



METRO

Agenda

MEETING: METRO COUNCIL
DATE: May 15, 2008
DAY: Thursday
TIME: 2:00 PM
PLACE: Forest Grove Community Auditorium
1915 Main Street (directions follow)

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. CONSENT AGENDA

3.1 Consideration of Minutes for the May 8, 2008 Metro Council Regular Meeting.

3.2 **Resolution No. 08-3946**, For the Purpose of Confirming the Appointment Of David Davies and Cece Hughley Noel to the North Portland Rehabilitation And Enhancement Committee (NPREC).

3.3 **Resolution No. 08-3942**, For the Purpose of Allocating Regional Flexible Funding to Regional Transportation Programs For the Years 2012 and 2013, Pending Air Quality Conformity Determination and to Commit \$144.8 Million of Regional Flexible Funding to Bond Payments For Contributions to the Milwaukie Light Rail Transit and Wilsonville to Beaverton Commuter Rail Project.

3.4 **Resolution No. 08-3943**, For the Purpose of Declaring the Cemetery Perpetual Care Fund a Permanent Fund.

4. ORDINANCES – SECOND READING

4.1 **Ordinance No. 08-1185**, For the Purpose of Annexing Lands on the West Side of SW 229th Avenue South of Tualatin Valley Highway to the Metro Jurisdictional Boundary. Harrington

4.2 **Ordinance No. 08-1186A**, For the Purpose of Amending Metro Code Chapter 5.02 to Establish Metro's Solid Waste Disposal Charges and System Fees for Fiscal Year 2008-09 (*public hearing, no final action*). Bragdon

- 4.3 **Ordinance No. 08-1187A**, For the Purpose of Amending Metro Code Chapter 7.01 Relating to Excise Tax, Regarding Exemptions and Calculations (*public hearing, no final action*) Bragdon

5. RESOLUTIONS

- 5.1 **Resolution No. 08-3935**, Authorizing the Chief Operating Officer to Execute an Intergovernmental agreement With the City of Forest Grove For Trail Development. Harrington

6. CHIEF OPERATING OFFICER COMMUNICATION

7. COUNCILOR COMMUNICATION

ADJOURN

Television schedule for May 15, 2008 Metro Council meeting

This Council meeting will be held off site at the Forest Grove Community Auditorium.

| | |
|--|---|
| <p>Clackamas, Multnomah and Washington counties, and Vancouver, Wash. Channel 11 -- Community Access Network www.tvctv.org -- (503) 629-8534 2 p.m. Thursday, replay of May 8</p> | <p>Portland Channel 30 (CityNet 30) -- Portland Community Media www.pcmv.org -- (503) 288-1515 8:30 p.m. Sunday, May. 18 2 p.m. Monday, May 19</p> |
| <p>Gresham Channel 30 -- MCTV www.mctv.org -- (503) 491-7636 2 p.m. Monday, May 19</p> | <p>Washington County Channel 30 -- TVC-TV www.tvctv.org -- (503) 629-8534 11 p.m. Saturday, May 24 11 p.m. Sunday, May 25 6 a.m. Tuesday, May 27 4 p.m. Wednesday, May 28</p> |
| <p>Oregon City, Gladstone Channel 28 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.</p> | <p>West Linn Channel 30 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.</p> |

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

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

Directions from Metro to Forest Grove Community Auditorium

| | |
|---|---------|
| Head north on NE Grand Ave toward NE Irving St | 0.5 mi |
| Turn left at NE Broadway | 0.3 mi |
| Turn right at N Williams Ave | 108 ft |
| Take the ramp on the left onto I-5 N | 0.4 mi |
| Take exit 302B for I-405/US-30 W toward St Helens | 0.6 mi |
| Merge onto I-405 S | 1.7 mi |
| Take exit 1D to merge onto Sunset Hwy/US-26 W toward Beaverton | 16.7 mi |
| Take exit 57 for Glencoe Rd toward N Plains | 0.2 mi |
| Turn left at NW Glencoe Rd | 1.3 mi |
| Turn right at NW Zion Church Rd | 2.0 mi |
| Continue on NW Cornelius Schefflin Rd | 1.6 mi |
| At traffic circle, take 1st exit onto NW Verboort Rd | 0.4 mi |
| At next traffic circle, take 2nd exit and stay on NW Verboort Rd | 1.6 mi |
| Turn left at OR-47 | 0.9 mi |
| Turn right at Sunset Dr | 0.9 mi |
| Slight right at University Ave | 0.2 mi |
| Turn left at Main St to 1915 | 0.3 mi |

Consideration of Minutes of May 8, 2008 Metro Council Regular Meeting.

Consent Agenda

Metro Council Meeting
Thursday, May 15, 2008
Forest Grove Community Auditorium

Resolution No. 08-3946, For the Purpose of Confirming the Appointment of David Davies and Cece Hughley Noel to the North Portland Rehabilitation and Enhancement Committee (NPREC)

Consent Agenda

Metro Council Meeting
Thursday, May 15, 2008
Forest Grove Community Auditorium

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONFIRMING THE) RESOLUTION NO. 08- 3946
APPOINTMENT OF DAVID DAVIES AND CECE)
HUGHLEY NOEL TO THE NORTH PORTLAND) Introduced by David Bragdon,
REHABILITATION AND ENHANCEMENT COMMITTEE) Council President
(NPREC)

WHEREAS, Metro Code Chapter 2.19.140 provides for a North Portland Rehabilitation and Enhancement Committee (NPREC);

WHEREAS, Metro Code 2.19.140(b) authorizes seven citizen representatives for NPREC membership;

WHEREAS, vacancies have occurred in the NPREC membership;

WHEREAS, the Council President has appointed David Davies to the position of Overlook neighborhood representative and Cece Hughley Noel to the position of Portsmouth neighborhood representative, subject to confirmation by the Metro Council; now, therefore,

BE IT RESOLVED, that the Metro Council confirms the 2-year appointments of Mr. Davis and Ms. Noel to serve on the North Portland Rehabilitation and Enhancement Committee.

ADOPTED by the Metro Council this ____ day of _____, 2008.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 08-3946 FOR THE PURPOSE OF CONFIRMING THE APPOINTMENTS OF DAVID DAVIES AND CECE HUGHLEY NOEL TO THE NORTH PORTLAND REHABILITATION AND ENHANCEMENT COMMITTEE (NPREC)

Date: May 15, 2008

Prepared by: Karen Blauer

BACKGROUND

Two vacancies have occurred in the North Portland Rehabilitation and Enhancement Committee (hereinafter referred to as NPREC) membership. Metro Code Chapter 2.19.140, "North Portland Rehabilitation and Enhancement Committee (NPREC)," provides for the NPREC and subsection 2.19.140(b) authorizes representatives for Committee membership and representation criteria. The vacancies in the NPREC membership exist due to term limits for the members representing the Overlook and Portsmouth neighborhoods.

A recruitment effort to fill the positions was launched on March 10, 2008 with a letter to request help sent from Rex Burkholder, Metro Councilor and North Portland Enhancement Committee chair, to approximately 30 community leaders including representatives of North Portland neighborhood and business associations, local schools, nonprofit and advocacy organizations, cultural groups and government staff and officials. Following the letter, a mailer announcing the recruitment was sent to nearly 200 local residents. In addition, a news release announcing the recruitment was sent to local media outlets and advertisements were placed in two local newspapers (the St. Johns Review and Portland Sentinel). The announcements directed those interested to Metro's website where more details and an Applicant Interest Form were posted. (A copy of Councilor Burkholder's letter, the mailer, news release and advertisement appear here as Attachments 1 - 4.)

A panel comprised of past Metro grant selection committee members and grant recipients was asked to review and evaluate applicants' interest forms and to provide Metro Council with a recommendation for nominations. The panel included Maria Elena Alvarado (Portland Public Schools outreach coordinator and resident of St. Johns neighborhood), Alan Holzapfel (neighborhood activist and resident of Arbor Lodge neighborhood), and Tom Griffin-Valade (North Portland Neighborhood Services District Director.)

One candidate applied for each position. The Review Panel recommends the appointment of David Davies (Overlook) and Cece Hughley Noel (Portsmouth). Both are active in and knowledgeable about their respective neighborhoods, have professional expertise and credentials that will be an asset to Metro's committee and decision-making process and received "high" ratings. (A copy of candidates' applications and the review panel's recommendation appear here as Attachments 5 - 7).

ANALYSIS/INFORMATION

1. Known Opposition. There is no known opposition to the appointments of Mr. Davies and Ms. Noel to the NPREC.
2. Legal Antecedents. Chapter 2.19 of the Metro Code Relating to Advisory Committees; Section 2.19.140 provides for a North Portland Rehabilitation and Enhancement Committee (NPREC) and sets forth guidelines for representation.
3. Anticipated Effects. Adoption of this resolution would confirm the appointments of Mr. Davies and Ms. Noel to the NPREC.
4. Budget Impacts. There are no known costs associated with implementation of this legislation.

RECOMMENDED ACTION

David Bragdon, Council President, and Councilor Rex Burkholder, chair of the enhancement committee, recommend adoption of this resolution to confirm the appointments of David Davies and Cece Hughley Noel to serve on the North Portland Rehabilitation and Enhancement Committee.

M:\rem\od\projects\Legislation\2008\083946 NPREC Stfprt.doc

March 10, 2008

Dear North Portland neighborhood leader:

Metro is recruiting for a representative from Overlook and Portsmouth neighborhoods to serve a two-year term on the North Portland Enhancement Committee. Please consider people you believe would be good prospects for this special opportunity and encourage them to apply now. The application deadline is 9 a.m. Monday, April 21, 2008.

As Metro Councilor representing the area targeted to receive these funds, I chair the grant selection committee. The committee is comprised of seven citizen members. Typically, nominees are community activists who live in the neighborhood and are knowledgeable about the needs of their specific neighborhood and the community in general.

Committee members help solicit and review grant applications, and select a slate of neighborhood improvement projects to fund. The committee meets two to three times per grant cycle - usually in June at Metro Regional Center in Northeast Portland.

