract payments as one assurance of performance
  - ✦ Metro approve any change of ownership.
- Contractor ownership has changed several times during the life of the contract:
  - ✦ March 1989 – Jack Gray Transport, Inc. was awarded the original contract.
  - ✦ January 1998 – Specialty Transportation Services (STS) acquired Jack Gray Transport. Asche Transportation Services became STS parent company.
  - ✦ January 2001 – Churchill Environmental and Industrial Equity Partners, LP became parent company of STS, soon after Asche filed for bankruptcy.
  - ✦ May 2001 – CSU Transport, Inc., also a subsidiary of Churchill, was assigned contract responsibility from STS.
- From January 1990 through December 2001, Metro’s waste hauling contractors:
  - ✦ shipped a total of 7.9 million tons from Metro’s transfer stations to the Columbia Ridge Landfill
  - ✦ transported as much as 72,754 tons per month, averaging 54,784 tons per month
  - ✦ transported as many as 2,510 loads per month, averaging 1,862 loads per month and 29.4 tons per load.
- CSU uses 38 trucks and 198 trailers and employs 71 drivers, 14 shuttle operators and 18 administrative personnel.



# Issues Associated with Developing and Approving Change Order 24

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## Key Contract Provisions Prior to Change Order 24

- Payments to STS consisted of three elements:
  - ✦ fixed monthly payments of \$69,117 through December 2009 for contractor equipment expenses
  - ✦ per-load payments of \$361.47, as of January 1999, to be adjusted for future inflation
  - ✦ miscellaneous payments for trailer shuttling, weighing and managing staging area for transport and shuttling of trailers at Metro South. Metro paid STS \$7,765 per month for shuttle operations and provided staging area, to be adjusted for future inflation.
- Metro held \$2.5 million retainage in interest-bearing account, available in event of default. Interest earned goes to contractor.

## Reasons for Entering into Discussions About Amending the Contract

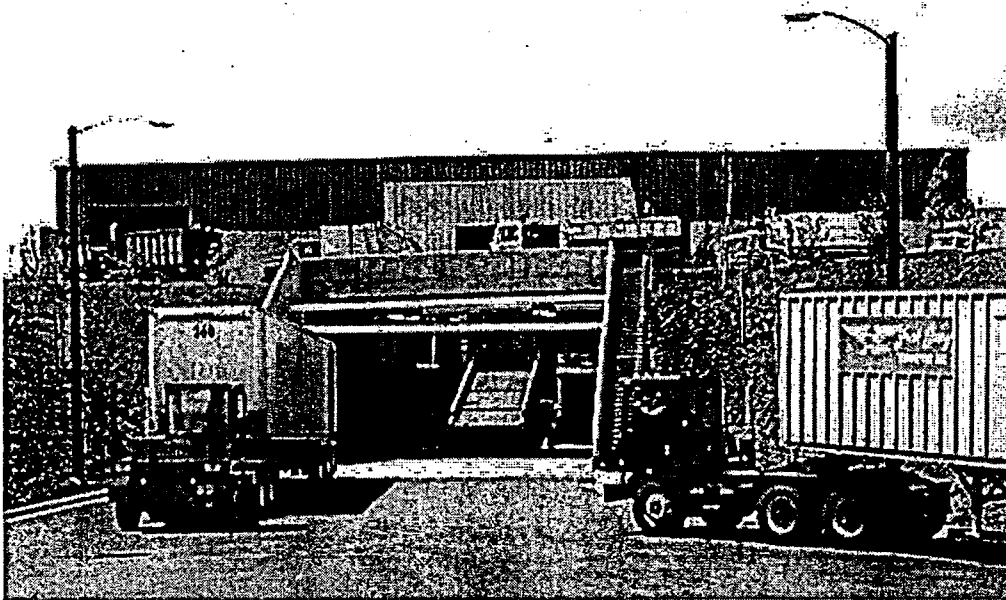
- Contractor's objective: STS, the contractor in 1999, wanted cash infusion to remedy financial problems, primarily high-interest, long-term debt.
- Metro's objectives:
  - ✦ reduce contract costs – per load unit costs would be reduced, Metro's monthly equipment and shuttle operations costs would be eliminated
  - ✦ address traffic problems, provide space for improved facilities, and provide better and safer service to commercial and other Metro customers at Metro South Station
  - ✦ keep future transportation options open.

## What Change Order 24 Did

- In overview, the change order was designed to provide the following benefits to the two parties:
  - ✦ STS would receive an up-front payment that would replace and reduce some Metro monthly payments for the remainder of the contract and receive the \$2.5 million retained payments held by Metro. This infusion of cash would place STS in a more financially sound position.
  - ✦ Metro would:
    - make lower per-load payments, lowering its monthly trash-hauling costs
    - benefit from operational changes the contractor agreed to make at Metro South Station
    - receive certain guarantees of contractor performance.



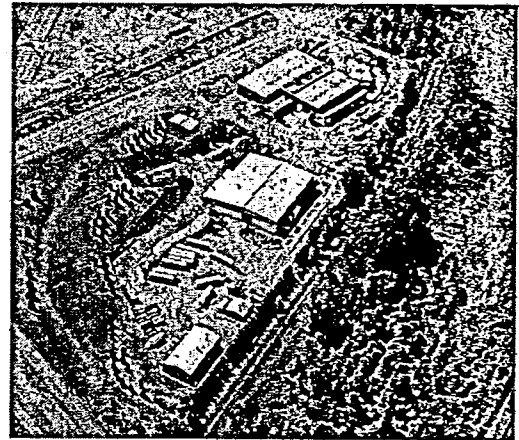
- What Metro gave under Change Order 24:
  - ✦ Metro pre-paid STS \$6,555,375 in May 1999 for monthly costs through 2009 associated with contractor equipment.<sup>1</sup>
  - ✦ Metro returned the \$2.5 million retainage to the contractor.
- What Metro received under Change Order 24:
  - ✦ A contractor in stronger financial position that can better fulfill material aspects of the contract through 2009.
  - ✦ Relief from fixed monthly payments of \$69,117 that Metro was obligated to pay for contractor equipment costs through December 2009 – this was the prepayment of \$6.6 million, discounted at 6 percent.
  - ✦ Reduced per load charge by \$30 (to \$331.47 in 1999) per load, an amount that would be adjusted annually for inflation. Metro's cost for the loads was about \$741,000 per month. This reduction saves Metro about \$600,000 annually.
  - ✦ Elimination of payment to STS for shuttling trailers to and from compactors at Metro South Station. Metro's cost for these operations was about \$7,800 per month, to be adjusted annually for inflation. Elimination of this cost saves Metro about \$108,000 annually.



STS shuttle trucks near compactor at Metro South Station – 1998

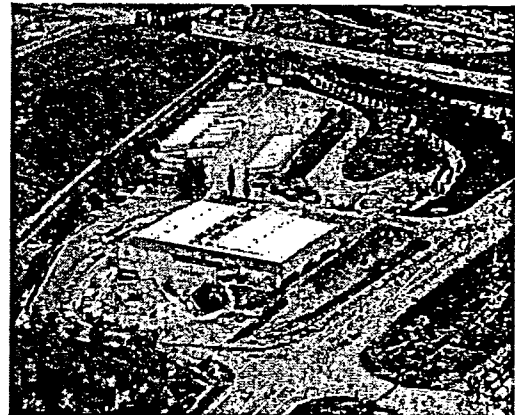
<sup>1</sup> If the \$6.6 million pre-payment were viewed as an investment, the three decreases (equipment costs, per load charges, shuttle payments) noted above that Metro has realized since May 1999 in effect free Metro from about \$1.2 million in annual payments. This investment will be repaid in nominal terms in August 2003, or in discounted terms in April 2004. See Appendix B for this payback analysis.

- + Other savings result from the removal of all but 10 STS trailers from the staging area at Metro South Station, where STS previously stored up to about 150 trailers. The newly opened space allows for improved waste recovery processes and reduced hauling costs for commercial customers. Also, because STS removed most trailers from Metro property, Metro was able to avoid paying for the alternative trailer staging area that was required by the contract. This equates to an avoided cost, or in effect a one-time Metro savings, of about \$1 million.



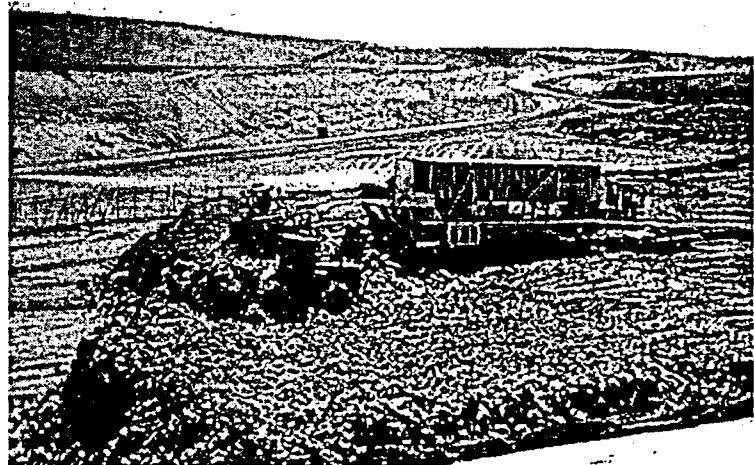
Metro South August 2001

- + Indirect system savings – wait time and traffic back-ups were reduced and safety increased for public and commercial haulers.
- + No extension to the contract. The contract will expire in 2009, at which time the Metro Council will have choices regarding future transportation modes.



Metro South 1997

- + Protections in case of default:
  - The contractor provided Metro with a \$4.1 million letter of credit, which declined by \$100,000 per month, as savings have been realized, to \$1.3 million. This amount is to be maintained for the remainder of the contract.
  - The parent company guarantees to Metro payment for all actual damages in the event of default, including attorneys' fees, incurred as a result of the default.
  - Metro usually withholds about \$1 million of contractor accounts payable that can be withheld in the event of default.
  - Metro has access to contractor equipment for 180 days, valued at about \$600,000. Contractor equipment includes over-the-road and shuttle trucks, trailers and tipper at Arlington.



STS Tipper at Columbia Ridge Landfill – 1998

## **How Metro Evaluated and Disclosed Risk**

- Risks were understood by Metro. Benefits were to be gained over 10 years.
- In April and May 1999, the Metro Council and Metro Executive Officer held discussions with STS.
- On May 5, 1999, REM staff issued a report itemizing the issues associated with Change Order 24, in which the known risks and potential rewards were fully disclosed (see Appendix B).
- As explained above, Change Order 24 included protections to mitigate risk, including the letter of credit, corporate guarantees and access to contractor equipment.
- On May 27, 1999, after evaluating the issues, the Council agreed with and the Executive Officer signed Change Order 24.

## Events Since Change Order 24

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### Risks of Poor Contractor Performance Continued into 2001

- STS was plagued by financial problems, and its parent company (Asche) went bankrupt in December 2000.
- 2000 and 2001 *Oregonian* and other media articles and a Metro consultant reported alleged financial and operational problems.
  - ✦ In November 2000 Metro's consultant, John Wiencken, warned of problems in continuing STS contract. The consultant stated that STS:
    - consistently lost money
    - was insolvent
    - failed to provide required financial assurance to Metro
    - was unable to update equipment
    - refused to provide financial data to Metro
    - was not fully honest with Metro.
- Metro threatened twice to default contractor:
  - ✦ February 2001 – Metro took action to place STS in default for various issues, such as poor equipment maintenance, failure to pay vendors, failure to provide financial information and failure to name Metro on equipment leases.
  - ✦ September 2001 – Metro took action to place CSU (the current contractor) in default because CSU had not complied with the requirement to keep in force a \$1.3 million letter of credit.
  - ✦ STS and CSU eventually cured problems on both occasions.
- Two additional change orders approved in 2001 have alleviated some financial concerns:
  - ✦ Change Order 25 in January approved a change of control of STS to a new parent company, Churchill Environmental and Industrial Equity Partners, LP, which appeared to have relatively strong financial standing. Churchill agreed to provide further financial guarantees and Metro had the right to use STS equipment for one year in the event of default.
  - ✦ Change Order 26 in May approved a change of control of contract obligations to CSU Transport, Inc. This changed trash-hauling operational requirements and ownership from STS to CSU. Churchill Environmental remained the parent company, agreed to Metro conditions and provided corporate guarantees of performance.

### Metro Incurred Costs in Dealing with Continuing Contractor Issues

- Problems with contractor compliance issues led to extensive Metro effort and cost. For example, Metro paid:
  - ✦ \$60,000 to the Larkin Group for assistance in locating a stand-by contractor
  - ✦ \$50,000 to Blue Line Transportation for stand-by equipment and transportation of wastes
  - ✦ \$34,600 to John Wiencken for business/bankruptcy advice
  - ✦ \$8,200 to Perkins and Company for financial analysis/accounting

- ✦ \$2,000 to Fruehauf Corporation for trailer inspections
- ✦ undetermined but substantial amounts of REM and OGC staff time for work relating to contractor compliance and potential default issues.
- Costs were not directly related to or caused by Change Order 24. Instead, they were primarily related to ensuring that Metro could continue trash-hauling services.
- According to REM managers, actual costs incurred to work through STS issues were likely much less than potential costs incurred with a contract termination. These costs would have included:
  - ✦ advertising for and procurement of new contractor, who may be able to demand higher trash-hauling rates
  - ✦ binding arbitration (that Metro might lose) and other legal costs.