Current and past committee members have commented that their work, though limited in scope and time commitment, is challenging and very rewarding. Since the program was established, more than \$2 million has funded 400 local projects in North Portland neighborhoods.

Nominees must complete the attached "appointment interest form" and send it to Karen Blauer (US mail to Metro 600 NE Grand Ave., Portland, OR 97232 or by email at blauerk@metro.dst.or.us). The application deadline is 9 a.m. Monday, April 21th. A selection panel headed by Tom Griffin-Valade, District Director of North Portland Neighborhood Services, will review applications and forward nominations for the Metro Council's confirmation.

For more information about committee work or Metro's community grants program, please call Karen Blauer, Metro community grants coordinator, at (503) 797-1506 or visit Metro's web page (www.metro-region.org/grants). Thank you for your consideration.

Rex Burkholder, Metro Councilor (District 5)
Chair, North Portland Enhancement Committee

klb

S:/REM/Blauer/Grants/NPEC/2008-09/Newbrmemo031008.doc



Metro community enhancement grants

Apply now for funds

Grant application deadline: 5 p.m. Monday, May 19, 2008

Have an idea to help make your community greener, cleaner, safer or healthier? Metro has \$60,000 to fund North Portland projects that benefit residents of Arbor Lodge, Cathedral Park, Kenton, Portsmouth, Overlook, St. Johns and University Park neighborhoods.

**Grant-writing skills and more!
7 to 9 p.m. Tuesday, April 15, 2008**

Kenton Firehouse, 8105 N. Brandon Ave. Call 503-797-1506 to reserve your place.

Want to help select projects to fund?

Now recruiting residents of Portsmouth and Overlook neighborhoods to serve on Metro's selection committee. Interested? Apply by Monday, April 21, 2008.

**Details available online at
www.metro-region.org/grants**

For more information call Karen Blauer, Metro community grants coordinator, at 503-797-1506 or send e-mail to blauerk@metro.dst.or.us.



METRO
PEOPLE PLACES
OPEN SPACES



Metro community enhancement grants

Apply now for funds

Grant application deadline: 5 p.m. Monday, May 19, 2008

Have an idea to help make your community greener, cleaner, safer or healthier? Metro has \$60,000 to fund North Portland projects that benefit residents of Arbor Lodge, Cathedral Park, Kenton, Portsmouth, Overlook, St. Johns and University Park neighborhoods.

**Grant-writing skills and more!
7 to 9 p.m. Tuesday, April 15, 2008**

Kenton Firehouse, 8105 N. Brandon Ave. Call 503-797-1506 to reserve your place.

Want to help select projects to fund?

Now recruiting residents of Portsmouth and Overlook neighborhoods to serve on Metro's selection committee. Interested? Apply by Monday, April 21, 2008.

**Details available online at
www.metro-region.org/grants**

For more information call Karen Blauer, Metro community grants coordinator, at 503-797-1506 or send e-mail to blauerk@metro.dst.or.us.



METRO
PEOPLE PLACES
OPEN SPACES



**Apply now for funds to
improve your neighborhood**

**Free workshop
Grant-writing skills and more!**

7 to 9 p.m. Tuesday, April 15, 2008

Grant application deadline

5 p.m. Monday, May 19, 2008



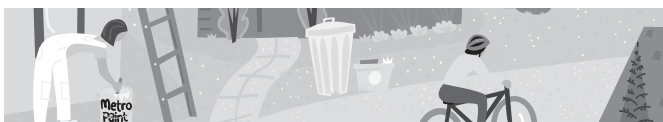
METRO

PEOPLE PLACES
OPEN SPACES

Printed on recycled-content paper. 08155 eka

Metro

600 NE Grand Ave.
Portland, OR 97232-2736



**Apply now for funds to
improve your neighborhood**

**Free workshop
Grant-writing skills and more!**

7 to 9 p.m. Tuesday, April 15, 2008

Grant application deadline

5 p.m. Monday, May 19, 2008



METRO

PEOPLE PLACES
OPEN SPACES

Printed on recycled-content paper. 08155 eka

Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Metro news release:

March 21, 2008

Contact: Karen Blauer (503) 797-1506

Metro launches 2008-09 North Portland grant cycle; apply now!

Funds benefit local residents and protect the nature of North Portland

Have an idea to help make your community greener, cleaner, safer or healthier? Metro has approximately \$60,000 available through its community grants program to help you make it happen. Projects must benefit residents or the property inside Metro's North Portland grant target area, including Arbor Lodge, Cathedral Park, Kenton, Overlook, Portsmouth, St. Johns and University Park neighborhoods. **The deadline for submitting grant applications is 5 p.m. Monday, May 19, 2008.**

Need help with your grant application? Metro offers a free grant-writing workshop with tips for first-time grant writers. The session will take place **from 7 p.m. to 9 p.m. Tuesday, April 15, 2008** at the Historic Kenton Firehouse, 8105 N. Brandon (diagonally across from the Kenton Post Office). A member of Metro's grant selection committee and the community grants program coordinator will answer questions about the application, selection process, and past and present use of funds. Call to reserve your place at the workshop.

Metro is recruiting for representatives from Overlook and Portsmouth neighborhoods to serve a two-year term on the North Portland Enhancement Committee. **The application deadline is 9 a.m. Monday, April 21, 2008.**

Committee members help solicit and review grant applications, and select a slate of neighborhood improvement projects to fund. Current and past committee members have commented that their work, though limited in scope and time commitment, is challenging and very rewarding. Nominees must complete an "appointment interest form" to be considered.

Metro's enhancement grant program has awarded \$2 million to more than 420 projects since it began awarding funds in 1987. Grants have supported the community's vision and responded to its unique blend of needs - from subsidizing the cost of trees for homeowners and helping with graffiti and pole-litter removal efforts, to creating a low-cost health care clinic, establishing a tool-lending library and improving outdoor playgrounds at a neighborhood schools.

For more details, a copy of the application forms and to reserve your place at the workshop, contact Karen Blauer, Metro's grant coordinator, by phone (503/797-1506) or email (blauerk@metro.dst.or.us).

###

(Distributed to The Oregonian, The Portland Tribune, St. Johns Review, Portland Sentinel, El Hispanic News, Portland Observer and The Skanner.)

Metro Community Enhancement Grants

Apply now for funds

Have an idea to help make your community greener, cleaner, safer or healthier? Metro has \$60,000 to fund projects in North Portland that benefit residents of Arbor Lodge, Cathedral Park, Kenton, Portsmouth, Overlook, St. Johns and University Park neighborhoods.

Grant application deadline:
5 p.m. Monday, May 19, 2008

Grant-writing skills and more!
7 to 9 p.m. Tuesday, April 15, 2008

Get tips, practical advice and more at Metro's free workshop for first-time applicants.

Want to help select projects to fund?

Now recruiting residents of Overlook and Portsmouth to serve on Metro's selection committee. Interested? Apply by Monday, April 21, 2008.

Details available online at

www.metro-region.org/grants

For more information, call Karen Blauer, community grants coordinator, at 503-797-1506 or send e-mail to blauerk@metro.dst.or.us.



Metro | *People places. Open spaces.*





NORTH PORTLAND ENHANCEMENT COMMITTEE
APPOINTMENT INTEREST FORM

COMMENTS (THIS SECTION TO BE FILLED OUT BY NOMINATION COMMITTEE ONLY):

NAME DAVID DAVIES DATE 3/17/08

HOME ADDRESS: 4027 N. COLONIAL AVE PORTLAND OR 97227
STREET CITY STATE ZIP

BUSINESS ADDRESS: 1140 SW 11TH AVE SUITE 500 PORTLAND OR 97205
STREET CITY STATE ZIP

HOME PHONE: 503-285-4745 BUSINESS PHONE: 503-242-0084

E-MAIL: DAVID@SOJPDX.COM

FAX 503-299-6769 NEIGHBORHOOD OVERLOOK

THE FOLLOWING INFORMATION IS VOLUNTARY:

SEX: ETHNIC ORIGIN

(METRO STRIVES FOR ETHNIC AND MINORITY BALANCE, AS WELL AS GEOGRAPHIC REPRESENTATION, IN ITS MEMBERSHIP COMPOSITION.)

SCHOOL (INCLUDE HIGH SCHOOL) LOCATION MAJOR OR DEGREE
LINCOLN HS PORTLAND OR
COLORADO COLLEGE, CO SPRINGS CO- BA IN ECONOMICS AND ENVIRONMENTAL STUDIES
UNIVERSITY OF OREGON- MASTER'S COMMUNITY AND REGIONAL PLANNING AND MASTER'S IN BUSINESS
ADMINISTRATION

LIST MAJOR EMPLOYMENT AND/OR VOLUNTEER ACTIVITIES, BEGINNING WITH MOST RECENT (INCLUDING ALL EXPERIENCES YOU BELIEVE TO BE RELEVANT):

PORTLAND DEVELOPMENT COMMISSION- DEVELOPMENT PROJECT MANAGER- 2001-2006

SHIELS OBLETZ JOHNSEN- DEVELOPMENT PROJECT MANAGER- 2006- PRESENT

OVERLOOK NEIGHBORHOOD ASSOCIATION- MEMBER, VOLUNTEER FOR THE COMMUNITY ADVISORY GROUP FOR THE INTERSTATE CORRIDOR ZONING UPDATE

HAVE YOU VOLUNTEERED FOR ANY MINORITY ORGANIZATIONS?

No

EXPERIENCE, SKILLS OR QUALIFICATIONS YOU FEEL WOULD CONTRIBUTE TO A PUBLIC SERVICE APPOINTMENT:

I HAVE A LOT OF EXPERIENCE WITH PUBLIC MEETINGS, CONSENSUS BUILDING, CONSTRUCTION, PROJECT MANAGEMENT AND GREEN BUILDING.

OUTLINE YOUR REASONS AND INTERESTS IN APPLYING FOR AN APPOINTMENT:

I AM ACTIVE IN THE NEIGHBORHOOD ASSOCIATION AND AM PASSIONATE ABOUT OUR NEIGHBORHOOD. I AM INTERESTED IN SEEING OUR NEIGHBORHOOD IMPROVED IN WAYS THAT WILL HAVE REAL IMPACTS TO THE RESIDENT'S QUALITY OF LIFE. IN MY PROFESSIONAL LIFE I HAVE SEEN A LOT OF DIFFERENT PROJECTS OF VARYING SIZE AND SCOPE WHICH GIVES ME VALUABLE INSIGHT INTO WHAT IS A REALISTIC PROJECT, WHICH PROJECTS ARE LIKELY TO STAND UP OVER TIME AND WHICH ONES WILL PROVIDE BENEFIT TO THE BROADEST SPECTRUM OF THE PUBLIC.

DATE



NORTH PORTLAND ENHANCEMENT COMMITTEE
APPOINTMENT INTEREST FORM

COMMENTS: (this section to be filled out by nomination committee only)

NAME: CECE HUGHLEY NOEL DATE APRIL 18, 2008

HOME ADDRESS: 9731 N. ADRIATIC AVE. PORTLAND OR 97203
STREET CITY STATE ZIP

BUSINESS ADDRESS: 3534 SE MAIN ST. PORTLAND OR 97214
STREET CITY STATE ZIP

HOME PHONE: (503) 706-8156 BUSINESS PHONE: (503) 232-0010 EXT. 311

E-MAIL: CECEHUGHLEYNOEL@GMAIL.COM

FAX: (503) 232-5265 NEIGHBORHOOD: PORTSMOUTH

THE FOLLOWING INFORMATION IS VOLUNTARY:

SEX: FEMALE ETHNIC ORIGIN: AFRICAN-AMERICAN

(Metro strives for ethnic and minority balance, as well as geographic representation, in its membership composition.)

| SCHOOL (include high school) | LOCATION | MAJOR OR DEGREE |
|-----------------------------------|-------------------------|------------------------------|
| <u>WASHINGTON HIGH SCHOOL</u> | <u>PORTLAND, OREGON</u> | |
| <u>MT. HOOD COMMUNITY COLLEGE</u> | <u>GRESHAM, OREGON</u> | <u>COMMUNITY TELEVISION</u> |
| <u>GEORGE FOX UNIVERSITY</u> | <u>NEWBERG, OREGON</u> | <u>HUMAN RESOURCES MGMT.</u> |

LIST MAJOR EMPLOYMENT AND/OR VOLUNTEER ACTIVITIES, BEGINNING WITH MOST RECENT (INCLUDING ALL EXPERIENCES YOU BELIEVE TO BE RELEVANT):

AS EXECUTIVE DIRECTOR OF SOUTHEAST UPLIFT NEIGHBORHOOD COALITION, I'VE ENGAGED NEIGHBORHOOD LEADERS, BUSINESS OWNERS, COMMUNITY BASED ORGANIZATIONS, SOCIAL SERVICE AGENCIES, SCHOOLS AND CULTURAL GROUPS IN COLLABORATIVE ACTIVITIES TO PROMOTE LIVABILITY AND ENHANCE QUALITY OF LIFE, INFLUENCING POLICY DIRECTION AND SOLVING PROBLEMS. IN THAT CAPACITY, I'VE PROVIDED DIRECTION, LEADERSHIP AND AUTHORITY IN ASSISTING COMMUNITY MEMBERS TO CO-CREATE CHANGE IN THEIR COMMUNITIES AND PROMOTE UNDERSTANDING OF GOVERNMENT PROCESSES AND OTHER CULTURES.

PREVIOUS TO MY WORK AT SEUL, I'VE WORKED AS A PUBLIC INVOLVEMENT PROFESSIONAL FOR OVER TEN YEARS, BOTH WITH THE CITY OF PORTLAND AND AS A CONSULTANT WITH AN ENVIRONMENTAL ENGINEERING FIRM, WHERE I SUPPORTED PUBLIC INVOLVEMENT FOR A WIDE VARIETY OF CLIENTS , PRIMARILY LOCAL AND STATE GOVERNMENT AGENCIES, INCLUDING ODOT, METRO, CLACKAMAS COUNTY AND CLARK COUNTY, WASHINGTON. PRIOR TO MY ROLE AS PUBLIC INVOLVEMENT SPECIALIST WITH THE CITY OF PORTLAND (PDOT AND THE FIRE BUREAU) I WORKED AS A COMMISSIONER'S ASSISTANT TO TWO ELECTED CITY COUNCIL MEMBERS FOR SIX + YEARS: FIRST FOR COMMISSIONER BOGLE (1991-94) AND THEN FOR HIS SUCCESSOR, CHARLIE HALES (1994-1996). MY WORK FOR BOTH COMMISSIONERS INCLUDED CONSTITUENT RELATIONS FOR MINORITY AND ETHNIC COMMUNITIES, BUT WAS PRIMARILY POLICY AND BUDGET ANALYSIS AND LIAISON TO BUREAUS IN THEIR PORTFOLIO, INCLUDING LICENSES, PURCHASING, CABLE & UTILITIES FRANCHISE MANAGEMENT AND PLANNING

HAVE YOU VOLUNTEERED FOR ANY MINORITY ORGANIZATIONS?

IN THE PAST I'VE BEEN ACTIVE IN THE LOCAL CHAPTER OF THE NAACP, PRIMARILY WITH THEIR ACT-SO CAMPAIGN THAT WAS PROMOTING ACADEMIC ACHIEVEMENT IN MATH AND SCIENCE FOR HIGH SCHOOL STUDENTS. I'M A MEMBER OF THE CENTER FOR INTERCULTURAL ORGANIZING (CIO) AND THROUGH MY WORK VERY ENGAGED WITH THE SOMALI WOMEN'S ASSOCIATION, ASIAN FAMILY CENTER, THE URBAN LEAGUE, SOCIETY FOR HAITIAN ARTS AND CULTURE, THE LATINO YOUTH NETWORK.

SOUTHEAST UPLIFT HOSTS A QUARTERLY WOMEN'S MULTICULTURAL LUNCHEON AT THE REED COLLEGE CAMPUS THAT INVITES NETWORKING AND DISCUSSION ON TOPICS RANGING FROM INVISIBLE MINORITIES, RELATIONS BETWEEN AFRICANS AND AFRICAN AMERICANS, ETC.

EXPERIENCE, SKILLS OR QUALIFICATIONS YOU FEEL WOULD CONTRIBUTE TO A PUBLIC SERVICE APPOINTMENT:

I'M PRETTY ADEPT AT DEVELOPING SOLUTIONS BY CONSENSUS IN GROUPS WHERE COMMON VALUES AND PRIORITIES ARE NOT OBVIOUS. I'M VERY ANALYTICAL, AND THROUGH MY WORK, I'M SKILLED AT DEVELOPING PROGRAMS FROM ASPIRATION OR IDEAS AND VALUES. I CAN ALSO SEE POTENTIAL AND OPPORTUNITIES TO INCREASE CAPACITY AND SKILL FOR GROUPS AND INDIVIDUALS, AND THINK MY EXPERIENCE WOULD BE AN ASSET ON THIS COMMITTEE.

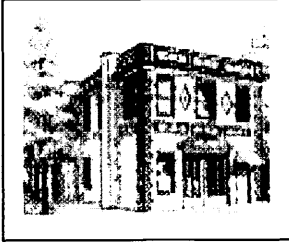
OUTLINE YOUR REASONS AND INTERESTS IN APPLYING FOR AN APPOINTMENT:

I'M FLATTERED THAT MEMBERS OF MY COMMUNITY AND MY COLLEAGUES RECOMMENDED THAT I APPLY FOR THIS APPOINTMENT. I WELCOME THE OPPORTUNITY TO PLAY A PART IN HAVING GREATER LOCAL INPUT TO WHAT HAPPENS IN MY NEIGHBORHOOD, ESPECIALLY IN THE CONTEXT OF THE LARGER COMMUNITY, NEIGHBORHOOD, CITY AND REGION THAT WE RESIDE.

I THINK MY EXPERIENCE, BOTH BECAUSE OF THE ROLE THAT I PLAY THROUGH MY WORK ON CITY-WIDE ISSUES, WILL ENHANCE THE WORK OF THE COMMITTEE BY CONTRIBUTING CONTEXT AND THOUGHTFUL ANALYSIS TO THE DISCUSSION AND THE DECISIONS THAT WILL BE MADE TO INCREASE THE QUALITY OF LIFE FOR NORTH PORTLAND RESIDENTS.

DATE: 4/18/2008

Send to North Portland Enhancement Committee, c/o Karen Blauer, Metro, 600 NE Grand Ave., Portland, OR 97232 (fax to 503-797-1795 or email blauerk@metro.dst.or.us).



City of Portland Office of Neighborhood Involvement
North Portland Neighborhood Services

2209 N. Schofield Portland Oregon 97217
503.823.4524 503.285.5614 fax
npns@ci.portland.or.us

Tom Griffin-Valade, Director

Arbor Lodge Bridgeton Cathedral Park East Columbia Kenton Hayden Island Overlook Piedmont Portsmouth St Johns University Park

TO: Rex Burkholder, Metro Councilor

THROUGH: Karen Blauer, Grants Administrator
Metro

FROM: Tom Griffin-Valade, Director
North Portland Neighborhood Services

DATE: April 27, 2008

RE: Recommendations for Metro North Portland Enhancement Fund
Committee Vacancies

Maria Elena Alvarado, Alan Holzapfel, and I, were appointed to review applications for the North Portland Enhancement Fund for the two vacancies from the Portsmouth and Overlook neighborhoods. One application each was submitted for these vacancies.

David Davies (Overlook) and **Cece Noel** (Portsmouth) were approved by the appointment committee. Each candidate received high ratings. The appointment committee recommends their appointment to the open positions.

Resolution No. 08-3942, For the Purpose of Allocating Regional Flexible Funding to Regional Transportation Programs for the Years 2012 and 2013, Pending Air Quality Conformity Determination and to Commit \$144.8 Million of Regional Flexible Funding to Bond Payments for Contributions to the Milwaukie Light Rail Transit and Wilsonville to Beaverton Commuter Rail Project.