**Thus Far, Savings Have Materialized and Risks Have Been Managed**

- To date, Metro has realized about \$2 million in reduced contract costs since it entered into Change Order 24.
- Additional savings (about \$1 million) have been realized at Metro South Station because Metro did not have to construct a new trailer staging area.
- Indirect savings through system enhancements have been significant at Metro South Station:
  - ✦ Construction was completed on a new public unloading area in August 2001, formerly the contractor's staging area, that greatly enhanced public safety (insert picture – next page).
  - ✦ Long waiting lines and traffic backups on public streets caused by commercial access limitations have been greatly reduced or eliminated.
  - ✦ Material recovery has increased and further increases are expected.



Inside New Public Area at Metro South Station – November 2001

## Conclusions

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- Metro's May 1999 decision to advance \$6.6 million to its trash-hauling contractor in exchange for future Metro benefits included substantial risk. With ongoing attention on Metro's part, these risks have so far been managed, and the decision has resulted in the savings that Metro officials anticipated.
- Metro's decision to accept a certain level of risk in exchange for certain benefits when it revised its waste-hauling contract was an informed decision. In preparing for this decision, Metro managers identified potential risks and rewards, Metro's Council evaluated detailed information, and managers and Council both acted to mitigate risks by requiring protections in the Change Order.
- Metro could have encountered expensive problems if the contractor defaulted. Metro would have had to incur expenses such as finding a new contractor through a cumbersome bidding process, becoming mired in legal and arbitration matters and, as a worst case, solid wastes not getting hauled. Such matters threatened to emerge, but thus far have been kept at bay, in part, because of additional actions taken by Metro.
- If the contractor continues to perform in accordance with the terms of the contract, savings will continue to accrue until the contract expires in December 2009.
- The region's solid waste has continued to flow to the Columbia Ridge Landfill in Eastern Oregon without interruption.

## **Appendix A**

### **Chronology of Events – Metro’s Waste Hauling Contract**

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# Chronology of Events – Metro’s Waste Hauling Contract

- March 1989** Metro signs original waste hauling contract with Jack Gray Transport for transportation of solid waste from Metro transfer stations to Arlington, OR
- January 1998** Change Order 23 approves change of ownership to Specialty Transportation Services (STS), a subsidiary of Asche Transportation Services
- May 1999** REM staff report itemizes potential risks and rewards of advancing \$6.6 million to STS, based on STS request to Metro
- May 1999** Change Order 24 approves STS request – \$6.6 million prepaid to STS in exchange for reduced contract expenses, corporate guarantees, letter of credit and other conditions
- June 1999** Mellon Bank issues \$4.1 million letter of credit as part of STS performance guarantee, declining at \$100,000 per month to a minimum of \$1.3 million as Metro savings are realized
- November 2000** Metro Consultant (Wiencken) summarizes STS problems: financial trouble, insolvent, failure to provide assurances to Metro, outdated equipment, etc.
- December 2000** Asche files bankruptcy
- January 2001** Change Order 25 recognizes change in STS ownership from Asche to Churchill Environmental and Industrial Equity Partners, LP and obtains additional conditions/protections for Metro
- January 2001** Metro contracts with Blue Line Transportation Co. Inc, as a “standby” contractor in case of STS default
- February 2001** Metro inspects STS trailers – majority fail
- February 2001** Metro Executive Officer finds STS in default of contract; gives intent to withhold payment and 30 days to cure defaults
- March 2001** Metro Executive Officer notifies Council that STS is curing some defaults, working on others; promises to monitor and report as needed
- May 2001** Change Order 26 changes transportation responsibilities from STS to CSU Transport, another Churchill subsidiary; reaffirms existing conditions and establishes new ones
- September 2001** CSU does not continue letter of credit as required; Metro Executive Officer issues “Notice of Default” to CSU and withholds \$670,000 August 2001 payment and future payments until letter of credit is received
- September 2001** Metro receives CSU letter of credit and default actions cease
- August 2003** Metro’s estimated financial break-even point (net cash flow dollars, not discounted) on benefits gained for the May 1999 \$6.6 million advance to contractor
- April 2004** Auditor’s estimated financial break-even point (1999 dollars discounted at 6%) on net cash flow benefits gained for the May 1999 \$6.6 million advance to contractor
- December 2009** Contract to end

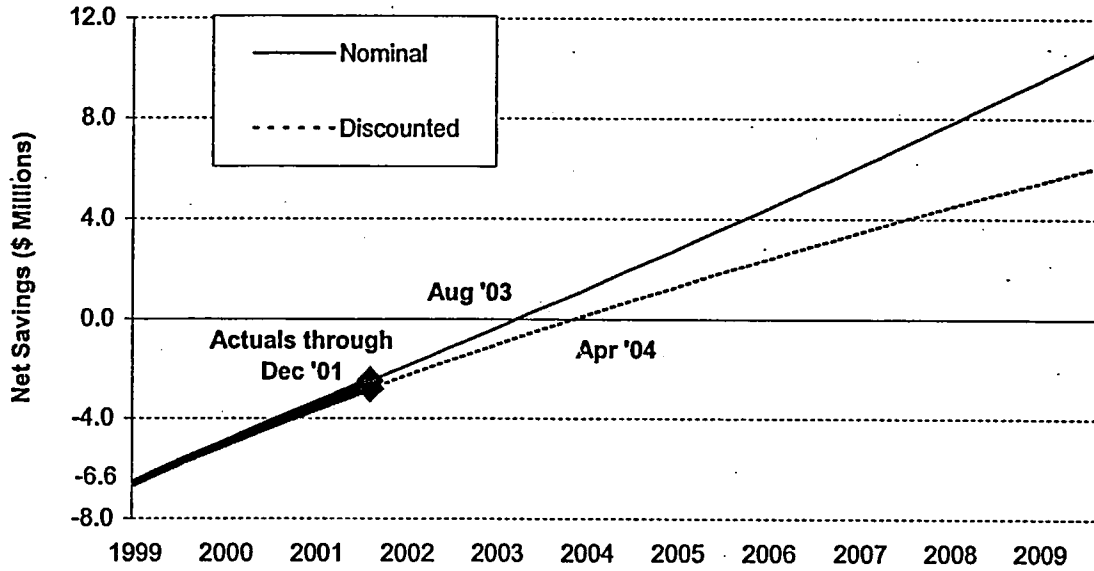


## **Appendix B**

**Nominal and discounted cumulative savings of \$6.6 million viewed as an investment**

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**Nominal and discounted cumulative savings  
of \$6.6 million viewed as an investment  
(STS Change Order 24)**



Source: REM

## **Appendix C**

REM Staff Report – Change Order 24

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## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 99-2786 FOR THE PURPOSE OF APPROVING CHANGE ORDER NO. 24 TO THE WASTE TRANSPORT SERVICES CONTRACT

Date: May 5, 1999

Presented by: Terry Petersen

## PROPOSED ACTION

Adopt Resolution No. 99-2786 for the purpose of authorizing Change Order No. 24 to the contract with Specialty Transportation Services, Inc. for waste transport services.

## SUMMARY

Metro Council approval of Change Order No. 24 to the Specialty Transportation Services, Inc. (STS) Contract would result in several benefits to Metro and the Region's ratepayers. Most importantly, there would be net savings of approximately \$9 million over the remainder of the contract.

Key elements of the proposed change order are as follows:

1. Metro would prepay future fixed costs of \$8.85 million (128 payments of \$69,117) discounted at 6.0%, resulting in a one-time payment of approximately \$6.6 million.
2. STS would provide Metro with an irrevocable letter of credit in the initial amount of \$4.1 million to protect Metro in the event that STS defaults or the contract is terminated. The letter of credit would decline monthly to a final value of \$1.3 million. The \$1.3 million letter of credit would be maintained for the remainder of the contract in lieu of retainage. STS would also provide Metro with a corporate guarantee from Aasche Transportation Services, Inc., the parent company of STS.
3. The per-load payment would be reduced by \$30, resulting in a price of \$331.47 per load at the time the change order is executed. The savings from this price reduction would be approximately \$7.8 million over the duration of the Contract.
4. STS would move most of their transport trailers off Metro property at Metro South Station and the \$93,142 annual shuttle cost would be eliminated. This change would allow Metro to proceed with facility improvements at Metro South that would increase waste recovery and reduce the hauling costs of commercial customers. Metro would obtain savings of about \$1.0 million in reduced contract payments. Metro would also be able to avoid approximately \$1 million in costs associated with replacing the trailer parking lot at Metro South. In addition, there would be indirect system savings as wait times would be reduced for commercial haulers if a new public dumping area is constructed in the space to be vacated by STS under the Change Order.

5. The estimated combined savings from the reduction in the per-load charge and the elimination of the annual shuttle cost total \$8.89 million over the remaining life of the Contract.

### FACTUAL BACKGROUND

Metro has a contract with Specialty Transportation Services, Inc. (STS) for transporting waste to the Columbia Ridge Landfill from the Metro South and Central transfer stations. The 20-year contract will expire on December 31, 2009. During FY97-98, STS transported 723,950 tons in 24,757 loads to the landfill. The total of all payments to STS during FY97-98 was \$9,858,853.

There are several key provisions of the existing contract that are relevant to this change order. The payments to STS consist of three components, which follow: (1) fixed monthly payments in the amount of \$69,117 for the duration of the contract; (2) per-load payments, currently in the amount of \$361.47; and (3) miscellaneous payments for trailer shuttling, trailer weighing, and managing overloaded trailers. The per-load and miscellaneous payments are adjusted annually based on the consumer price index.

Metro currently holds \$2.5 million in retainage, as specified in Article 13 of the contract. Metro retained 5% of all STS payments until the retainage equaled \$2.5 million. The retainage is in an interest-bearing account managed by Metro with the interest accruing to STS. The \$2.5 million retainage is available for use by Metro in the event that STS defaults and is unable to perform according to the contract specifications.

A third condition of the Contract that is relevant to this change order relates to the staging area used for transport trailers as well as the shuttling of trailers to and from the compactors at Metro South Station. When the original contract was executed, it was intended that the transfer station operator, not the transport contractor, would provide on-site shuttling services. This provision was revised in subsequent contract changes such that STS now provides shuttling service at both Metro South and Central Transfer Stations. In return for this shuttling service at Metro South, Metro pays STS \$7,765 per month and also provides STS with a staging area on Metro property.

### KEY ISSUES AND CONSIDERATIONS

*Risk Associated With Contractor Default.* Prepaying the fixed payments under the Contract increases Metro's risk, since \$6.6 million would be paid prior to STS providing the services associated with the payment. A number of factors reduce Metro's level of risk. First, Metro has obtained a declining letter of credit in the amount of \$4.1 million. The letter of credit would decline, along with Metro's risk, at the rate of \$100,000 per month. Secondly, since Metro pays for services after they have been performed, Metro normally has obtained about \$1.0 million of services from STS that have not yet been paid for. In the event of a default, Metro has the right under the Contract to withhold these payments. The Contract also specifies that Metro shall have access to STS equipment in the event of default for 180 days after contract termination (worth about \$600,000). By eliminating the requirement that Metro provide a large parking area for STS trailers, Metro could save avoided costs of \$1.0 million for providing a new staging area.

STS would also be required to provide Metro with a corporate guarantee from Aasche Transportation Services, Inc. This is a financial and performance guarantee.

*Retainage.* After Metro releases the currently held retainage to STS, the collection of the retainage will be suspended unless a contractual breach is committed. Additional security will also be provided by the letter of credit provided by STS and the corporate guarantee of Aasche.

*Alternative Transport Modes.* There continues to be interest among elected officials and others in examining alternatives to trucking waste through the Columbia Gorge. The changes to the Disposal Contract with Waste Management, Inc. (approved by the Council as Change Order No. 8 in Resolution No. 99-2766) included a provision that Metro's Disposal Contractor may propose an alternative transportation method to Metro, as long as the transport price does not increase. Since the alternative transportation mode provisions in Change Order 8 anticipated that the Disposal Contractor would "buy-out" the Transportation Contract, the changes to the STS Contract in Change Order 24 should not materially change the likelihood of a change in mode. Any changes to the value of the Transportation Contract would obviously be reflected in the price paid to "buy-out" the Contract.

*Waste Reduction and System Costs.* The REM Facility Master Plan calls for the construction of a new dumping area for public self-haul customers at Metro South Station in an area now used by STS for trailer storage. It is necessary for STS to reduce the number of trailers stored at Metro South before this public dumping area can be constructed. As a condition of this change order, Metro would be obligated to provide STS with storage space for only 10 trailers. This would free up sufficient space for construction of the new public area.