Consent Agenda

Metro Council Meeting
Thursday, May 15, 2008
Forest Grove Community Auditorium

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF PROPOSING) RESOLUTION NO. 08-3942
ALLOCATION OF REGIONAL FLEXIBLE)
FUNDING TO REGIONAL TRANSPORTATION) Introduced by [Councilor Rex Burkholder](#)
PROGRAMS FOR THE YEARS 2012 AND 2013,)
AND TO BOND PAYMENTS FOR)
CONTRIBUTIONS TO THE MILWAUKIE)
LIGHT RAIL TRANSIT AND WILSONVILLE TO)
BEAVERTON COMMUTER RAIL PROJECTS)
FOR THE YEAS 2013 - 2025 PENDING PUBLIC)
COMMENT PERIOD AND AIR QUALITY)
CONFORMITY DETERMINATION)

WHEREAS, approximately \$67.8 million is forecast to be appropriated to the Metro region through the federal Surface Transportation Program (STP) and Congestion Mitigation – Air Quality (CMAQ) transportation grant programs; and

WHEREAS, the Metro Council and Joint Policy Advisory Committee on Transportation (JPACT) are designated by federal legislation as authorized to allocate these funds to projects and programs in the metropolitan region through the Regional Flexible Fund allocation process; and

WHEREAS, the Metro Council and JPACT have provided policy guidance to Metro staff and the Transportation Policy Alternatives Committee (TPAC) on the type and balance of projects and programs that are a priority for these funds through Metro Resolution No. 08-3916A, FOR THE PURPOSE OF ADOPTING THE POLICY DIRECTION AND PROGRAM OBJECTIVES FOR THE 2009 REGIONAL FLEXIBLE FUNDING ALLOCATION PROCESS AND 2010-2013 METROPOLITAN IMPROVEMENT PROGRAM (MTIP), adopted March 20, 2008; and

WHEREAS, the policy guidance report called for the creation of a two-step allocation process with the first step to consider recommendation of funding for regionally administered programs and a second step to consider recommendation of funding for local project applications; and

WHEREAS, TPAC and JPACT have considered funding options for step one of four existing programs administered by Metro, high capacity transit implementation funding, and two potential new programs for regional bridges and pedestrian & bicycle implementation; and

WHEREAS, TPAC has provided recommendations to JPACT and the Metro Council on funding of these programs and guidance for the step two process as shown in Exhibit A, to allocate funding in response to policy direction, technical evaluation, qualitative factors, and public comments; and

WHEREAS, a proposal has been submitted for a supplemental commitment of regional flexible fund contribution to the Milwaukie light rail transit and Beaverton to Wilsonville Commuter rail projects as demonstrated in Exhibit B; and

WHEREAS, the supplemental funding would add \$3.7 million per year to the existing high capacity transit implementation bond payment between 2012 and 2015 and then extend the \$13 million per year commitment from 2016 through 2025; and

WHEREAS, the \$144.8 million of supplemental funding would contribute \$72.5 million net present value contribution to the Milwaukie light rail transit project and \$13.3 million net present value contribution to the Beaverton to Wilsonville Commuter rail project; and

WHEREAS, additional information will be developed and considered for legislation adopting the preferred alternative and finance plan of the Milwaukie light rail project and for the inter-governmental agreement to define the terms and conditions of the supplemental bond agreement; and

WHEREAS, public comment will be solicited on these proposals and an air quality analysis will be conducted on the projects selected for funding for conformity with air quality regulations; now therefore

BE IT RESOLVED that the Metro Council hereby accepts the recommendation of JPACT on the proposed allocation of regional flexible funds to regional transportation programs, as shown in Exhibit A, pending public comment and air quality analysis; and

BE IT FURTHER RESOLVED that the Metro Council hereby accepts the recommendation of JPACT to solicit public comment on the proposed multi-year commitment of regional flexible funds to the supplemental bond funding of high capacity transit implementation as shown in Exhibit B.

ADOPTED by the Metro Council this ____ day of May 2008.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

Exhibit A

Regional Flexible Fund Step 1

| Revenue Source or Program | Revenues | Potential Allocation |
|--------------------------------------|-----------------|----------------------|
| Forecast of Funding Available | \$67.800 | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| Remaining balance | TBD | |

This table will be completed to reflect the TPAC recommendation.

Exhibit B

Exhibit B to Resolution 08-3942 Supplemental Multi-Year Commitment of MTIP Funds

1. Pending approval following a public comment period, Metro proposes to supplement the multi-year commitment of Metropolitan Transportation Improvement Program (MTIP) Funds for the region's high capacity transit program that was last approved by Resolution No. 04-3468 and amend the MTIP as follows:

| Fiscal Year [a] | Current Multi-Year MTIP Commitment Under Resolution No. 04-3468 | Proposed Supplemental Multi-Year MTIP Commitment | Total Multi-Year MTIP Commitment |
|----------------------------------|--|---|---|
| 2008 | \$9,300,000 | | \$9,300,000 |
| 2009 | \$9,300,000 | | \$9,300,000 |
| 2010 | \$9,300,000 | | \$9,300,000 |
| 2011 | \$9,300,000 | | \$9,300,000 |
| 2012 | \$9,300,000 | \$3,700,000 | \$13,000,000 |
| 2013 | \$9,300,000 | \$3,700,000 | \$13,000,000 |
| 2014 | \$9,300,000 | \$3,700,000 | \$13,000,000 |
| 2015 | \$9,300,000 | \$3,700,000 | \$13,000,000 |
| 2016 | | \$13,000,000 | \$13,000,000 |
| 2017 | | \$13,000,000 | \$13,000,000 |
| 2018 | | \$13,000,000 | \$13,000,000 |
| 2019 | | \$13,000,000 | \$13,000,000 |
| 2020 | | \$13,000,000 | \$13,000,000 |
| 2021 | | \$13,000,000 | \$13,000,000 |
| 2022 | | \$13,000,000 | \$13,000,000 |
| 2023 | | \$13,000,000 | \$13,000,000 |
| 2024 | | \$13,000,000 | \$13,000,000 |
| 2025 | | \$13,000,000 | \$13,000,000 |
| | \$74,400,000 | \$144,800,000 | \$219,200,000 |

[a] Initial multi-year commitment began in FY 1999

As used in this resolution, the term MTIP Funds includes urban Surface Transportation Program (STP) and Congestion Mitigation Air Quality (CMAQ) funds, or any successor or replacement federal funding programs, allocated by formula or agreement to the Portland metropolitan region. These MTIP Funds will be programmed for use by TriMet.

2. TriMet will prepare and implement a financing program to use, through direct federal grants to projects and/or a borrowing strategy, the MTIP Funds committed in Section 1 to provide, net of borrowing costs, \$72.5 million in 2011 dollars to the Milwaukie LRT Project and \$13.3 million in 2008 dollars to the Wilsonville-Beaverton Commuter Rail Project.

Exhibit B

3. TriMet will work with Metro to develop legislation adopting the preferred alternative and finance plan of the Milwaukie light rail project and for the inter-governmental agreement to define the terms and conditions of the supplemental bond agreement.
4. TriMet will enter or amend binding agreements with FTA and/or local governments committing TriMet to provide the amounts shown in Section 2 to the respective projects. To provide such amounts, TriMet will enter loan agreements relying on receipt of the annual amounts shown in Section 1 to help repay such obligations. Accordingly, the annual amounts shown in Section 1 are fully committed to TriMet; subject only to authorization and appropriation of MTIP Funds.
5. A mix corresponding to the needs of TriMet's financing program of Surface Transportation Program (STP) and Congestion Mitigation Air Quality (CMAQ) funds will be used to fulfill the multi-year commitment of MTIP funds. Representatives of Metro and TriMet will cooperatively determine the appropriate mix of CMAQ and STP funds to be used to fulfill the multi-year commitment of MTIP funds.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 08-3942, FOR THE PURPOSE OF ALLOCATING REGIONAL FLEXIBLE FUNDING TO REGIONAL TRANSPORTATION PROGRAMS FOR THE YEARS 2012 AND 2013, PENDING AIR QUALITY CONFORMITY DETERMINATION AND TO COMMIT \$144.8 MILLION OF REGIONAL FLEXIBLE FUNDING TO BOND PAYMENTS FOR CONTRIBUTIONS TO THE MILWAUKIE LIGHT RAIL TRANSIT AND WILSONVILLE TO BEAVERTON COMMUTER RAIL PROJECTS

Date: April 29, 2008

Prepared by: Ted Leybold

BACKGROUND

JPACT and the Metro Council recently adopted new policy direction for the Metropolitan Transportation Improvement Program and the allocation of Regional Flexible Funds. One change recommended for the allocation of regional flexible funds was to institute a two-step allocation process; first to regional programs and then to local projects. Resolution 08-3942 is to adopt the first step allocation of regional flexible funds to regional programs. This allocation will be followed with a solicitation, evaluation, public comment period and allocation of remaining regional flexible funds to local projects.

The Metro region is forecasted to receive \$67.8 million from the urban Surface Transportation Program and the Congestion Mitigation Air Quality funding programs in the federal fiscal years of 2012 and 2013. Previous allocations have identified projects and programs to receive funds during the Federal fiscal years of 2010 and 2011.

Seven existing or potential regional programs were considered for proposed funding: high capacity transit implementation, Metro planning, the Regional Travel Options program, the Transit Oriented Development program, the Transportation System Management & Operations program, a potential regional bridge program and a potential pedestrian and bicycle program.

The proposal for a regional Bicycle and Pedestrian program focused on an allocation of \$6.8 to \$7.2 million to be administered with existing regional staff, assisted by a committee of local and state staff from stakeholder agencies. Supporters posited that such a program would provide a consistent source of funds to implement the regional pedestrian and bicycle needs of the region. Transportation Policy Alternatives Committee (TPAC) instead recommended pedestrian and bicycle projects be funded as a part of the Step 2 process at a minimum funding level of \$7.2 million.

TPAC also considered three potential bridge funding proposals, bonding of funds to contribute to a Sellwood Bridge project, a Willamette River bridge program or a regional bridge program. TPAC did not recommend funding for a bridge program but supported individual bridge applications being eligible for funding in Step 2.