Once the public self-haul customers are moved to the new area, the existing transfer station building would be reserved for commercial haulers. There would be sufficient space inside the existing building to allow for substantially more waste recovery activities. The space restriction at Metro South has been a long-standing obstacle to waste recovery. Increased waste recovery at Metro South would help the Region to move toward its waste reduction goals.

By separating public and commercial customers, the new public dumping area would also reduce traffic queuing at Metro South Station. With the increase in tipping space for commercial trucks inside the transfer station building and the separation of public and commercial vehicles, there should be a substantial improvement in on-site queuing time for commercial haulers. As a result, hauling costs and total system costs in the Region (collection through disposal) would be reduced.

#### FINANCIAL ANALYSIS

The following paragraphs summarize the financial analyses that have been conducted by financial staff of the REM and Administrative Services Departments and Metro's financial advisor, Clancy, Gardiner, & Pierce.

**Discounted Fixed Costs.** Over the remainder of the Contract, Metro would pay STS \$829,404 annually, or \$8.85 million in total fixed payments. The lump sum payment called for in this change order is the present value of these payments at a discount rate of 6 percent.

**Unit Price Reduction.** Based on the conservative assumption that the tonnage from Metro's transfer stations would be 600,000 tons in 1999 and increase 2 percent annually, the \$30 per load reduction in the unit price represents cash savings of \$7.8 million (assuming 30 tons per load) over the remainder of the contract. These calculations also assume an inflation rate of 2.6 percent per year.

**Metro South Shuttle and Trailer Staging Area.** The Change Order specifies that Metro would no longer be required to make payments to STS for shuttling trailers to and from the compactors at Metro South Station. This change reduces Metro's costs by \$93,142 annually, or a total savings of \$1.0 million for the remainder of the Contract. Because the Change Order also specifies that STS would move most of their transport trailers off of the property at Metro South Station, Metro would also avoid any costs associated with constructing and leasing an alternative trailer staging area, which would be necessary to implement the REM Facility Master Plan. For the purposes of estimating the value of these changes related to the transfer trailers, it is assumed that the present value of the avoided costs associated with the alternative trailer staging area is \$1.0 million. Therefore, the total savings related to STS moving trailers off of the Metro South Station property and eliminating the shuttle payment could be about \$2.0 million.

**Total and Net Savings.** This change order would result in the payment of remaining fixed cost payments to STS during the remainder of the Contract (to December 31, 2009), based on their present value. This reduction in future payments would be offset by the initial lump sum payment of fixed costs and the lost interest. The net cash flow savings are estimated to be about \$9 million.

### BUDGET IMPACT

Funds in the amount of \$6.6 million would be needed to prepay the fixed costs upon approval of the Change Order. Metro Council approval of a budget amendment transferring \$6.6 million from Contingency to the Operating Account of the Solid Waste Revenue Fund would be necessary to make this expenditure (see Ordinance No. 99-798). After the prepayment of the fixed costs to STS, the estimated undesignated ending Fund Balance for FY98-99, based upon March 1999 tonnage forecasts, would be about \$700,000 (\$7.3 million - \$6.6 million).

### EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 99-2786.

TP:ck  
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METRO

# Metro Auditor Report Evaluation Form

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Our mission at the Office of the Metro Auditor is to assist and advise Metro in achieving honest, efficient management and full accountability to the public. We strive to provide Metro with accurate information, unbiased analysis and objective recommendations on how best to use public resources in support of the region's well-being.

Your feedback helps us do a better job. If you would please take a few minutes to fill out the following information for us, it will help us assess and improve our work.



**Name of Audit Report:** Solid Waste Hauling Contract:  
Metro's Consideration of Risks and Rewards of Change Order 24

Please rate the following elements of this report by checking the appropriate box.

	Too Little	Just Right	Too Much
Background Information	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Details	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Length of Report	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Clarity of Writing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Potential Impact	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Suggestions for our report format: \_\_\_\_\_  
\_\_\_\_\_

Suggestions for future studies: \_\_\_\_\_  
\_\_\_\_\_

Other comments, ideas, thoughts: \_\_\_\_\_  
\_\_\_\_\_

Name (optional): \_\_\_\_\_

**Thanks for taking the time to help us.**

Fax: 503.797.1831  
Mail: Metro Auditor, 600 NE Grand Avenue, Portland, OR 97232-2736  
Call: Alexis Dow, CPA, Metro Auditor, 503.797.1891  
Email: dowa@metro.dst.or.us

**Suggestion Hotline:** 503.230.0600, MetroAuditor@metro.dst.or.us



**Agenda Item Number 5.1**

**Consideration of the February 14, 2002 Regular Metro Council Meeting minutes.**

**Metro Council Meeting  
Thursday, February 21, 2002  
Metro Council Chamber**

Agenda Item Number 6.1

**Ordinance No. 02-939, For the Purpose of Amending Metro Code Chapter 7.01 to Amend the Metro Excise Tax to Provide Revenues for Metro's Regional Parks and Greenspaces Programs.**

***Second Reading***

Metro Council Meeting  
Thursday, February 21, 2002  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO )      ORDINANCE NO. 02-939  
CODE CHAPTER 7.01 TO AMEND THE )  
METRO EXCISE TAX TO PROVIDE )      Introduced by:  
REVENUES FOR METRO'S REGIONAL )      Mike Burton, Executive Officer  
PARKS AND GREENSPACES PROGRAMS )

WHEREAS, In July 1992, the Metro Council adopted the Metropolitan Greenspaces Master Plan (Resolution No. 92-1637) that identifies a desired regional system of parks, natural areas, trails and greenways for fish, wildlife and people; and,

WHEREAS, The Metropolitan Greenspaces Master Plan states Metro will seek a regional funding mechanism to assemble and develop a regional greenspaces system and assume operations and management responsibility for components of the system in cooperation with local governments; and,

WHEREAS, In December 1997, the Metro Council adopted the Regional Framework Plan (Resolution No. 97-715B) that set regional policy to inventory, protect and manage a regional system of parks, natural areas, trails and greenways for fish, wildlife and people; and,

WHEREAS, The Regional Framework Plan states (3.3.10) Metro, in cooperation with local governments, shall pursue the identification and implementation of a long term, stable funding source to support the planning, acquisition, development, management and maintenance of the regional greenspaces system; and,

WHEREAS, Metro has acquired over 7,100 acres of metropolitan greenspaces with funds from the Open Spaces, Parks and Streams bond measure of 1995; and,

WHEREAS, The cost of managing these acquired lands exceeds current resources; and,

WHEREAS, The Regional Parks and Greenspaces Department currently has about \$3 million in unfunded deferred maintenance projects at existing park facilities; and,

WHEREAS, The Regional Parks and Greenspaces Department cannot sustain current levels of service or growing responsibilities without additional funding sources; and,

WHEREAS, an interim financial solution is necessary until a voter-approved long-term solution is realized, and support of the Regional Parks and Greenspaces Department is an allowable use of excise tax under the Metro Charter; and,

WHEREAS, this ordinance was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code Section 7.01.020 is amended to read:

7.01.020 Tax Imposed

(a) For the privilege of the use of the facilities, equipment, systems, functions, services, or improvements owned, operated, certified, licensed, franchised, or provided by the district, each user except users of solid waste system facilities shall pay a tax of 7.5 percent of the payment charged by the operator or the district for such use unless a lower rate has been established as provided in subsection 7.01.020(b). The tax constitutes a debt owed by the user to the district which is extinguished only by payment of the tax directly to the district or by the operator to the district. The user shall pay the tax to the district or to an operator at the time payment for the use is made. The operator shall enter the tax on his/her records when payment is collected if the operator keeps his/her records on the cash basis of accounting and when earned if the operator keeps his/her records on the accrual basis of accounting. If installment payments are paid to an operator, a proportionate share of the tax shall be paid by the user to the operator with each installment.

(b) The council may for any period commencing no sooner than July 1 of any year and ending on June 30 of the following year establish a tax rate lower than the rate of tax provided for in subsection 7.01.020(a) or in subsections 7.01.020(c)-(e) by so providing in an ordinance adopted by the district. If the council so establishes a lower rate of tax, the executive officer shall immediately notify all operators of the new tax rate. Upon the end of the fiscal year the rate of tax shall revert to the maximum rate established in subsection 7.01.020(a) unchanged for the next year unless further action to establish a lower rate is adopted by the council as provided for herein.

(c) For the privilege of the use of the solid waste system facilities, equipment, systems, functions, services, or improvements, owned, operated, certified, licensed, franchised, or provided by the district, each user of solid waste system facilities and each solid waste facility licensed or franchised under chapter 5.01 of this Code to deliver putrescible waste directly to the district's contractor for disposal of putrescible waste shall pay a tax in the amount calculated under subsection (e)(1) for each ton of solid waste exclusive of compostable organic waste accepted at Metro Central or Metro South stations and source separated recyclable materials accepted at the solid waste system facilities. In addition, each user of solid waste system facilities and each solid waste facility licensed or franchised under chapter 5.01 of this Code to deliver putrescible waste directly to the district's contractor for disposal of putrescible waste shall also pay the additional tax in the amount set forth under Section 3 of this Ordinance for each ton of solid waste exclusive of compostable organic waste accepted at Metro Central or Metro

South stations and source separated recyclable materials accepted at the solid waste system facilities. The tax constitutes a debt owed by the user to the district which is extinguished only by payment of the tax directly to the district or by the operator to the district. The user shall pay the tax to the district or to an operator at the time payment for the use is made. The operator shall enter the tax on his/her records when payment is collected if the operator keeps his/her records on the cash basis of accounting and when earned if the operator keeps his/her records on the accrual basis of accounting. If installment payments are paid to an operator, a proportionate share of the tax shall be paid by the user to the operator with each installment.

(d) For the Metro fiscal year beginning July 1, ~~2000~~ 2002, ~~and for each fiscal year thereafter subject to this section,~~ the tax rate imposed and calculated under this section shall be sufficient to generate net excise tax revenue of ~~\$5,700,000~~ \$6,050,000 after allowing for any tax credit or tax rebate for which provision is made in this chapter. For each Metro fiscal year thereafter the tax rate imposed and calculated under this section shall be sufficient to generate net excise tax revenue equal to the net excise tax revenue authorization in the previous fiscal year as adjusted in accordance with Section 7.01.022.

- (e) (1) The excise tax rate for each ton of solid waste, exclusive of (i) source separate recyclable materials accepted at the solid waste system facilities, (ii) inert materials, (iii) Cleanup Materials Contaminated by Hazardous Substances, and (iv) compostable organic waste delivered to Metro Central or Metro South stations, shall be the amount that results from dividing the net excise tax revenue amount set forth in sub-section (d) by the amount of solid waste tonnage which the Executive Officer reports to the Council under sub-section (f)(2). Subject to the provisions of subsection 7.01.020(b), the rate so determined shall be the district's excise tax rate on solid waste during the subsequent Metro fiscal year.
- (2) The excise tax rate for each ton of solid waste constituting Cleanup Materials Contaminated by Hazardous Substances shall be \$1.00.

(f) By December 1, 2000 and by March 1st of each year thereafter, the Executive Officer shall provide a written report to the Metro Council stating the following:

- (1) For the twelve-month period ending the previous December 31; the amount of solid wastes, exclusive of inert materials, delivered for disposal to any Solid Waste System Facility that is not exempt pursuant to section 7.01.050(a) of this chapter, and
- (2) The amount of such solid wastes that would have been delivered for disposal to any such non-exempt Solid Waste System Facility if

the Regional Recovery Rates corresponding to each calendar year set forth on the following schedule had been achieved:

Year	<b>Regional Recovery Rate</b>
1999	43%
2000	46%
2001	48%
2002	50%
2003	52%
2004	54%
2005	56%

The result of such calculation by the Executive Officer shall be used to determine the excise tax rate under sub-section (e)(1).

(g) A solid waste facility which is certified, licensed or franchised by Metro pursuant to Metro Code Chapter 5.01 shall be allowed a credit against the Excise Tax otherwise due under Section 7.01.020(e)(1) for disposal of Processing Residuals from such facility. The Facility Recovery Rate shall be calculated for each six-month period before the month in which the credit is claimed. Such credit shall be dependent upon the Facility Recovery Rate achieved by such facility and shall be equal to the amount resulting from reducing the Excise Tax due by the percentage reduction corresponding with the Facility Recovery Rates provided on the following table:

<b>Excise Tax Credit Schedule</b>		
Facility		
Recovery Rate		Excise
From Above	Up To & Including	Tax Credit
0%	25%	0%
25%	30%	4%
30%	35%	10%
35%	40%	20%
40%	45%	33%
45%	100%	45%

**SECTION 2.** Section 3 of this Ordinance is added to and made a part of Metro Code chapter 7.01

**SECTION 3. Amount of Additional Excise Tax; Budgeting of Additional Revenue for Regional Parks and Greenspaces Programs.**

Commencing with the Metro fiscal year beginning July 1, 2002, the additional excise tax authorized in Section 7.01.020(c) shall be \$1 per ton. Such additional excise tax shall be dedicated to funding Metro's Regional Parks and Greenspaces programs. For each fiscal year thereafter, the additional excise tax dedicated to Metro's Regional Parks and Greenspaces programs shall be not less than the amount of the additional excise tax in the previous fiscal year increased by a percentage equal to (a) the annualized rate of increase in the Consumer Price Index, All Items, for Portland-Salem (All Urban Consumers) reported for the first six months of the federal reporting year as determined by the appropriate agency of the United States Government or (b) the most nearly equivalent index as determined by the Metro Council if the index described in (a) is discontinued, or such lesser amount as the Executive Officer deems appropriate. .

**SECTION 4.** Section 5 of this Ordinance is added to and made a part of Metro Code chapter 7.01

**SECTION 5. Repeal of Provisions Setting Amount of Additional Excise Tax and Budgeting of Revenue for Regional Parks and Greenspaces Programs**

Section 3 of this Ordinance is repealed at the end of any Metro fiscal year during which any initiative or referendum is adopted by a majority of electors that specifically provides for (a) revenue funding for operations of the Metro Regional Parks and Greenspaces programs in an amount not less than that raised under in Section 3 of this Ordinance; and (b) the repeal of Section 3 of this Ordinance.

**SECTION 6.** Metro Code Section 7.01.022 is amended to read:

**7.01.022 Consumer Price Index Adjustment**

Commencing with the Metro fiscal year beginning July 1, ~~2001~~2003, and each year thereafter, the amount of revenue to be generated by the taxes imposed by Section 7.01.020(c) shall be the amount of tax revenue authorized in Section 7.01.020(d) for the previous fiscal year increased by a percentage equal to (a) the annualized rate of increase in the Consumer Price Index, All Items, for ~~Portland-Vancouver-Salem~~ (All Urban Consumers) reported for the first six months of the federal reporting year as determined by the appropriate agency of the United States Government or (b) the most nearly equivalent index as determined by the Metro Council if the index described in (a) is discontinued, or such lesser amount as the Executive Officer deems appropriate.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Carl Hosticka, Presiding Officer

ATTEST:

Approved as to Form:

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

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

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## STAFF REPORT

### IN CONSIDERATION OF ORDINANCE NO. 02-939 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 7.01 TO AMEND THE METRO EXCISE TAX TO PROVIDE REVENUES FOR METRO'S REGIONAL PARKS AND GREENSPACES PROGRAMS.

Date: February 6, 2002

Prepared by: Charles Ciecko  
Terry Petersen

#### BACKGROUND

Over the past several years, the Regional Parks and Greenspaces Department has assumed responsibility for an ever-growing portfolio of properties as a result of the continued successful implementation of the 1995 Open Spaces, Parks and Streams Bond Measure. In the last six years, the number of acres that the department manages has grown from 4,092 to over 10,800, an increase of over 170%.

When the bond measure was approved by Council for the ballot, it was clearly stated that the measure did not provide financial support for the maintenance of the lands that were to be acquired under this program. Council increased excise tax allocations to help offset some of these costs, but these contributions have not kept pace with the department's growing responsibilities.

This unprecedented expansion, combined with other factors such as the continued growth of fixed costs, declining interest earnings rates, inflation and the eminent exhaustion of open spaces bond funds are now converging to pose a real threat to the department's core mission and programs.

Beginning in Fiscal Year 1998-99, the adopted budget for the Regional Parks and Greenspaces Department anticipated the use of reserves (fund balance) to pay for current operating expenditures. Concurrently, the department has endeavored to reduce the draw on these reserves by:

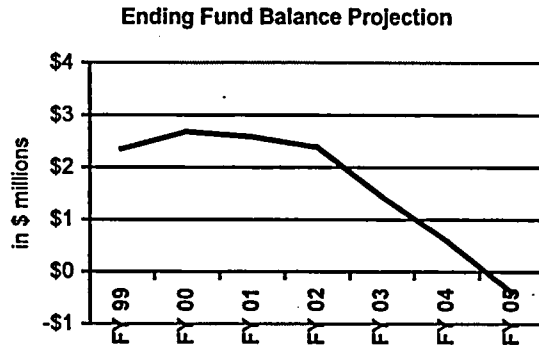
- Not increasing the number of full time positions in the department, even as acres and responsibilities have increased;
- Holding the total materials and services budget flat, at FY 98-99 levels;
- Deferring capital maintenance, with the FY 01-02 budget reduced to 25% of FY 98-99 levels;
- Eliminating the Blue Lake Concert Series, and delaying master planning for the Tualatin River Access Points;
- Delaying the filling of vacant staff positions to create salary savings;
- Reducing fleet costs; and
- Eliminating all non-essential out-of-state travel and conferences and significantly reducing in-state travel and conferences.

In addition to budget and expenditure reductions, actions have been taken to increase the revenues of the department:

- Dwellings on newly-acquired open space lands were leased, rather than demolished, resulting in an estimated income of \$260,000 annually;
- Staff has sought additional grant funding, resulting in grant revenues more than doubling since FY 98-99 (about \$1 million in FY 01-02, compared to \$430,000 in FY 98-99), that are used to supplement on-going program expenditures and capital projects; and

- Fee increases were implemented in several program areas, including Glendoveer Golf Course, cemeteries, picnic reservations and camping fees.

While these measures have delayed and, more recently, reduced the need to tap reserves, they cannot be viewed as permanent solutions to the need for long-term, stable funding to support basic parks programs and stewardship responsibilities. Even with these measures, the available reserves in the Regional Parks Fund are projected to be depleted in FY 04-05 as shown below:



Moreover, reducing dependence on financial reserves to support current programs is but one of a variety of needs that have been previously documented. Other examples include:

- Additional staff and financial resources for the Natural Resource Stewardship and Property Management Program (formerly called “Landbanking”),
- Additional support to reduce the backlog of deferred maintenance projects,
- Making permanent the Regional Trails Planner position,
- Removing Open Spaces Bond support for key administrative and Natural Resource Stewardship positions, and
- Master planning.

The proposed action would address some, but not all, of these needs on an interim basis.

### **IMPLICATIONS OF NO ACTION**

Unless additional funding is provided in the interim, the Council may have to make serious programmatic reductions in the Regional Parks and Greenspaces Department. Based on an analysis conducted in Spring 2001, the following could be required if funding is not secured to replace the use of reserves and cover the projected costs of inflation:

- All remaining special events, including the Salmon Festival at Oxbow Park and “Especially for Kids” at Blue Lake Park, could be eliminated;
- Most of the department’s environmental education programs could be eliminated, severely impacting the Volunteer Naturalist Program and the more than 7,000 people who annually attend these programs – many of whom are local area school children;
- Habitat restoration projects and noxious weed control programs could be all but eliminated at our parks and new open space acquisitions;
- Deferred maintenance, already under-funded at all our facilities, will continue to be funded at 25% of FY 98-99 levels, causing the backlog of projects to grow and the ultimate long-term cost of repair to increase.

## RECOMMENDED ACTION

To avoid these program reductions and decrease the use of reserves in the Regional Parks Fund to pay for current programs and service levels, the Executive Officer is proposing that the excise tax collected on solid waste be increased to provide an additional \$1.23 million in FY 2002-03, dedicated for use by the Regional Parks and Greenspaces Department for operational and maintenance activities as determined through the annual budgeting process. This increase would raise the per-ton excise tax on solid waste by one dollar (\$1) per ton. This revenue will increase annually at the rate of CPI.

The Executive Officer will recommend a budget to Council for the Regional Parks and Greenspaces Department that incorporates this additional revenue. The revenue is proposed to be expended for the following purposes:

- **1.0 FTE Natural Resources Stewardship Park Ranger**

**\*\* \$105,093 in FY03, continuing in future \*\***

Currently, only one Park Ranger is responsible for on-site daily land management activities on approximately 6,800 acres of open space acquisitions distributed widely across the region. Typical activities include:

- Securing access to Metro properties (i.e. construction and/or maintenance of fences, gates, roads);
- Response to emergency calls (i.e. thefts, criminal trespass, illegal hunting, vandalism);
- Correcting health and safety concerns (i.e. hazard trees, loose livestock, infrastructure failure/malfunction, wildfire prevention);
- Control of invasive vegetation and pest animals; and
- Supervision of volunteer work parties.

The addition of one more Park Ranger will reduce the accumulating backlog of land management needs that currently exist and help meet on-going demands in a more timely manner. Budget for this position includes salary and benefits (\$57,302), materials & services (\$6,000 vehicle costs, \$37,749 for building, grounds and equipment supplies and services, and contracted professional services) and contingency (\$4,042).

- **Transfer support for Department Director, Department Finance Manager and Contract Administrator from the Open Spaces Bond to the Regional Parks Fund**

**\*\* \$51,703 in FY03, continuing in future \*\***

The Open Spaces, Parks and Streams Bond Measure included funds for administration of the implementation effort. During the implementation phase, the relevant portion of certain administrative positions have been billed to the Open Spaces Bond Fund. As the acquisition program winds down and the focus shifts from acquisition to land management, it is necessary to reallocate the costs of administrative functions accordingly.

Affected positions and the associated portions of salary and benefits are as follows:

	<u>FY 03</u>	<u>FY 04</u>	<u>FY 05</u>
10% of Department Director	15,255	16,019	16,820
25% of Department Finance Manager	21,125	22,181	23,290
25% of Department Contracts Administrator	15,323	16,089	16,893
<b>Total Administration Staff</b>	<b>51,703</b>	<b>54,289</b>	<b>57,003</b>

**NOTE:** This proposal does not affect any staff in the Open Spaces Acquisition Division. As indicated in the Council-adopted Open Spaces Implementation Work Plan, staff positions within the Open Spaces Acquisition Division are “limited duration” and will be eliminated when bond measure implementation is complete. Limited duration positions include: Division Manager, Senior Real Estate Negotiator, 2 Real Estate Negotiators, Secretary, Program Assistant II, and related positions in the Office of General Counsel.

- **Reallocate Open Spaces Bond Fund support for Natural Resources Stewardship and Property Management staff in FY05**

**\*\* \$73,131 in FY05, continuing in future \*\***

The Open Space, Parks and Streams Bond Measure included funds for a variety of short-term activities or projects required “to stabilize” properties following acquisition. Staff costs associated with “stabilization” projects have also been paid from bond funds.

“Stabilization” projects are carried out by certain members of the Natural Resources Stewardship and Property Management Program who are also responsible for the on-going day-to-day management of sites acquired with bond funds (landbanking). During the implementation phase, staff costs associated with “stabilization” have been billed to the Open Spaces Bond Fund. As “stabilization” activities wind down and staff focus shifts to on-going, day-to-day management, it is necessary to reallocate costs accordingly. Please note that the current level of bond funding is expected to continue through FY 2004-05. Affected positions and the associated portion of salary and benefits are as follows:

	<u>FY 03</u>	<u>FY 04</u>	<u>FY 05</u>
50% of Natural Resources Program Manager	0	0	52,416
25% of Property Manager	0	0	20,715
<b>Total Stabilization/Natural Resources Staff</b>	<b>0</b>	<b>0</b>	<b>73,131</b>

**NOTE:** This proposal does not affect any staff in the Open Spaces Acquisition Division. As indicated in the Council-adopted Open Spaces Implementation Work Plan, staff positions within the Open Spaces Acquisition Division are “limited duration” and will be eliminated when bond measure implementation is complete as noted above.

- **Transfer the Regional Trails Planner position to Planning & Education Division**

**\*\* \$46,100 in FY03 (50%), \$96,810 in FY04 (100%), continuing in future \*\***

For the past 6 years, Metro has focused its trail planning efforts primarily on those trail projects identified as target areas in the Open Spaces Bond Measure. This work has been funded with bond proceeds. To continue implementation of the Regional Trails Plan (part of the Regional Transportation Plan and Greenspaces Master Plan), it will be necessary for more comprehensive regional trail planning to take place since most regional trails are multi-jurisdictional and many jurisdictions do not have the capacity to provide the necessary planning functions. Therefore, the Metro Regional Trail Planner position would:

- Complete planning for and promotion of the Regional Trails Plan, a component of the Regional Framework Plan (Chapter 3) and of the Regional Transportation Plan;
- Perform planning functions for the Springwater Corridor project (Sellwood Bridge to McLoughlin Blvd. gap);
- Perform planning and coordination functions for the Fanno Creek Trail, Beaverton Powerline Trail, Tualatin River Trail, Willamette Greenway Trail, PTC Trail (Milwaukie to Gladstone) and other components of the Regional Trails and Greenways Map;
- Coordinate regional efforts to secure state and federal transportation funding and other outside resources for trail projects; and

- Participate in the design and implementation of Best Management Practices for regional trail design and construction to be consistent with Metro's Title 3 and Goal 5 efforts.

This proposal would formalize the Regional Trails Planner position in the Planning and Education Division, 50% in FY 2002-03 and 100% in subsequent years.