TPAC also supported a supplemental allocation to high capacity transit implementation by funding \$4 million for EIS work in the Lake Oswego corridor. Supporters of this recommendation noted that regional flexible funds have traditionally been used to prepare HCT corridors for federal construction funding and that the Lake Oswego corridor should be prepared to immediately follow the Milwaukie corridor light rail

project. Opponents to this recommendation argued to preserve funding for the Step 2 project allocation or to wait for results of the HCT system study to prioritize the region's next HCT corridor.

JPACT has recommended regional flexible funding for regional programs in federal fiscal years 2012-13 in the amounts summarized in Exhibit A to Resolution 08-3942. Additionally, regional flexible funding is proposed to be committed to bond payments from 2012 through 2025 for a regional contribution to the Milwaukie light rail transit and Wilsonville to Beaverton commuter rail projects. This funding proposal is summarized in Exhibit B to the resolution.

ANALYSIS/INFORMATION

1. **Known Opposition**
2. **Legal Antecedents** This resolution allocates transportation funds to regional programs in accordance with the federal transportation authorizing legislation (currently known as the Safe, Accountable, Flexible, Efficient Transportation Equity Act or SAFETEA). The allocation process is intended to implement the Regional Flexible Fund and 2010-13 MTIP program policies as defined by Metro Resolution No. 08-3916A.
3. **Anticipated Effects** Adoption of this resolution would allocate funding to regional transportation programs as defined in Exhibits A and B to the resolution.
4. **Budget Impacts** Adoption of the resolution would begin staff analysis of the air quality impacts of implementing the list of projects and programs as provided for in the Unified Work Program. Grant funds allocated to Metro planning require a match totaling 10.27% of project costs. Current options under consideration would include \$242,186 over the federal fiscal years 2012 and 2013. Metro would also negotiate with other transportation agencies for responsibility of a portion of \$1,019,446 of required local match for other regional planning activities over the course of the 2010 – 2013 time period.

RECOMMENDED ACTION

Staff recommends the adoption of Resolution 08-3942.

**Resolution No. 08-3943, For the Purpose of Declaring the
Cemetery Perpetual Care Fund a Permanent Fund.**

Consent Agenda

Metro Council Meeting
Thursday, May 15, 2008
Forest Grove Community Auditorium

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF DECLARING THE) RESOLUTION NO. 08-3943
CEMETERY PERPETUAL CARE FUND A) Introduced by Chief Operating Officer
PERMANENT FUND) Michael J. Jordan, with the concurrence of
) Council President David Bragdon

WHEREAS, Metro owns and operates 14 Pioneer Cemeteries and is obligated to the perpetual care of these facilities; and

WHEREAS, in March 2003 the Metro Council approved Ordinance #03-996 “For the Purpose of Increasing Grave Prices, Procuring a Niche Wall and Establishing a Cemetery Surcharge” adopted March 27, 2003, where it established a surcharge of 15% of grave sale fees and 5% of niche wall sale fees to be deposited in the Cemetery Perpetual Care Fund; and

WHEREAS, during the financial audit of Metro’s Fiscal Year 2007 Comprehensive Annual Financial Report, the audit firm Moss Adams found that it was not clear whether the principal in the Cemetery Perpetual Care Fund is legally restricted, as required for the fund to be recognized as a Permanent Fund under Governmental Accounting Standards Board Statement Number 34, and recommended that Metro review the designation of this fund as a Permanent Fund; and

WHEREAS, it is the intent of the Metro Council that the principal in the Cemetery Perpetual Care Fund not be expended, so that interest can be generated and accumulate in support future cemetery maintenance expenses; and,

WHEREAS, in the Metro management response to the audit Metro agreed to bring legislation before the Metro Council to clarify the nature of the fund; now therefore,

BE IT RESOLVED THAT THE METRO COUNCIL DECLARES:

1. That the principal in the Cemetery Perpetual Care Fund is legally restricted to the extent that only accumulated interest earnings, and not principal, may be used for the purpose of maintaining Metro’s Pioneer Cemeteries; and
2. That the “principal” in the fund shall be defined as any contributions or donations made to the Cemetery Perpetual Care Fund for the purpose of supporting future maintenance expenses, including any surcharges on grave and niche wall fees, but excluding any accumulated interest earnings in the fund.

ADOPTED by the Metro Council this _____ day of _____, 2008.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 08-3943, FOR THE PURPOSE OF DECLARING THE CEMETERY PERPETUAL CARE FUND A PERMANENT FUND

Date: May 15, 2008

Prepared by: Jeff Tucker

BACKGROUND

During the financial audit of Metro's Fiscal Year 2007 Comprehensive Annual Financial Report, the audit firm Moss Adams found that it was not clear whether the principal in the Cemetery Perpetual Care Fund is legally restricted, as required for the fund to be recognized as a Permanent Fund under Governmental Accounting Standards Board Statement Number 34.

Moss Adams recommended, and Metro management agreed, that Metro review the designation of this fund as a Permanent Fund and bring legislation to the Metro Council to clarify the status of the principal in this fund.

This resolution clarifies that the surcharges on the sale of cemetery graves and niches, established by Council in 2003, are principal intended for the Cemetery Perpetual Care Fund. The resolution also identifies that other contributions made to the Cemetery Perpetual Care Fund are principal. The only current example of this is a transfer of approximately \$89,500 from the Willamina Farmer Special Account, which came to Metro from Multnomah County specifically restricted for maintenance of the pioneer cemeteries.

In addition, this resolution states the Council's intent that the principal in this fund not be spent, and that the interest is accumulating in the fund for the purpose of offsetting future maintenance expenses at the pioneer cemeteries.

ANALYSIS/INFORMATION

1. **Known Opposition:** None known.
2. **Legal Antecedents:** Ordinance #03-996 "For the Purpose of Increasing Grave Prices, Procuring a Niche Wall and Establishing a Cemetery Surcharge" adopted March 27, 2003, where the Metro Council established a surcharge of 15% of grave sale fees and 5% of niche wall sale fees to be deposited in the Cemetery Perpetual Care Fund; Ordinance #03-1001B "For the Purpose of Adopting the Annual Budget for Fiscal Year 2003-04, Making Appropriations, and Levying Ad Valorem Taxes, and Declaring an Emergency" adopted June 12, 2003, in which the Cemetery Perpetual Care Fund was created.
3. **Anticipated Effects:** This resolution will clarify the intended purpose for the surcharges on grave and niche sales at the pioneer cemeteries.
4. **Budget Impacts:** There is no budgetary impact to this legislation.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of this resolution.

Ordinance No. 08-1185, For the Purpose of Annexing Lands on the West Side of SW 229th Avenue South of Tualatin Valley Highway to the Metro Jurisdictional Boundary.

Second Reading

Metro Council Meeting
Thursday, May 15, 2008
Forest Grove Community Auditorium

BEFORE THE METRO COUNCIL

| | | |
|--|---|----------------------------------|
| FOR THE PURPOSE OF ANNEXING |) | ORDINANCE NO. 08-1185 |
| LANDS ON THE WEST SIDE OF SW |) | |
| 229 th AVE. SOUTH OF TUALATIN |) | |
| VALLEY HIGHWAY TO THE METRO |) | |
| JURISDICTIONAL BOUNDARY |) | |
| |) | |
| |) | Introduced by Council President, |
| |) | David Bragdon |
| |) | |

WHEREAS, the duty and authority to review and approve annexations to the Metro jurisdictional boundary is granted to Metro pursuant to Oregon Revised Statute 268.354 (3) (c); and

WHEREAS, Metro received a complete petition from the property owners and registered voters of a certain tract of land depicted on the attached map and described in Exhibit A to this ordinance, requesting that their property be annexed to Metro; and

WHEREAS, Metro received written consent from a majority of the electors in the territory to be annexed and owners of more than half the land in the territory proposed to be annexed, as required by ORS 198.855 (3); and

WHEREAS, Metro Council in Ordinance No. 02-969B, For the Purpose of Amending the Metro Urban Growth Boundary, the Regional Framework Plan and the Metro Code in order to Increase the Capacity of the Boundary to Accommodate Population Growth to the Year 2022 adopted on December 5, 2002 to include the territory described in Exhibit A; and

WHEREAS, a report was prepared as required by law and Metro having considered the report and the testimony at the public hearing, does hereby favor annexation of the subject property based on the findings and reasons for decision attached hereto as Exhibit B; now therefore

THE METRO COUNCIL ORDAINS;

The territory described in Exhibit A and depicted on the attached map is hereby annexed to the Metro jurisdictional boundary.

ADOPTED by the Metro Council this ____ day of _____ 2008.

David Bragdon, Council President

ATTEST:

Approved as to Form

Christina Billington, Recording Secretary

Daniel Cooper, Metro Attorney

ANNEXATION CERTIFIED

BY Paul A. Koff
FEB 01 2008

MAY 1 - 2008

Ordinance No. 08-1185
Exhibit A
Legal/Territorial Description of Property

WASHINGTON COUNTY A & T
CARTOGRAPHY

A tract of land in the southeast quarter of Section 10, Township 1 South, Range 2 West, Willamette Meridian, Washington County, Oregon, being more particularly described as follows:

Beginning at the northeast corner of Lot 65 of Witch Hazel Little Farms, a duly recorded subdivision in said county;

thence South 74°21'30" East, along the southeasterly projection of the north line of said lot, a distance of 41.34 feet to a point on the east right of way line of Southwest 229th Avenue;

thence South 1°00' West, along said right of way line, a distance of 1135.01 feet to the intersection of said right of way line and the easterly projection of the south line of that tract of land conveyed to Robert E. Strauss and Deanna M. Strauss by deed recorded June 20, 2007 as Document No. 2007-068327 in Deed Records of said county;

thence North 89°00' West, along said projection and said south line, a distance of 822.0 feet to the southwest corner of said Strauss Tract;

thence North 1°00' East, along the west line of Lots 68, 67, and 66 of Witch Hazel Little Farms, a distance of 881.70 feet to the northwest corner of said Lot 66;

thence South 89°00' East, along the north line of said lot, a distance of 782.0 feet to the northeast corner thereof;

thence North 1°00' East, along the west right of way line of Southwest 229th Avenue, a distance of 263.76 feet to the point of beginning.