- **Create Volunteer Recognition and Recruitment Program**

**\*\* \$5,000 annually \*\***

The Department has effectively used volunteers for a variety of environmental education, maintenance, restoration and other projects using limited department resources. In 2001, 900 volunteers donated 10,000 hours inside the office and at various parks and greenspaces sites throughout the region. This contribution is valued at approximately \$154,000. To maintain this type of program into the future, it is imperative that the Department establish a recognition program for these volunteers. Recognition expenses could include uniforms, plaques, framed certificates, gifts to celebrate years of service and/or hour milestones, birthday cards, volunteer newsletter, and events. Event costs would include food, decoration, facility rental, and invitations. Recruitment of new volunteers will always be necessary. Recruitment expenses could include newspaper and magazine ads, tabletop exhibit, brochures targeting specific positions and/or divisions, Metro website enhancement, and website banner ads. This program will be administered by existing staff in the Planning and Education Division.

- **Restore the 0.33 FTE Seasonal Employee at Smith & Bybee Lakes Wildlife Area**

**\*\* \$6,572 in FY03 only \*\***

One seasonal position is typically filled from May through October, when maintenance and field work needs are greatest. Because of the significant decrease in interest earnings expected in the Smith & Bybee Lakes Fund, the fund is unable to cover these costs. Subsequently, the Department's proposed budget eliminated this position. This employee performs baseline maintenance at the wildlife area such as garbage pickup, tree and shrub pruning, trail maintenance and security patrols of the public use areas of the wildlife area. In addition, this employee assists the Wildlife Area Manager with wildlife and plant surveys that are used to monitor the success of restoration projects. This employee creates a Metro presence at the wildlife area three to four days per week, answering visitors' questions and increasing general security.

- **Deferred Maintenance**

**\*\* \$175,000 in FY03, \$125,000 in FY04 and thereafter \*\***

An update to the Department's Unfunded Deferred Maintenance assessment was completed in March 2001 listing several dozen deferred capital maintenance projects at a variety of facilities totaling over \$2.9 million. The size of projects on this list varies, with major projects such as the automation of the irrigation system at Blue Lake Park to reduce labor intensive manual watering and conserve water, and the replacement of deteriorated picnic shelters at Oxbow Park. While the requested increase will not be enough to complete these major projects, there are smaller, but no less important, projects that could be completed with the proposed increase. Examples of projects include:

- New playground equipment at Blue Lake Park to eliminate current hazardous and non-ADA (Americans with Disabilities Act) compliant metal and concrete play structures.
- Replace 100 picnic tables at Oxbow Park and Blue Lake Park with metal frame and wood tops/benches. This will reduce the risk exposure from old wood tables, reduces maintenance costs and improves overall park appearance.
- Replace non-functional entry/exit gate at Chinook Landing. Closing the facility at night will deter after hour use and reduce the risk of vandalism and other illegal and/or inappropriate activities.

- **Natural Resource Stewardship – Restoration Projects**

**\*\* \$75,000 Annually \*\***

The current stewardship activities for Metro-owned natural areas are very limited, equating to the basics of nuisance control and weed abatement required by state law and by our responsibility to be good neighbors to surrounding property owners. Much more needs to be done to ensure that these properties are not degraded and that restoration activities are initiated.

Funds will be used for habitat restoration activities. It is assumed that these funds will be used as matching funds for Federal and State grant applications to “grow the pot” of restoration money available. The additional support will be used for the following:

- Reduce the spread of invasive species by re-establishing diverse native plant communities and restoring historic hydrologic conditions to benefit a variety of native fish and wildlife including sensitive, rare and threatened species;
- Maintain the significant investment in reforestation projects which have already been completed;
- Provide opportunities for continued community involvement in natural resource stewardship; and
- Attract outside funding and partners for natural resource protection projects.

- **Continued funding for National Fish & Wildlife Foundation Partnership**

**\*\* \$100,000 in FY04, continuing thereafter \*\* (tentative)**

Beginning in FY2002-03, the Department anticipates a new partnership with the National Fish & Wildlife Foundation to create a regional program focused on restoration projects in parks and open spaces designated as components of the Regional System as articulated in Chapter 3 of the Regional Framework Plan. This partnership will leverage Metro’s contribution 2-to-1, effectively tripling the amount of restoration activities that Metro can effectuate. Goals of the partnership include:

- To fund habitat protection and restoration projects conducted by Metro and other local partners that provide substantial benefit to wildlife habitats located in Multnomah, Washington, and Clackamas Counties;
- To engage citizens, businesses, and community groups in our region in environmental stewardship and education projects that attempt to correct the decline of wildlife habitat;
- To stimulate creativity and leadership among community groups to address conservation needs and encourage active community stewardship of protected lands; and
- To target groups that can be particularly helpful in conserving rare habitat types, including farmers, homeowners, government officials, nonprofit organizations, and business owners.

The Department’s Proposed Budget includes funding for this program in FY2002-03. This proposal continues funding for this program into years FY 2003-04 and FY 2004-05.

- **Renewal and Replacement Funding**

**\*\* \$85,000 Annually \*\***

New capital policies adopted by the Metro Council require the department to plan for the renewal and replacement of its facilities and other depreciable assets. The Department, up to this point, has not reserved any resources for the purpose of renewal and replacement. The allocation proposed here will not fully fund the Renewal and Replacement needs of the department, but will be a step in the right direction for the future maintenance and replacement needs of fixed assets.

- **Reduce Use of Financial Reserves from the Regional Parks Fund**

**\*\* \$533,860 in FY03, continuing in future \*\***

For FY 2002-03, the department Proposed Budget (adjusted for final central service allocated cost calculations) uses \$1,114,085 of fund balance to maintain current service levels (including contingency and project carry-forward). This proposal will decrease, but not eliminate, the draw on this financial reserve.

- **Reduce Use of Financial Reserves from the Smith & Bybee Lakes Fund**

**\*\* \$100,672 in FY03 only \*\***

As a matter of sound financial practice, the Department attempts to use only interest earnings from this fund to pay for operational expenses at Smith & Bybee Lakes Wildlife Area. However, the projected interest earnings rate for next year (estimated at just 1.5%) results in a decrease of roughly 75% of normal operational revenues. Despite significant reductions in expenditures, the use of \$100,000 of fund balance is necessary just to provide basic maintenance services and support the existing 1.5 FTE in this program. This proposal eliminates draw on fund balance and preserves the principal in the fund. Financial support for this fund is only necessary for FY 2002-03. It is anticipated that interest rates will increase in subsequent years and the support will not be necessary on an ongoing basis.

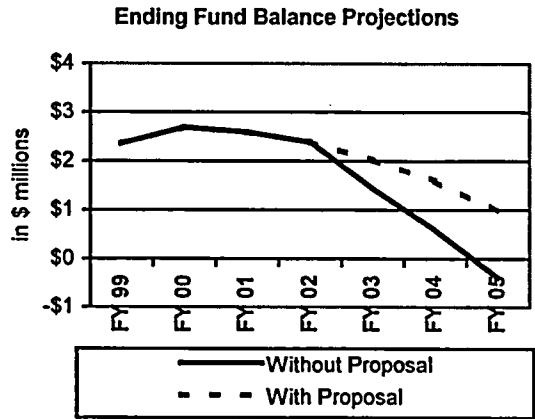
Summary

<b>Program Expenditures</b>	<b><u>FY 02-03</u></b>	<b><u>FY 03-04</u></b>	<b><u>FY 04-05</u></b>
Natural Resources - Park Ranger	105,093	110,348	115,865
Admin Staff to Regional Parks Fund	51,703	54,289	57,003
Trail Planner to Regional Parks Fund	46,100	96,810	101,650
Stabilization staff to Regional Parks Fund	0	0	53,576
Volunteer Recognition and Recruitment	5,000	5,000	5,000
0.33 FTE Seasonal at Smith & Bybee Lakes	6,572	0	0
Deferred Maintenance	175,000	125,000	125,000
Restoration Projects	75,000	75,000	75,000
National Fish & Wildlife Foundation	0	100,000	100,000
Renewal & Replacement	85,000	85,000	85,000
<b>Total Expenditures</b>	<b>549,468</b>	<b>651,447</b>	<b>718,094</b>
Reduce use of Fund Balance – Regional Parks Fund	533,860	568,053	538,006
Reduce use of Fund Balance – Smith & Bybee Fund	100,672	0	0
<b>Total</b>	<b>1,184,000</b>	<b>1,219,500</b>	<b>1,256,100</b>

**NOT A LONG TERM REMEDY**

This proposal is intended to be an interim step. It is designed to stabilize Regional Parks funding for current programs while addressing some immediate programmatic needs that have been deferred for some time. This proposal does not provide for all of the programmatic needs. Specifically, it does not provide support for Master Planning, nor does it provide support to develop, operate or maintain new sites or trails for public use as recommended by the Green Ribbon Committee. The proposal does not address any of the recommendations of the MPAC Parks Report (dated April 4, 2001). It does not fully fund renewal and replacement or provide for education and incentives for private land owners in critical natural resources areas.

The use of reserves (fund balance) to pay for current operating expenditures will continue under this proposal, but at a slower rate than the current projection. By the end of FY 2004-05, it is expected that the Regional Parks Fund will have undesignated reserves of approximately \$1 million. A justification for this level of reserve can be found in "Attachment A" of this report:



This proposal is a modest interim measure designed to stabilize funding for current programs until a new proposal addressing long term needs can be developed and implemented.

## ANALYSIS/INFORMATION

### 1. Known Opposition

No known opposition.

### 2. Legal Antecedents

Metro Code Chapter 7.01 sets forth the provisions of the Metro Excise Tax.

### 3. Anticipated Effects

Based on the projected solid waste revenue base in FY 2002-03, the proposed excise tax of one dollar (\$1) per ton would provide \$1,184,000 of new revenue. As of this writing, the excise tax rate on solid waste is expected to increase from the current \$5.04 per ton to \$5.39 per ton during FY 2002-03. (This rate will be reviewed and finalized in March 2002.) If this ordinance were approved, that rate would rise to \$6.39 per ton.

- Effect on Metro Tip Fee.** When calculating the Metro tip fee, the excise tax is added on to the solid waste rate base. That rate will be \$59.84 in FY 2002-03 (per Ordinance No. 01-918A, approved October 25, 2001). With a \$5.39 excise tax, the total tip fee will be \$65.23. If this ordinance is approved, the tip fee would be a dollar higher, at \$66.23.
- Effect on non-Metro Tip Fees.** The excise tax at disposal sites that are not owned by Metro (e.g., Forest Grove Transfer Station and Lakeside Reclamation Landfill) would likewise increase by \$1 per ton. Although many non-Metro facilities set their own rates and are free to absorb as much or as little of the excise tax as they wish, historically all of the tax has been passed on to the rate payers. Accordingly, the tip fees at non-Metro facilities can be expected to rise by \$1 per ton due to approval



of this ordinance. Currently, non-Metro tip fees range from about \$22 per ton to \$66 per ton including excise tax.

- **Effect on Material Recovery Facilities.** Because the excise tax is levied on waste that is landfilled, the excise tax is a cost to material recovery facilities (MRFs). However, to ease the tax burden and support recycling goals, the Council discounts the excise tax on MRFs up to 45%, based on the facility's recovery rate. At present, the average excise tax discount over all MRFs is 30%. If there is no change in recovery performance, the \$1 increase will be discounted at the same 30% rate, meaning that the effect of this ordinance will be to raise the average cost of disposal by 70¢ per outgoing ton at material recovery facilities.

#### **4. Budget Impacts**

The approval of this ordinance will provide an additional \$1,184,00 to the Regional Parks Fund, increasing annually at the rate of CPI. The revenue will be available for expenditure upon Council adoption of a budget for the affected funds. This action in and of itself does not authorize the expenditure of this new revenue.

#### **RECOMMENDED ACTION**

The Executive Officer recommends passage of Ordinance No. 02-939, For The Purpose of Amending Metro Code Chapter 7.01 to Amend the Metro Excise Tax to Provide Revenues for Metro's Regional Parks and Greenspaces Programs.

**Regional Parks Fund  
Fund Balance Reserve Requirements**

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**What is the minimum Fund Balance reserve that the Regional Parks Fund should have to maintain fiscal prudence?**

There are several ways to answer this question. Presented here are two different ways to determine what the minimum amount of reserve is.

**Option 1 – Cash Flow Needs**

The enterprise revenues in the Regional Parks Fund tend to be cyclical, with higher revenues in the summer months and lower revenues in the winter. Expenditures are also cyclical, but do not vary as much as revenues. This disparity creates a situation where in the summer months, there are more revenues than expenditures. In the winter months, there are more expenditures than revenues.

A cash flow analysis answers the question, “How much cash does the fund need to have on hand to ensure that there is adequate cash, on a daily basis, to meet the expenditure needs, especially when expenditures are exceeding revenues?”

In Fiscal Year 2000-01, the Regional Parks Fund needed to have just over \$961,000 in cash reserves to ensure that there was adequate cash in December and January to meet operational expenditure needs.

**Option 2 – A Three-Month Operating Reserve**

Metro currently does not have a specific financial policy stating guidelines for determining the appropriate fund balance level for its general and special revenue funds. However, one such policy may be to maintain a fund balance reserve adequate to meet unanticipated service needs. This policy can be operationalized by saying that the fund should have a reserve adequate to pay for three months of operating expenditures. For the Regional Parks Fund in FY 2000-01, a three-month operating reserve equates to a range of between \$944,000 and \$1,400,000.

Based on review of these two different options, the department management believes that a fund balance reserve of \$1 million would be a minimally fiscally prudent amount.

Agenda Item Number 7.1

**Resolution No. 02-3174, For the Purpose of Authorizing the Executive Officer Contribute towards the Purchase of the Jarvis Property in the Tryon Creek Linkages Target Area**

*Executive Session*

Metro Council Meeting  
Thursday, February 21, 2002  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE ) RESOLUTION NO. 02-3174  
OFFICER TO CONTRIBUTE TOWARD THE PURCHASE )  
OF THE JARVIS PROPERTY IN THE TRYON CREEK ) Introduced by Mike Burton,  
LINKAGES TARGET AREA ) Executive Officer

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

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

WHEREAS, on May 16, 1996, via Resolution 96-2330, the Metro Council adopted a refinement plan for the Tryon Creek Linkages regional target area, which included a confidential tax-lot specific map identifying priority properties for acquisition; and

WHEREAS, Robert Jarvis, co-trustee, has agreed to sell and the City of Lake Oswego, the City of Portland Bureau of Environmental Services (BES) and Metro have agreed to the purchase of an approximately 6.5-acre parcel that lies in Tier II of the Tryon Creek Linkages target area, as described in the attached Exhibit A, conditional on Metro Council approval; and

WHEREAS, on September 27, 2001, the Metro Council approved Resolution 01-3106, modifying the Open Spaces Implementation Work Plan and Open Spaces Acquisition regional target area refinement plans to require Metro Council approval of all acquisitions in target areas where minimum acreage goals have been met; and

WHEREAS Metro has exceeded the minimum 20-acre goal established for the Tryon Creek Linkages target area, and therefore contributing toward the purchase of the Jarvis property requires formal Metro Council authorization pursuant to Council Resolution 01-3106; now therefore

BE IT RESOLVED that the Metro Council authorizes the Metro Executive Officer to contribute \$250,000 (15.6% of the purchase price) toward the purchase of the Jarvis Property as identified in Exhibit A, in accordance with the terms and conditions set forth in the Agreement of Purchase and Sale for this Property.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Carl Hosticka, Presiding Officer

Approved as to Form:

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

RESOLUTION NO. 02-3174

EXHIBIT A

SCHEDULE A, Page No. 2

Legal Description, Continued

Order No.: 800995c

PARCEL I:

A tract of land situated in the Southwest one-quarter of Section 2, Township 2 South, Range 1 East of the Willamette Meridian, in the City of Lake Oswego, County of Clackamas and State of Oregon, described as follows:

COMMENCING at an iron rod in the Southeasterly right of way property line of the Beaverton and Willsburg Railroad (now Southern Pacific Railroad) as the same was recorded in Book 102, Page 577, Deed Records; said iron rod is also further described as being the Southwest corner of said J. T. Stampher Tract; thence North 30° 24' East 112.15 feet to the point of beginning of the herein described tract; thence North 30° 24' East 117.85 feet; thence North 32° 30' East 32.15 feet to the Southerly line of a 30 foot roadway; thence South 75° 50' East 168.25 feet; thence South 75° 12' East 9.08 feet; thence South 11° 26' East 159.50 feet along a portion of the Westerly edge of a 30 foot roadway as described in Book 514, Page 474, and recorded August 3, 1956; thence North 75° 46' 30" West 289.31 feet to the true place of beginning.

PARCEL II:

A tract of land situated in the Southwest one-quarter of Section 2, Township 2 South, Range 1 East of the Willamette Meridian, in the City of Lake Oswego, County of Clackamas and State of Oregon, described as follows:

BEGINNING at an iron rod in the Southeasterly line of the right of way conveyed to the Beaverton and Willsburg Railroad (now Southern Pacific Railroad) which bears South 52° 45' East 16.16 feet from the Southerly end of the 33 foot jog in the North line of the Josiah Franklin Donation Land Claim; thence North 30° 24' East along said right of way line, 268.10 feet to the Southwesterly corner of said Stampher Tract in common with the Northwesterly corner of the tract conveyed to Emil L. Petrin by Deed recorded in Book 395 at Page 704 and being the true point of beginning of the tract to be described; thence South 48° 45' East along the Northerly line of said Petrin Tract 217.36 feet to the most Northerly corner of the tract conveyed to V. P. Branstetter by Deed recorded in Book 324, Page 112; thence South 68° East along the Northerly line of said Branstetter Tract 202.52 feet to the most Westerly corner of the 20 foot strip of land conveyed to P. C. Sandberg by Deed recorded in Book 398, Page 93; thence North 13° 51' East along the Westerly line of said Sandberg Strip, 81.54 feet to the Southwest corner of a roadway tract conveyed to the Public by Deed recorded in Book 514, Page 474; thence North 11° 26' West along the Westerly line of said roadway tract, 169.04 feet, more or less, to the Southeasterly corner of the tract described in a Deed to Virginia M. Dorney recorded under Fee No. 68-20452; thence North 75° 46' 30" West along the Southerly line of said Dorney Tract 289.31 feet to the Southwesterly corner thereof at a point in the Easterly line of aforesaid railroad right of way; thence South 30° 24' West along said right of way line 112.15 feet to the true point of beginning.

(Continued)

Legal Description, Continued

Order No.: 800995c

**PARCEL III:**

A tract of land situated in the Southwest one-quarter of Section 2, Township 2 South, Range 1 East of the Willamette Meridian, in the City of Lake Oswego, County of Clackamas and State of Oregon, described as follows:

BEGINNING at an iron pipe set in the Easterly right of way property line of the Southern Pacific Company, said iron pipe bears South 52° 45' East and is 16.16 feet distant from the Southerly end of the 33.00 foot jog in the North line of the Josiah Franklin Donation Land Claim in said Southwest one-quarter of Section 2; thence North 30° 24' East 92.75 feet to the true place of beginning of the tract of land hereinafter described; thence from said true place of beginning, North 30° 24' East, along the Easterly line of the said Southern Pacific Company's property a distance of 175.35 feet; thence South 48° 45' East 217.36 feet; thence South 30° 24' West 97.06 feet; thence North 69° 36' West 216.77 feet, more or less, to the true place of beginning.

**PARCEL IV:**

A tract of land situated in the Southwest one-quarter of Section 2, Township 2 South, Range 1 East of the Willamette Meridian, in the City of Lake Oswego, County of Clackamas and State of Oregon, more particularly described as follows:

BEGINNING at an iron pipe set in the Easterly right of way property line of the Southern Pacific Company, said iron pipe bears South 52° 45' East and is 16.16 feet distant from the Southerly end of the 33.00 foot jog in the North line of the Josiah Franklin Donation Land Claim in said Southwest one-quarter of Section 2, from said beginning point; thence South 52° 45' East 496.11 feet to an iron pipe set at the Northwesterly corner of that certain tract of land conveyed by Deed to Ward C. Smith dated March 15, 1927 and recorded in the Deed Records of Clackamas County, Oregon; thence South 69° 44' 30" East 69.43 feet to the Southwest corner of a tract of land conveyed to P. O. Sandberg and Grace E. Sandberg, husband and wife, by Deed recorded October 9, 1947 in Book 397, Page 472, Deed Records; thence following the West line of said Sandberg Tract North 4° 34' East 173.87 feet to a point that is 164 feet South of the Northwest corner of said Sandberg Tract; thence North 68° West 31 feet; thence North 4° 34' East parallel with the West line of said Sandberg Tract 164 feet to the North line of a tract conveyed to V. P. Branstetter by Deed recorded in Book 324, Page 112, Deed Records; thence North 68° West 171.52 feet to the Northeast corner of a tract of land conveyed to Emil L. Petrin and Florence M. Petrin, husband and wife, by Deed recorded September 5, 1947, in Book 395, Page 704, Deed Records; thence South 30° 24' West following the East line of said Petrin Tract 97.06 feet to the Southeast corner of said Petrin Tract; thence North 69° 36' West following the Southerly line of said Petrin Tract 216.77 feet to the Southwest corner of said Petrin Tract; thence South 30° 24' West 92.75 feet to the place of beginning.

EXCEPTING THEREFROM that portion conveyed to the City of Portland, a municipal corporation, by Deed recorded in Book 618, Page 522, Clackamas County Deed Record.

(Continued)

Legal Description, Continued

Order No.: 800995c

## PARCEL V:

A parcel of land lying in the Southwest one-quarter of Section 2, Township 2 South, Range 1 East of the Willamette Meridian, in the City of Lake Oswego, County of Clackamas and State of Oregon, and being a portion of that certain tract of land conveyed by Deed to V. M. Branstetter and Margaret J. Branstetter as recorded in Book 324, Page 112, Deed Records, said parcel being described as:

BEGINNING at an iron pipe driven in the Northerly line of that certain tract of land conveyed by Deed to V. M. and Margaret J. Branstetter as recorded in Book 324, Page 112, Deed Records, said iron pipe being South 48° 45' East 217.43 feet and South 68° East 202.52 feet from the Northwest corner thereof; thence South 4° 34' West a distance of 337.87 feet to a point on the Southerly line of said Branstetter property; thence South 69° 44' 30" East, a distance of 68.59 feet to an iron pipe; thence North 76° 37' 30" East a distance of 98.40 feet to an iron pipe; thence North 65° 04' 30" East a distance of 174.89 feet to an iron pipe; thence North 56° 12' 30" East a distance of 61.77 feet to an iron pipe; thence North 39° 49' 45" West a distance of 157.77 feet to an iron pipe; thence North 81° 45' West a distance of 18.64 feet to an iron pipe; thence North 16.50 feet to an iron pipe; thence North 68° West a distance of 242.98 feet, more or less, to the place of beginning.

## PARCEL VI:

A tract of land situated in the Southwest one-quarter of Section 2, Township 2 South, Range 1 East of the Willamette Meridian, in the City of Lake Oswego, County of Clackamas and State of Oregon, more particularly described as:

BEGINNING at an iron pipe set in the Easterly right of way property line of the Southern Pacific Company, said iron pipe bears South 52° 45' East and is 16.16 feet distant from the Southerly end of the 33.00 foot jog in the North line of the Josiah Franklin Donation Land Claim in said Southwest one-quarter of Section 2; from said beginning point, thence South 52° 45' East 496.11 feet to an iron pipe set at the Northwesterly corner of that certain tract of land conveyed by Deed to Ward C. Smith dated March 15, 1927, and recorded in the Deed Records of Clackamas County, Oregon; thence South 69° 44' 30" East 69.43 feet to the Southwest corner of a tract of land conveyed to P. O. Sandberg, et ux, by Deed recorded October 9, 1947 in Book 397, Page 472, Deed Records; thence following the West line of said Sandberg Tract North 4° 34' East 173.87 feet to a point that is 164 feet South of the Northwest corner of said Sandberg Tract, said point being the true point of beginning; thence North 68° West 31 feet; thence North 4° 34' East, parallel with the West line of said Sandberg Tract 164 feet to the North line of a tract conveyed to V. P. Branstetter by Deed recorded in Book 324, Page 112, Deed Records; thence South 68° East to the Northwest corner of Parcel I as conveyed to Herbert D. Rustrum, et ux, by Deed recorded September 14, 1969, Fee No. 69-18769; thence South 4° 34' West to the true point of beginning.

(Continued)

## PARCEL VII:

A parcel of land lying in the Socrates H. Tryon Donation Land Claim and being a portion of that certain tract of land conveyed by Deed to J. T. Stampher in Section 2, Township 2 South, Range 1 East of the Willamette Meridian, in the City of Lake Oswego, County of Clackamas and State of Oregon, as recorded in Book 169, Page 505, Clackamas County Records, said parcel being described as:

BEGINNING at an iron pipe set in the Southerly line of that certain tract of land conveyed by Deed to J. T. Stampher as recorded in Book 169, Page 505, Clackamas County Records, said iron pipe being South 48° 45' East, 217.43 feet and South 68° East, 223.48 feet from the Southwest corner thereof; thence North 13° 51' East, a distance of 84.40 feet to an iron pipe; thence North 76° 09' West, a distance of 20.00 feet to an iron pipe; thence South 13° 51' West, a distance of 81.54 feet to an iron pipe set in the Southerly line of said Stampher property; thence South 68° East along said Southerly line, a distance of 20.20 feet, more or less, to the point of beginning.



## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 02-3174 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO CONTRIBUTE TOWARDS THE PURCHASE OF THE JARVIS PROPERTY IN THE TRYON CREEK LINKAGES TARGET AREA

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Date: March 8, 2002

Presented by: Charles Ciecko  
Jim Desmond

#### BACKGROUND

Resolution No. 02-3174 requests authorization for the Executive Officer to contribute towards the purchase of the 6.51-acre Jarvis property (hereafter referred to as "the Property") in the Tryon Creek Linkages target area.