EXCEPTING THEREFROM the following described property:

Beginning at the southeast corner of Lot 67 of Witch Hazel Little Farms;

thence North 89°00' West, along the south line of said lot, a distance of 250.0 feet to the southwest corner of that tract of land conveyed to Gregory W. Homdrom by deed recorded April 30, 2004 as Document No. 2004-048014 in Deed Records of said county;

thence North 1°00' East, along the west line of said tract and the west line of that tract of land conveyed to Brad R. Smith and Kimberly A. Smith by deed recorded May 13, 1999

as Document No. 99-58504 in Deed Records of said county, a distance of 273.85 feet to the northwest corner of said Smith Tract;

thence South $89^{\circ}00'$ East, along the north line of said tract, a distance of 250.0 feet to the northeast corner thereof;

thence South $1^{\circ}00'$ West, along the west right of way line of Southwest 229th Avenue, a distance of 273.85 feet to the point of beginning.

Ordinance No. 08-1185
Exhibit B
FINDINGS

Based on the study and the public hearing, the Council found:

1. The territory is located on the west edge of the District on the west side of SW 229th Ave. south of Tualatin Valley Highway. The territory contains 14.26 acres and 2 vacant single family dwellings.
2. The annexation is being sought to continue the process which will lead to development of the property. The property has been included in the Urban Growth Boundary and annexed to the City of Hillsboro. The City is developing the Concept Plan for the area. The Metro Functional Plan requires that the entity responsible for the Concept Plan make annexation to the Metro jurisdictional boundary a requirement of the Plan. This annexation will meet that requirement. The Hillsboro School District plans to construct an elementary school on approximately 9 acres. The remaining 5+ acres would be utilized for low density residential uses but there are no current development plans in place.
3. Oregon Revised Statute 198.850 (2) directs the Council to consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.

A second set of criteria can be found in Chapter 3.09 of the Metro Code. That Code states:

(e) The following criteria shall apply in lieu of the criteria set forth in subsection (d) of section 3.09.050. The Metro Council's final decision on a boundary change shall include findings and conclusions that demonstrate:

1. The affected territory lies within the UGB;
2. The territory is subject to measures that prevent urbanization until the territory is annexed to a city or to service districts that will provide necessary urban services; and
3. The proposed change is consistent with any applicable cooperative or urban service agreements adopted pursuant to ORS chapter 195.

Additionally Metro Code 3.09.050 (b) requires issuance of a report that addresses:

- (1) The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
- (2) Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and
- (3) The proposed effective date of the boundary change."

The applicants have prepared a detailed response to each of the criteria listed above:

Oregon Revised Statute 198.850 (2)

(2) ORS 198.800 to 198.820 apply to the proceeding conducted by the county board and the rights, powers and duties of petitioners and other persons having an interest in the proceedings. However, when determining whether to approve an annexation petition filed under this section, the county board, in lieu of the criteria prescribed by ORS 198.805 (1) and 199.462, shall consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.

This ORS section makes it clear that the service agreement between the City of Hillsboro, Metro and Washington County and other local governments is the primary document to rely upon for these types of decisions, in lieu of other economic, demographic and sociological trends and projections, past or prospective physical development of land, and other criteria that might be pertinent if a service agreement was not in effect.

The directly applicable criteria for annexation to the Metro district include Chapter 3.09.050(b) and (d) of the Metro Code. Responses to each criterion are listed below, which can be considered findings of fact and conclusions from those findings.

(3) A description of how the proposed boundary change is consistent with the comprehensive land use plans, public facility plans, regional framework and functional plans, regional urban growth boundary goals and objectives, urban planning agreements of affected entity and of all necessary parties;

RESPONSE: The properties have been considered for eventual urbanization for a number of years. The South Hillsboro Concept Plan that was completed in 1998, though never officially adopted, included the subject properties.

~~UGB Amendment.~~ Metro brought the area into the Metro Urban Growth Boundary in December 2002, via Ordinance #02-969B, as part of Study Area #71. At that time, the findings adopted by Metro included the following statements, found on Page 5 of Exhibit P to Ordinance No. 02-969B.

~~K. Westside Area, Study Areas 62 (partial), 63, 64, 67, 69 (partial), 71 and 0~~

These non-contiguous study areas lie west of and adjacent to the UGB as it existed prior to this expansion. The portions included are all exception lands and designated Inner Neighborhood on the 2040 Growth Concept Map (Exhibit N). Part of the included portion of Study Area 62 will be used by the City of King City as a park and storm-water retention area. The cities of Tigard, Beaverton and Hillsboro will use the other portions of the Westside Area to provide housing.

Study Areas 63, 64, 67, 69 (partial), 71 and 0 rate "easy" to "difficult" for sewer, water, storm-water and transportation services. The cities of Tigard, Beaverton and Hillsboro, Clean Water Services and the Tualatin Valley Water District will be the service providers; all have expressed a willingness to provide the services. These areas are adjacent to the UGB as it existed prior to this expansion; services can be extended in an orderly manner.

Adverse economic, energy, environmental and social consequences of urbanization in these areas will be relatively low. Compliance with Title 3 of the UGMFP will reduce the consequences to water quality and the few wetlands, streams, floodplains and riparian areas present.

Urbanization of the areas will bring urban development near agricultural activities to the west and south of the UGB. However, most of the areas are already developed in a rural residential pattern. Application of General Condition 5 in Exhibit M will reduce incompatibility with farm practices.

The Council included these exception lands to provide opportunities for a wide range of housing types in a part of the region that was relatively "housing-poor."

Metro Planning Requirements. A "concept plan" for areas brought into the UGB is required prior to development. Metro's Urban Growth Management Plan (UGM) Functional Plan requires that all land annexed into the UGB "shall be subject to adopted comprehensive plan provisions consistent with the requirements of all applicable titles of the Metro Urban Growth Management Functional Plan and in particular Title 11"¹. The applicable provisions of Title 11 include the following statements:

B. Provision for average residential densities of at least 10 dwelling units per net developable residential acre or lower densities, which conform to the

¹ Metro Code, UGM Functional Plan, Section 3.07.1120
Ordinance Findings, Page 3 of 13

2040 Growth Concept Plan design type designation for the area.

1. A concept school plan that provides for the amount of land and improvements needed, if any, for school facilities on new or existing sites that will serve the territory added to the UGB. The estimate of need shall be coordinated with affected local governments and special districts.

Witch Hazel Village Community Plan. The City of Hillsboro completed a concept plan for a portion of Area #71, which was completed in February 2004. That plan, called the "Witch Hazel Village Community Plan", did not include the subject site in the Witch Hazel Village Planning Area boundary. That is, the concept plan, which was adopted into the Hillsboro Comprehensive Plan, excluded any land use planning designations for that portion of Area 71 south and east of Gordon Creek. (It did include 10 acres in Area 71 north of Gordon Creek).

South Hillsboro Planning Process. The City intended to begin the concept planning process for the majority of Area 71 in 2003. That process was delayed by a few years, but commenced in earnest in January 2007, and is currently nearing completion. The subject site is included in the current land use planning process, which is called the "South Hillsboro Community Plan". Although earlier scenarios of this plan designated the site as "Single Family Neighborhood"² then as "School"³, the latest draft shows it as a combination of Civic/Institutional (labeled "School" on the map) and Recreational/Open Space (labeled "Park" on the map)⁴.

Comprehensive Plan Amendment application. The applicants applied for an amendment to the City of Hillsboro Comprehensive Plan, changing the designations of these properties from the Washington County "Future Development – 20 acre minimum" (FD-20) district to the City of Hillsboro "Public Facilities" (PF) for the 9 acres owned by the School District, and "Residential Low" Density (RL) district for the remaining 5+ acres. That application is pending, and is tentatively scheduled for a Planning Commission hearing on March 12, 2008.

Zone Change. The applicants are applying for a zone change to R-7 (residential, 7000 square foot minimum lot size). The City does not have a corresponding zone district for the Open Space or Public Facilities

² Scenarios "A" and "B", South Hillsboro News newsletter, Volume 1, Issue 3, July 2007

³ Hybrid Scenario, South Hillsboro New newsletter, Volume 1, Issue 4, September 2007

⁴ Final Concept map, Figure 7, December 14, 2007

Comprehensive Plan districts, but schools and parks are permitted in the R-7 zone. The corresponding zone for the RL Comprehensive Plan District is R-7.

R-7 is also an appropriate implementing zone for the City's "Open Space" and "Public Facilities" Comprehensive Plan districts.

~~Transportation System Plan.~~ The proposed annexation is consistent with the City's Transportation System Plan. SW 229th Avenue is a collector street in this location. It has an existing, 40'-wide right-of-way. The property owners will dedicate additional right-of-way and improve the west side of the street to collector standards with the development of those properties.

~~Natural Resources.~~ The site does not contain any streams, wetlands, open water, flood areas, or steep slopes. A Clean Water Services Sensitive Area Pre-screening Site Assessment was completed in July 5, 2007. CWS noted that sensitive areas potentially exist on site or within 200 feet of the site. A jurisdictional wetland determination and delineation report on the property was completed by Schott & Associates, dated July 17, 2007. The report found no wetlands present on the site.

The site was included in the Tualatin Basin Partners for Natural Places report, and is included on Metro's Interactive web site. These maps do not show any streams, wetlands or open water, or any flood areas or steep slopes. One map shows a portion of the property as "Class A Wildlife". However, most of the site is shown on the "Metro Council's recommendation on habitat protection" map as "not affected". The remaining portion of the site is shown as "allow development".

The City of Hillsboro's website shows a portion of tax lot 1S210DC00600 as "Natural Resource Protection – Level 3". But the Significant Natural Resources Overlay District map also shows the site as "unincorporated – not regulated by SNRO [Significant Natural Resource Overlay] unless annexed". Therefore, the City SNRO regulations did not apply prior until the properties were annexed to the City.