This resolution proposes to authorize the purchase of the Property subject to the terms of a Purchase and Sale Agreement to be executed by the Property owners, Metro, the City of Lake Oswego and perhaps other partners. The purchase of the Property requires Metro Council authorization pursuant to Resolution 01-3106 ("For The Purpose of Modifying The Open Spaces Implementation Work Plan and Open Spaces Acquisition Regional Target Area Refinement Plans To Direct Future Acquisitions Of Properties That Satisfy Specific Identified Criteria") because Metro has previously exceeded the minimum 20-acre goal established for the target area.

Acquisition of the Property is recommended because:

- (a) The acquisition of this Property would meet three of the criteria set forth in Resolution 01-3106.
  - "Complete the acquisition of existing public ownership gaps in trails and greenways identified in the bond measure." The purchase of this site would connect two areas identified in the bond measure – Tryon Creek and the Willamette River.
  - "Acquire key remaining parcels adjacent to parcels already acquired by Metro or other parks or conservation entities... consistent with the specific goals and objectives set forth in the refinement plan for that target area." The purchase of this site was identified as a specific Tier II objective in the refinement plan for the Tryon Creek Linkages target area.
  - "Within existing target areas and parcels that meet the objectives otherwise set forth in this resolution, particular emphasis should be given to acquisitions that would either (a) have a significant financial contribution from a local government or other outside partner or ..." The financial contribution by local governments is significant, as Metro is being asked to contribute 22% of the purchase price.
- (b) The Property was identified as a "Tier II" acquisition priority in the confidential tax lot map approved in connection with the adoption of the refinement plan for the Tryon Creek Linkages target area, which outlined the land protection strategy for the target area, all pursuant to Resolution 96-2330 ("For The Purpose Of Approving A Refinement Plan For The Tryon Creek Linkages Target Area, As Outlined In The Open Space Implementation Work Plan"). Acquiring the Property meets a specific Tier II objective of the target area refinement plan: "Provide linkage from the Tryon Creek State Park to the mouth of Tryon Creek at the Willamette River."

- (c) Metro has been engaged in negotiations to purchase the Property dating back to 1996 and has on numerous occasions indicated to the City of Lake Oswego its intent to contribute \$250,000 towards the purchase; and
- (d) The Property lies at the confluence of Tryon Creek and the Willamette River and as such contains critical stream front area with outstanding restoration potential.

The Property lies within the city limits of Lake Oswego but is adjacent to a sewage treatment facility owned by the City of Portland. It is separated from Tryon Creek State Park only by the right-of-way to Highway 43, and therefore, is a critical link between the State Park and the Willamette River. The Property comprises a number of tax parcels that are zoned for residential use and contains a significant amount of Tryon Creek and Willamette River frontage. The Property is improved with one large residential house, a second smaller residential house, a garage, barn and outdoor swimming pool. The Property is zoned for low-density residential use and could be improved with five additional homesites.

The Property represents a long-time, high priority acquisition for the City of Lake Oswego. Efforts to restore fish runs on Tryon Creek are considered dependent on the ability to control the mouth of the stream as well as the passage of Tryon Creek below the Willamette River Trolley Line and US 43, which form the western boundary of the Property. In a letter dated February, 12, 2002, from Mayor Judie Hammerstad to Carl Hosticka, Presiding Officer of Metro Council, it is stated that the Property is rated by the City's natural resources advisory board as the "highest priority" for open space acquisition due to its significant natural resource potential and critical links for the regional trail system. Partners and supporters for the acquisition include the Tryon Creek Watershed Council, the Friends of Tryon Creek State Park, the state of Oregon State Parks, and the Three Rivers Land Conservancy.

Numerous prior attempts by Metro during the period from 1996 through 2000 to purchase the Property were unsuccessful. In January 2000, Metro staff believed they had reached an agreement and submitted an Agreement of Purchase and Sale to purchase a 4.2-acre portion of the Property in partnership with the City of Lake Oswego and the City of Portland Bureau of Environmental Services (BES). Metro would have contributed \$250,000 in that transaction with the City and BES contributing the remainder of the acquisition funds. In the end, that transaction was never agreed to by the landowner, and subsequently City of Lake Oswego staff assumed the lead in the negotiations to acquire the Property, including a consideration of condemnation of the Property. Now however, the passage of Resolution 01-3106 in September 2001 limits the ability of the Metro Executive to confirm Metro's longstanding offer to contribute towards the purchase of this Property because Metro has previously exceeded the minimum acreage goal established for the Tryon Creek Linkages target area, and that resolution specifically requires Metro Council approval of any such transactions.

After two years of negotiations with the landowner following Metro's efforts to purchase the Property, the City of Lake Oswego staff have reached an agreement to purchase the entire site consisting of 6.51 acres. As a result of the inclusion of more property, the purchase price has increased accordingly, and therefore, Mayor Hammerstad has requested in her letter dated February 12, 2002, that Metro increase its contribution by \$100,000 (from the \$250,000 previously discussed, to \$350,000). A contribution by Metro of \$250,000 would represent 15.6% of the total purchase price, while a contribution of \$350,000 would represent 22% of the total purchase price.

The Executive Officer is referring this to Council with a recommendation to continue the \$250,000 commitment towards the purchase. Council may, in its deliberations, choose to consider whether to include the additional \$100,000 now requested by the City.

## **FINDINGS**

Acquisition of the Property with the above-stated terms is recommended based on the following:

- The Property lies in Tier II of the Tryon Creek Linkages target area and fulfills a specific goal of the refinement plan.
- The Property has significant natural and scenic resource values, including frontage along both the Willamette River and Tryon Creek.
- The Property represents a critical link in the gap between Tryon Creek State Park and the Willamette River and the control of this Property is considered critical for the restoration of fish and related habitat along Tryon Creek.
- While the overall minimum acreage goal of the target area has been exceeded, the acquisition of this Property is highly desirable from a regional perspective due to its natural area features, frontage along a stream and river both of regional significance, opportunity for restoration and its proximity to the City of Lake Oswego.
- The partial funding of this acquisition by Metro would represent the completion of a longstanding commitment from Metro towards two of its local partners: the City of Lake Oswego and the City of Portland Bureau of Environmental Services.
- Stabilization, landbanking and restoration costs will not be borne by Metro, as the Property will be managed by the City of Lake Oswego with assistance from BES.

## **ANALYSIS/INFORMATION**

### **1. Known Opposition**

None.

### **2. Legal Antecedents**

In May 1995, Metro area voters approved the Open Spaces, Parks and Streams Bond Measure that authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and certain park-related capital improvements. Metro Code 2.04.026 (a) (3) requires that the Executive Officer obtain the authorization of the Metro Council prior to executing any contract for the purchase of real property. The Open Spaces Implementation Work Plan, adopted by the Metro Council via Resolution 96-2424 ("For The Purpose Of Authorizing The Executive Officer To Purchase Property With Accepted Acquisition Guidelines As Outlined In The Amended Open Spaces Implementation Work Plan") established acquisition parameters that authorize the Executive Officer to purchase property, within the Council-approved target area refinement plan maps. Via Resolution 96-2330 ("For The Purpose Of Approving A Refinement Plan For the Tryon Creek Linkages Target Area, As Outlined In The Open Space Implementation Work Plan"), the Metro Council adopted a refinement plan, which outlined a land protection strategy for the Tryon Creek Linkages. Through that resolution, the Metro Council also approved the target area refinement plan tax-lot specific map, which includes the subject Jarvis property as a Tier II priority.

On September 27, 2001, the Metro Council adopted Resolution 01-3106, which modifies the Open Spaces Implementation Work Plan. Section B of Resolution 01-3106 requires Metro Council approval of new acquisitions in target areas where minimum acreage goals (as established in the bond measure) have been met.

This resolution proposes to authorize the purchase of the Property subject to the terms of Purchase and Sale Agreement executed by the Property owners and Metro. The proposed acquisition satisfies more than one of the listed criteria set forth in Section A of Resolution 01-3106, but because Metro has exceeded the minimum 75-acre goal established for the target area, Resolution 01-3106 requires that the purchase of the Property be authorized by the Metro Council prior to acquisition.

### **3. Anticipated Effects**

Acquisition of this Property will allow public agency control of the confluence of Tryon Creek and the Willamette River and is a key connection between the Willamette River and Tryon Creek State Park.

### **4. Budget Impacts**

After the acquisition of this Property, assuming that Metro's contribution is \$250,000, approximately \$9,081,515 will remain of unrestricted regional bond funds.

Landbanking and future management costs will be borne by the City of Lake Oswego and BES.

### **RECOMMENDED ACTION**

The Executive Officer recommends passage of Resolution No. 02-3174.

## At A Glance: The Institute of Portland Metropolitan Studies

### Mission:

The mission of the Institute is to serve the region and further the urban mission of Portland State University by:

- providing access to the resources of higher education for area communities;
- creating a shared understanding of the metropolitan area, its issues and prospects;
- providing a neutral forum for the discussion of critical metropolitan policy issues;
- creating partnerships linking faculty, students, and community groups to meet community and scholarly objectives; and
- sponsoring public service research.

By acting effectively on this mission statement, the Institute will enable the:

- University to better serve the people of this region;
- communities of this region to be better equipped to meet their objectives and cope with the dynamics of growth and change.

### What we currently offer:

• **Information** - The Institute serves as a unique source of information about the metropolitan area and its issues, and promotes recognition of the metropolitan area as a place. Its customers include students, faculty, jurisdictions, community-based organizations, and the media.

- Examples - *Metropolitan Briefing Book*  
*Metroscope*  
New Economy Observatory

• **A Neutral Forum** - The Institute, by virtue of its location in the university, has the ability to create a neutral forum for the discussion of issues and/or the exploration of new partnerships.

- Examples - Bistate Governor's Conferences  
Regional Industrial Lands Study Phase 3  
Regional Air Transportation Demand Task Force

• **Community Building** - The Institute assists communities with their organizing efforts and provides access to information and other resources needed to enable communities to understand the environment for their concerns.

- Examples - Community Geography Project  
Neighboring Cities Forum

## Regional Roundtables

- **Access to the Resources of Higher Education** - The Institute provides new access to the resources of higher education, both at Portland State University and other colleges and universities.

- Examples - Internship and Research Referrals  
Web Page ([www.upa.pdx.edu/IMS/](http://www.upa.pdx.edu/IMS/))

## In addition, we'd like to provide:

- **Community Research Trust** - Today there is no dedicated source of funds that can be invested in the research priorities of the metropolitan community. Understanding new issues, exploring best practices, and learning from local and regional experiences requires investment of a type not available at the metropolitan level today.

- **Catalytic Leadership** - The recent experience of the Institute with its bistrate conference highlights the role that it can play as a convener and bridge builder. In addition to continuing its focus on the bistrate nature of this region, the Institute is well-placed to become an important catalyst in bridging the "two Oregons" and can help to forge new relationships between communities within the metropolitan region.

## What we need to move forward:

- **Funds to Seed and Support New Initiatives**
- **Stable Funding for Core Activities:**

- *Metroscape*
- *Metropolitan Briefing Book* and the Critical Issues Survey
- *The Catalyst*
- Annual Leadership Symposium
- Web Page maintenance
- Community Geography Project
- Regional Connections
- Graduate Research Assistant Support

## How we'll get there:

- **The Board of the Institute has committed itself to working with Portland State University to develop an endowment for the Institute.** The endowment target is \$2.5 million, and the endowment will be sought over the next five years. Together with the funding provided by

Portland State University on an annual basis, endowment income will enable the Institute to continue its existing programs and expand its ability to serve the region.

- **The Board has decided to institute a modest dues assessment for cities, counties, regional and state agencies, and special districts in the six-county Portland-Vancouver metropolitan area.** The dues will serve two essential purposes. First, they will stabilize funding for existing programs during the endowment campaign. Second, they will demonstrate to private funders that communities and agencies in the metropolitan region support the Institute and value the role it plays.

## **For more information about the Institute:**

- **Visit our web page: [www.upa.pdx.edu/IMS/](http://www.upa.pdx.edu/IMS/)**
- **Call Ethan Seltzer, Director, at 503-725-5170**
- **Visit us in the new Urban Center Building, 510 SW Mill, Portland, Room 780**

**Institute of Portland Metropolitan Studies**  
**Project List**  
**March 18, 2002**

**Publications and Events**

- Metroscape - biannual magazine about the metropolitan area, its issues and dynamics.
- Catalyst - quarterly newsletter about the work of the Institute
- Briefing Book - biennial report on the economy, demographic trends, and issues and attitudes in the metropolitan area, and work with faculty in the School of Urban Studies and Planning to develop a mapped "state of the region" summary for the Coalition for a Livable Future and others
- The Regionalist - feasibility study for assuming responsibility for publishing The Regionalist, a peer-reviewed journal, as an inducement and outlet for scholarly work on regionalism and regional themes
- Web Page - the Institute's public archive and one-stop source for information about us, our projects and our region
- Regional Roundtable - the Regional Roundtable is an interactive forum to link faculty and community leaders in dialogue regarding the region's key issues...May 18 forum: Is it time to let regionalism off the leash?