There is a relatively small grouping of about 21 trees, mostly Douglas Firs, on the south portion of the site, basically all on or adjacent to tax lot 1S210DC00600. Some of the Douglas Fir trees were removed by the School District prior to annexation to the City, based on the preliminary site plans and the District's concern about potential risks to the public and to the school facilities from falling trees. An arborist report noted that none of these on-site Douglas Fir trees were in an "equilibrium environment", or appropriate for long term preservation. However, the report noted that there are 14 trees (a

mix of Douglas Fir, Incense Cedar, Silver Birch, and Garry Oak) along the south and west property lines that are viable, and which should be protected as the site is developed. The arborist report specifies how these trees should be protected during the development process.

The proposed boundary change is consistent with the comprehensive land use plans, public facility plans, regional framework and functional plans, regional urban growth boundary goals and objectives, urban planning agreements of affected entity and of all necessary parties, and therefore meets Criterion #3.

(2) A description of how the proposed boundary change complies with any urban service provider agreements adopted pursuant to ORS 195.065 between the affected entity and all necessary parties;

RESPONSE: There is currently a Hillsboro Urban Service Provider Agreement in place for this area, dated April 2, 2003, as required by ORS 195.065. The local governments which are a party to this agreement are as follows: Washington County, the City of Hillsboro, the City of Beaverton, Metro, Clean Water Services, TriMet, Tualatin Valley Park and Recreation District, Tualatin Valley Fire and Rescue District, Tualatin Valley Water District, and Washington County Fire District No. 2. The annexation is consistent with the applicable provisions of the Agreement, specifically Section 1, Roles and Responsibilities, subsections C. and G.

Approval of the Petition to Annex the site to the Metro District would be consistent with, and carry out the intent and stated purposes and objectives of, the Hillsboro Urban Service Agreement. The subject properties are included in that document and marked as "Future Urban" (Map C-2). Section III.C makes it clear that the agreement applies to properties identified on Map C-2. In fact, Section IX.E.2 automatically amends the boundary of the Hillsboro Urban Service Agreement (HUSA) to include the properties shown on Map C-2 "once the final action has been taken by Metro and the Department of Land Conservation and Development (DLCD) and appeals have been finalized".

Specifically, this annexation complies with that agreement as follows:

It fulfills Sections I.C., which designates the City of Hillsboro as the appropriate provider of services to citizens residing within the boundaries shown on Maps A-1 to A-6, which include the area shown on Map C-2.

Approval of this Annexation Petition will enable the City of Hillsboro to exercise full municipal governance of the site consistent with the following relevant provisions of the Hillsboro Urban Service Agreement.

Section I.C. Hillsboro is "designated as the appropriate provider of services to citizens residing within its boundaries and to unincorporated areas...as shown on Maps A-1 to A-6." (As noted above, Section III.C. added the properties identified on Map C-2 to Maps A-1 to A-6 when those properties were added to the UGB.)

Section I.D. Washington County recognizes the cities and special services districts as the ultimate municipal service providers as specified in this agreement, and recognizes cities as the "ultimate local governance provider to the urban area".

Section I.G.1. Consistent with Section I.C., I.D., and I.E, the County, City and Special Districts agree to develop a program for "the eventual annexation of all urban unincorporated properties into the cities". Further, Section I.G.2. states that the program will include the transfer of Washington County responsibilities, programs, equipment and personnel to the City for urban municipal services, including "law enforcement; road maintenance; engineering and construction; land use and transportation planning; land development; and building."

Approval of this annexation petition would be consistent with I.G of the Hillsboro Urban Services Agreement because it would expedite the transfer of law enforcement, road maintenance, engineering and construction, land use and transportation planning, land development and building services as contemplated by Section I.G. Pursuant to ORS 222.524, the City of Hillsboro has determined that upon its annexation to the City, assumption of law enforcement, road maintenance, engineering and construction, land use and transportation planning, land development and building services to the site would be in the best interest of the City.

Currently, the site is protected by the Washington County Fire District No. 2 (Dist. No. 2), which has primary fire protection responsibility for much of rural, unincorporated Washington County. Under the Hillsboro Urban Services Agreement, Dist. No. 2 and the City of Hillsboro have agreed that the City will ultimately be the sole provider of fire protection services to the site. Approval of this annexation petition would be consistent with Exhibit 'A' of the Hillsboro Urban Services Agreement because it would expedite the transfer of fire protection services to the site from Dist. No. 2 to the City, as contemplated

by Exhibit 'A'.

Pursuant to ORS 222.524, the City of Hillsboro has determined that upon its annexation to the City, withdrawal of the site from the Dist. No. 2 service area and subsequent City provision of fire protection services to the site would be in the best interest of the City.

Exhibit 'B' states that TriMet is currently the sole provider of public mass transit in the HUSD. Annexation to the Metro District would not alter that provision of the Agreement.

Exhibit 'C' states that the City will assume law enforcement services as annexations occur within the HUSA, and the area will be withdrawn from the Enhanced Sheriff's Patrol District. The subject properties are not in the Enhanced Sheriff's Patrol District, so they do not have to withdraw from that district. Annexation to the Metro District is consistent with this provision of the Agreement.

Exhibit 'D' states that the City, rather than the Tualatin Hills Park and Recreation District (THPRD), will be the designated provider of park, recreation and open spaces services to the HUSD. The subject properties are not within the THPRD boundary, so they do not have to withdraw from that district. Annexation to the Metro District is consistent with this provision of the Agreement.

Exhibit 'E' states that the County will continue to retain jurisdiction over the network of arterials and collectors within the HUSD, and that the City will accept responsibility for "public streets, local streets, neighborhood routes and collectors and other streets and roads that are not part of the County-wide road system" upon annexation. The City intends to accept responsibility for that portion of SW 229th Avenue that is within its city limits. Annexation to the Metro District is consistent with this provision of the Agreement.

Exhibit 'F' states that Clean Water Services (CWS) is responsible for sanitary sewage and storm water management within the City and the urban unincorporated area. Further, the City performs a portion of the local sanitary sewer and storm water management programs as defined in an operating agreement between the City and CWS. Annexation to the Metro district will not impact the agreement between the City and CWS, and is consistent with this provision of the Agreement.

Exhibit 'G' states that the City will be the designated water provider to

properties in the HUSA west of Cornelius Pass Road between Sunset Highway and TV Highway, and the Tualatin Valley Water District will provide services north of Sunset Highway, east of Cornelius Pass Road between Sunset Highway and TV Highway, and east of SW 209th Avenue. The subject site will be served with City water services. Annexation to the Metro district will not impact the agreement between the City and TVWD, and is consistent with this provision of the Agreement.

The proposed boundary change complies with the urban service provider agreements adopted pursuant to ORS 195.065 between the affected entity and all necessary parties, and therefore, meets Criterion #2.

(6) If the proposed boundary change is for annexation of territory to Metro, a determination by the Metro Council that the territory should be included in the Urban Growth Boundary shall be the primary criterion for approval;

RESPONSE: The property was brought into the Urban Growth Boundary in December 2002, under Metro Council Ordinance #02-969B. Therefore, the proposed boundary change meets Criterion #6.

(1) The extent to which urban services presently are available to serve the affected territory including any extra territorial extensions of service;

RESPONSE: No extraterritorial extensions of service are necessary. The property has been annexed into the City of Hillsboro, which will supply water and sanitary sewer services. Currently, there are no public utilities within SW 229th Ave south of SE Alexander Street. Utilities will be extended within SW 229th Avenue as needed.

The City of Hillsboro currently is in the process of extending their sanitary sewer main from SE River Road to SW 229th Ave, along SE Davis Road and Gordon Creek. Once that is complete, the applicants can extend the gravity system from this point to the subject properties. (However, if this sewer has not been constructed at the time of occupancy of the new elementary school, the Hillsboro School District will construct a private sanitary sewer pump station to pump the sanitary sewer to a manhole at the intersection of SE Alexander Street and SW 229th Avenue).

Storm water services will be provided by Clean Water Services and the City of Hillsboro. Storm water runoff will be routed through approved water quality

facilities and will be piped along the west boundary line of the neighboring tax lot (1S210DC00100) to Gordon Creek, once an easement has been procured.

Street maintenance for local streets will be provided by the City of Hillsboro. SW 229th Avenue will continue to be maintained by Washington County until the City and the County both agree to transfer that responsibility to the City.

Police, Fire and Parks services will be provided by the City of Hillsboro.

All private utilities will be extended as required by the utility companies as well.

In addition to local services, Metro provides a variety of services that will be available to this site. These include regional land use planning, solid waste disposal, the Oregon Zoo and other regional facilities, and regional park and greenspaces acquisition. Similarly, Washington County provides services to this site, including the County Sheriff's services, the County court system, the County health services, and several other general services available to all properties within the County. The annexation of the properties to the Metro district will not impact the Metro or County services.

All necessary urban services are presently available to serve the affected territory, and therefore the proposed boundary change meets Criterion #1.

(4) Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party;

RESPONSE: The annexation to the Metro boundary will not result in the withdrawal of the affected territory from the legal boundary of any necessary party. However, annexation to the City of Hillsboro resulted in a withdrawal from Washington County Rural Fire Protection District No. 2.

Therefore, the proposed boundary change is meets Criterion #4.

(5) The proposed effective date of the decision.

RESPONSE: The proposed effective date is July 1, 2008.

4. The site consists of level ground mostly cleared of vegetation with trees along the west and south edges.

To the east (across SW 229th) lies farmland. To the north, west and south of the property are rural residential properties.

5. This territory abuts the Metro jurisdictional boundary on the north, east and south.

The law that requires Metro to adopt criteria for boundary changes specifically states that Metro shall “. . . ensure that a boundary change is in compliance with the Metro regional framework plan as defined in ORS 197.015 and cooperative agreements and urban service agreements adopted pursuant to ORS 195.” ORS 197.015 says “Metro regional framework plan means the regional framework plan required by the 1992 Metro Charter or its separate components.” The Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes.

There are two adopted regional functional plans, the Urban Growth Management Plan and the Regional Transportation Plan.

The Urban Growth Management Functional Plan contains only one provision in its Title 11 component which speaks to annexations and prescribes a directly applicable standard or criterion for an annexation boundary change. Title 11, Section 3.07.1110.A, Interim Protection of Areas Brought into the Urban Growth Boundary, concerns “annexations” of land added to the UGB. It requires local comprehensive plan amendments for land added to the UGB to include “provisions for annexation to the (Metro) district and to a city or any necessary service district prior to urbanization of the territory . . . to provide all required urban services”. By its terms, this Title 11 provision requires local comprehensive plans to assure the provision of adequate public facilities and services to land added to the UGB through annexation of such lands to the Metro District, the affected city and/or any special service district responsible for providing such facilities and services to the land prior to its urban development.