**Metropolitan Economy**

- The New Economy Observatory - the Institute's ongoing effort to assess and keep track of the metropolitan area's economy and its trends
- Regional Economic Development - creation of a Metropolitan Economic Policy Council to review economic development strategies in the region to identify common themes, conflicts, and principles for linking economic development and land use planning efforts
- Regional Industrial Lands Study Phase 3 - completed 3/7/02
- Multnomah-Washington Regional Investment Board - provision of staff and technical support for this body, charged with disbursing \$1.8 million in lottery funds to economic and community development projects in the two counties
- Higher Education and Economic Development - work with a multi-institutional group to better connect post-secondary education in the metropolitan area to economic development and job creation efforts

**Metropolitan Planning**

- NEON - the National Ecological Observatory Northwest, development of a grant application for a long-term effort to take a landscape ecological approach to creating scenarios for long-term metropolitan growth and landscape change.



## **Resource Development**

- Community Research Trust - development of an endowment to create a Community Research Trust as a permanent resource for the metropolitan area...earnings from the endowment would be invested in public service research by the Board of the Institute and applied to critical metropolitan information and analytical needs
- Building Livable and Sustainable Communities - work with the region's Congressional delegation to develop an earmark in the Federal budget to support creation of benchmarks for metropolitan livability and sustainability through a public, inclusive process

## **Special Projects**

- Community Geography Project - grant funding from The Ford Foundation to use GIS to provide valued citizenship roles for youth and empower community organizations and link them to the region and each other
- Damascus Firehouse Study Group - facilitation of a multijurisdictional/multi-interest forum to determine governance responsibilities in areas to be added to the urban growth boundary in eastern Clackamas County
- Metro Performance Indicators - work with Metro on the development of Metropolitan Performance Indicators to assess the outcomes of growth management efforts
- Ballot Box Planning - development of a white paper and possible other activities on the topic of "ballot box planning," a phenomenon common in California and now threatening to overtake and commandeer local planning processes

## MINUTES OF THE METRO COUNCIL MEETING

March 14, 2002

Metro Council Chamber

Councilors Present: Carl Hosticka (Presiding Officer), Susan McLain, Rod Park, Bill Atherton, David Bragdon, Rod Monroe, Rex Burkholder

Councilors Absent:

Presiding Officer Hosticka convened the Regular Council Meeting at 2:05 p.m.

### 1. INTRODUCTIONS

There were none.

### 2. CITIZEN COMMUNICATIONS

There were none.

### 3 SOUTH CORRIDOR STUDY BRIEFING

**Richard Brandman, Deputy Planning Director**, updated the Council on where they were in the South Corridor Study and gave a power point presentation on the Project (a copy of which is found in the meeting record). He spoke about the four links, project lead agencies, project needs and purpose, South Corridor Alternatives Analysis as well as the light rail addition to the analysis, light rail cost reduction, SDEIS alternatives, BRT alternatives and improvements, busway alternatives, light rail alternatives, LRT alternatives, downtown rail capacity, river crossing and transit mall issues, Hawthorne Bridge alignment, public input, policy group's direction, policy committee's direction, next steps, public outreach and the process for decision making.

**Councilors** asked questions about alternatives, funding, and timeline. **Mr. Brandman** responded to their questions.

**Councilor Bragdon** said, in terms of the interaction with the Milwaukie neighborhood groups, it was important to add that they hadn't just asked to put the light rail option back on the table but they had asked that it be put back on the table with certain conditions which pertained to design, compatibility with their downtown plan, and to their own involvement in it. It was in invitation to work together.

**Aleta Woodruff**, 2143 NE 95<sup>th</sup> Place, Portland OR, representing the Gateway Opportunity, encouraged consideration of the light rail on I-205 from Gateway south. She noted that it would extend transportation to the airport by 6 1/2 miles. The neighborhood residents in the Gateway area were very supportive.

### 4. MPAC COMMUNICATIONS

**Presiding Officer Hosticka** said MPAC discussed wildlife mapping. The Job Subcommittee met afterwards. They were doing a lot of good work about the effects of the decisions that the Council

would be facing under periodic review on jobs and economic health the region. He then asked Mr. Cooper to address the LCDC response to the Council's petition for a declaratory ruling that had been distributed at MPAC as well.

**Dan Cooper**, General Counsel, responded that LCDC put it early on the schedule and invited him to speak during their director's report. They adopted a motion to deny the request for the declaratory ruling but instead to invite Metro to submit a petition for rule making which could be the vehicle for addressing the identical issues. They tentatively scheduled consideration of whether or not to initiate the rule making if Metro made that petition at their April 25, 2002 meeting. They had discussed this with their staff and the advice they were receiving from the attorney general's office was that this was their preferred vehicle and process for answering the questions. The discussion centered on the fact that rule making as opposed to a declaratory ruling was more likely to generate a legally definitive appeal to the Court of Appeals that would provide some finality to the answers they gave Metro. That would provide both LCDC and Metro with greater certainty with whatever conclusion was reached through the process than simply the declaratory ruling which was less likely to be appealed and would only be binding on LCDC and Metro if not appealed and could not produce as final a decision as the rule making. He said it was not necessary to send it back to MTAC or MPAC. If they wanted to move as quickly as LCDC wanted to move, his office could have a resolution prepared for Council so they have the vehicle to formally request that the Executive Officer send down a formal petition for rule making with a proposed draft rule for them to consider.

**Presiding Officer Hosticka** said there was a lot of political sensitivity on this. He asked when the last point of action would be in order to meet the April 23, 2002 LCDC meeting?

**Mr. Cooper** said LCDC sends a notice 30 days in advance of their meeting. It was his understanding that LCDC were proceeding in April. Metro was not necessarily required to submit the actual petition for rule making by that time.

**Presiding Officer Hosticka** asked if they could put it on their agenda without a lot of detail. He suggested Mr. Cooper check into this.

**Councilor McLain** asked how this rule making related to Measure 7 and Goal 14 being put on hold.

**Mr. Cooper** said the Commission discussed this at the March meeting. Part of Metro's reasoning for submitting a petition for a declaratory ruling rather than rule making was because the Goal 14 rule and revision process that they had undertaken in 2000 seemed to be very complicated on a number of statewide issues. The Commission's discussion initiated by their staff and staff recommendation was to give them an option of doing this as part of larger revision to Goal 14 or to request that they dealt with a very narrow rule that only applied to sub-regions in areas where there was a population of 750,000 or more within the Urban Growth Boundary which would be a Metro only rule. The action they took was to take the narrow pathway and not to include this in a wider Goal 14 rule making process. They hadn't made any final decision. The maker of the motion was clear that Metro had a need for a decision and Metro's preference for action by them. He made the motion to deny the petition for declaratory ruling and inviting the petition for rule making but reserving the right to eventually say no to the rule making as well or to convert that rule making into a broader rule making. Mr. Cooper had encouraged them to have a decision by sometime in the fall before the legislature met because they would then be slowed down. In his judgement it was better for the Commission to make the rule than the matter to fall into the legislation cycle.

**Councilor McLain** asked if the Council would have an opportunity to work on this as soon as possible?

**Mr. Cooper** said this was not an executive session issue. They could be prepared to discuss this as soon as the next Community Planning Committee. If at that time the Council wanted them to proceed they could.

**Presiding Officer Hosticka** said he hoped that they would disseminate broadly the decision of LCDC so others knew that Metro was considering additional steps because of LDCD's action today.

**Councilor Park** said, given the advisory nature that Metro would be in, in the position to the Commission and that MPAC would be advisory to the Council, it seemed more expedient to get what Metro needed down to them and let advisory committees make comments directly to the Commission.

**Councilor Atherton** asked, even if we did a fast track on the rule making, could they expect a decision to help the Council in their UGB decisions this year.

**Mr. Cooper** responded that the earliest time they could make their decision would be October 2002. They were making that decision in anticipation that the matter would be appealed to the Court of Appeals. Even if it weren't appealed, an October rule making would be too late for the Council to take that into account in this timeframe. He had informed the Commission of this but he had urged them to give Metro an answer anyway because we needed the answer for the future if not for now.

**Councilor Atherton** asked what the advantages were in doing this right now?

**Mr. Cooper** said he thought that was policy not legal.

**Presiding Officer Hosticka** said he anticipated that this issue would be considered in Community Planning next week.

## 5. CONSENT AGENDA

### 5.1 Consideration of minutes of the March 7, 2002 Regular Council Meeting.

**Motion:** **Councilor Park** moved to adopt the meeting minutes of the March 7, 2002, Regular Council meeting.

**Vote:** The vote was 7 aye/ 0 nay/ 0 abstain, and the motion passed.

## 6 ORDINANCES – SECOND READING

### 6.1 **Ordinance No 02-937A**, For the purpose of amending the Metro Code Chapter 5.04 Related to Supporting Markets for Recyclable Materials and Making Related Changes to Metro Code Chapter 2.19 to Establish a Recycling Business Assistance Advisory Committee.

**Motion:** **Councilor McLain** moved to adopt Ordinance No. 02-937A.

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

**Councilor McLain** said this ordinance was reviewed at Solid Waste & Recycling and passed out unanimously. She spoke to the particular recyclable materials that needed market assistance and the composition of the Recycling Business Assistance Advisory Committee. She noted her amendments concerning notice and budget.

**Presiding Officer Hosticka** opened a public hearing on Ordinance No. 02-937A. No one came forward. Presiding Officer Hosticka closed the public hearing.

**Councilor Atherton** talked about the specifics of the loans.

**Councilor McLain** closed by encouraging an aye vote. She said the business community had brought this idea to the Council. There was a real need in the region.

**Vote:** The vote was 7 aye/ 0 nay/ 0 abstain, and the motion passed.

## 7. CONTRACT REVIEW BOARD

7.1 **Resolution No 02-3165**, For the Purpose of Authorizing the Release of a Request for Proposals for Implementation of the First Year of a Marketing and Communications Plan to Increase the Salvage and Recycling of Construction and Demolition Debris.

0

**Motion:** **Councilor Park** moved to adopt Resolution No. 02-3165.

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

**Councilor Park** reviewed the purpose of the RFP for the Communications Plan and the background for the resolution. He summarized the amended staff report (a copy of which is in the meeting record).

**Councilor McLain** added that they had asked for an amendment on the staff report and explained further those amendments.

**Councilor Atherton** spoke to the facilities outside our jurisdiction that accepted construction and demolition debris. He noted that Waste Management had sent a letter indicating they planned to implement recycling at their Hillsboro facility.

**Councilor Park** supported Councilor Atherton's point and urged an aye vote.

**Vote:** The vote was 7 aye/ 0 nay/ 0 abstain, and the motion passed.

## 8. COUNCILOR COMMUNICATION

**Presiding Officer Hosticka** reported that the Executive Officer had signed the agreement on the regional drinking water initiative. He passed out a recommendation which was made by the Green Ribbon Committee (a copy of this recommendation is included in the meeting record). He explained further the recommendations that were adopted unanimously at the Green Ribbon Committee.

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**Councilor McLain** said she would carry this message to SWAC, March 18<sup>th</sup>. She thought it was important to hear from both parks and solid waste individuals.

**Presiding Officer Hosticka** said Natural Resources and Solid Waste and Recycling Committees would be considering this issue next Wednesday. If it was passed out of committee, it could be considered as early as March 21, 2002 at the Metro Council meeting.

**Councilor Burkholder** talked about the Budget and Finance Committee process. He encouraged Council's participation.

**Councilor Park** said there had been requests to discuss Ballot Measure 26-29.

**Mr. Cooper** said, as elected officials, they were free to discuss the ballot measures.

**9. ADJOURN**

There being no further business to come before the Metro Council, Presiding Officer Hosticka adjourned the meeting at 3:35 p.m.

Prepared by

Chris Billington  
Clerk of the Council

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF MARCH 14,  
2002**

TOPIC	DOCUMENT DATE	DOCUMENT DESCRIPTION	DOCUMENT NUMBER
MINUTES	3/7/02	MINUTES OF THE METRO COUNCIL OF 3/7/02	031402C-01
COMMITTEE REPORT	3/11/02	RESOLUTION NO. 02-3165 SOLID WASTE & RECYCLING COMMITTEE FROM JOHN HOUSER TO THE METRO COUNCIL	031402C-02
STAFF REPORT	2/4/02	RESOLUTION NO. 02-3165 AMENDED STAFF REPORT TO METRO COUNCIL	031402C-03
COMMITTEE REPORT	3/11/02	ORDINANCE NO. 02-937A SOLID WASTE & RECYCLING COMMITTEE FROM JOHN HOUSER TO METRO COUNCIL	031402C-04
GREEN RIBBON COMMITTEE RECOMMENDATION	3/12/02	RECOMMENDATION ON PARKS TO METRO COUNCIL	031402C-05