The Regional Transportation Plan was examined and found not to contain any directly applicable standards and criteria for boundary changes.

This area was added to the UGB by the Metro Council in December, 2002 (Metro Ordinance No. 02-969B).

6. The territory was recently annexed to the City of Hillsboro. The territory has been designated FD-20 (Future Development, 20 Acre District) as a way to prevent premature development prior to adoption of a Concept Plan and rezoning in compliance with that plan. The area is covered by an Urban Services Agreement which identifies Hillsboro as the appropriate provider of urban services. The subject site is included in a currently underway Concept Plan (South Hillsboro Planning Process). The applicants have applied for an amendment to the City Comprehensive Plan from Washington County’s Future Development – 20 acre minimum to Public Facilities (for the 9 acres owned by the Hillsboro School District) and Residential Low for the remaining 5+ acres. A corresponding zone change to R-7 has also been applied for.

7. All major public Services are available from the City of Hillsboro.
8. Metro provides a number of services on the regional level. Primary among these is regional land use planning and maintenance of the regional Urban Growth Boundary. Metro has provided this service to this site through the process of reviewing and approving the inclusion of this area in the UGB.

Metro provides some direct park service at what are basically regional park facilities and has an extensive green spaces acquisition program funded by the region's voters. Metro is responsible for solid waste disposal including the regional transfer stations and contracting for the ultimate disposal at Arlington. The District runs the Oregon Zoo and other regional facilities such as the Convention Center and the Performing Arts Center. These are all basically regional services provided for the benefit of and paid for by the residents within the region. These facilities are funded through service charges, excise taxes and other revenues including a small tax base for operating expenses at the Zoo and tax levies for bonded debt.

CONCLUSIONS AND REASONS FOR DECISION

Based on the Findings, the Council concluded:

1. Oregon Revised Statutes 198 requires the Council to consider the local comprehensive plan when deciding a boundary change. The Council has reviewed the applicable comprehensive plan which is the Hillsboro Comprehensive Plan and finds that it contains no directly applicable criteria for making district boundary change decisions.
2. Oregon Revised Statutes 198 also requires consideration of "any service agreement executed between a local government and the affected district." As noted in Finding No. 3 Metro is a party to an Urban Service Agreement which identifies Hillsboro as the appropriate provider of urban services for this area.
3. Metro Code 3.09.070 (e) (1) establishes inclusion of the territory within the Urban Growth Boundary as one criterion for any annexation subject to the Metro rules. The Council has made such a determination as noted in Finding No. 5. Therefore the Council finds this proposed annexation to be consistent with that criterion.
4. The final criterion to be considered under the Metro Code 3.09.120 (e) (2) is "The territory is subject to measures that prevent urbanization until the territory is annexed to a city or to service districts that will provide necessary urban services." As noted in Finding 6 the territory has been protected from premature development by application of FD-20 zoning. The territory has been annexed to Hillsboro and as stated in Finding 3 the City has necessary urban services available. The Council concludes this criterion is met.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 08- 1185 FOR THE PURPOSE OF ANNEXING LANDS ON THE WEST SIDE OF SW 229th AVE. SOUTH OF TUALATIN VALLEY HIGHWAY TO THE METRO JURISDICTIONAL BOUNDARY

Date: May 15, 2008

Prepared by: Ken Martin, Annexation Staff

SECTION I: APPLICATION SUMMARY

CASE: AN-0108, Annexation To Metro Jurisdictional Boundary

APPLICANT: 100% Owners/100% Voters of Three Properties

PROPOSAL: The petitioners are requesting annexation to the Metro boundary following the Metro Council's addition of the property to the Urban Growth Boundary in December, 2002 and the City of Hillsboro's annexation of the property in January, 2008.

LOCATION: The territory is located on the west edge of the District on the west side of SW 229th Ave. south of Tualatin Valley Highway. (See Figure 1).

PLAN/ZONING Future Urban/FD-20 (Future Development – 20 Acre District).

APPLICABLE REVIEW CRITERIA: ORS Chapter 198, Metro Code 3.09

SECTION II: STAFF RECOMMENDATION

Staff recommends adoption of Ordinance No. 08-1185 approving Boundary Change Proposal No. AN-0108, annexation to Metro.

SECTION III: BACKGROUND INFORMATION

Initiation: Proposal No. AN-0108 was initiated by a consent petition of the property owners and registered voters. The petition meets the requirement for initiation set forth in ORS 198.855 (3) (double majority annexation law), ORS 198.750 (section of statute which specifies contents of petition) and Metro Code 3.09.040 (a) (which lists minimum requirements for petition).

Site Information: The territory is located on the west edge of the District on the west side of SW 229th Ave. south of Tualatin Valley Highway. The territory contains 14.26 acres and 2 vacant single family dwellings.

REASON FOR ANNEXATION

The annexation is being sought to continue the process, which will lead to development of the property. The property has been included in the Urban Growth Boundary and annexed to the City of Hillsboro. The City is developing the Concept Plan for the area. The Metro Functional Plan requires that the entity responsible for the Concept Plan make annexation to the Metro jurisdictional boundary a requirement of the Plan. This annexation will meet that requirement. The Hillsboro School District plans to construct an elementary school on approximately 9 acres. The remaining 5+ acres would be utilized for low density residential uses but there are no current development plans in place.

CRITERIA

Oregon Revised Statute 198.850 (2) directs the Council to consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.

A second set of criteria can be found in Chapter 3.09 of the Metro Code. That Code states:

(e) The following criteria shall apply in lieu of the criteria set forth in subsection (d) of section 3.09.050. The Metro Council's final decision on a boundary change shall include findings and conclusions that demonstrate:

1. The affected territory lies within the UGB;
2. The territory is subject to measures that prevent urbanization until the territory is annexed to a city or to service districts that will provide necessary urban services; and
3. The proposed change is consistent with any applicable cooperative or urban service agreements adopted pursuant to ORS chapter 195.

Additionally Metro Code 3.09.050 (b) requires issuance of a report that addresses:

- (1) The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
- (2) Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and
- (3) The proposed effective date of the boundary change.”

The applicants have prepared a detailed response to each of the criteria listed above. These responses are attached as Attachment 1.

LAND USE PLANNING

SITE CHARACTERISTICS

The site consists of level ground mostly cleared of vegetation with trees along the west and south edges.

To the east (across SW 229th) lies farmland. To the north, west and south of the property are rural residential properties.

REGIONAL PLANNING

This territory abuts the Metro jurisdictional boundary on the north, east and south.

Regional Framework Plan

The law that requires Metro to adopt criteria for boundary changes specifically states that Metro shall “. . . ensure that a boundary change is in compliance with the Metro regional framework plan as defined in ORS 197.015 and cooperative agreements and urban service agreements adopted pursuant to ORS 195.” ORS 197.015 says “Metro regional framework plan means the regional framework plan required by the 1992 Metro Charter or its separate components.” The Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes.

There are two adopted regional functional plans, the Urban Growth Management Plan and the Regional Transportation Plan.

The Urban Growth Management Functional Plan contains only one provision in its Title 11 component which speaks to annexations and prescribes a directly applicable standard or criterion for an annexation boundary change. Title 11, Section 3.07.1110.A, Interim Protection of Areas Brought into the Urban Growth Boundary, concerns “annexations” of land added to the UGB. It requires local comprehensive plan amendments for land added to the UGB to include “provisions for annexation to the (Metro) district and to a city or any necessary service district prior to urbanization of the territory . . . to provide all required urban services”. By its terms, this Title 11 provision requires local comprehensive plans to assure the provision of adequate public facilities and services to land added to the UGB through annexation of such lands to the Metro District, the affected city and/or any special service district responsible for providing such facilities and services to the land prior to its urban development.

The Regional Transportation Plan was examined and found not to contain any directly applicable standards and criteria for boundary changes.

Urban Growth Boundary Change

This area was added to the UGB by the Metro Council in December, 2002 (Metro Ordinance No. 02-969B).

CITY PLANNING

The territory was recently annexed to the City of Hillsboro. The territory has been designated FD-20 (Future Development, 20 Acre District) as a way to prevent premature development prior to adoption of a Concept Plan and rezoning in compliance with that plan. As explained in Greater detail in Attachment 1, the area is covered by an Urban Services Agreement, which identifies Hillsboro as the appropriate provider of urban services. The subject site is included in a currently underway Concept Plan (South Hillsboro Planning Process). The applicants have applied for an amendment to the City Comprehensive Plan from Washington County’s Future Development – 20 acre minimum to Public Facilities (for the 9 acres owned by the Hillsboro School District) and Residential Low for the remaining 5+ acres. A corresponding zone change to R-7 has also been applied for.

FACILITIES AND SERVICES

Public Services. The availability of public services is addressed in Attachment 1.

Metro Services. Metro provides a number of services on the regional level. Primary among these is regional land use planning and maintenance of the regional Urban Growth Boundary. Metro has provided this service to this site through the process of reviewing and approving the inclusion of this area in the UGB.

Metro provides some direct park service at what are basically regional park facilities and has an extensive green spaces acquisition program funded by the region's voters. Metro is responsible for solid waste disposal including the regional transfer stations and contracting for the ultimate disposal at Arlington. The District runs the Oregon Zoo and other regional facilities such as the Convention Center and the Performing Arts Center. These are all basically regional services provided for the benefit of and paid for by the residents within the region. These facilities are funded through service charges, excise taxes and other revenues including a small tax base for operating expenses at the Zoo and tax levies for bonded debt.

Metro has no service agreements with local governments that would be relative to district annexation in general or to this particular site.

SECTION IV: ANALYSIS/INFORMATION

1. **Known Opposition** - There is no known opposition to this annexation. No one has contacted staff on this matter despite extensive notification which included posting and publishing of notices and notices to surrounding property owners.
2. **Legal Antecedents** - This annexation is a follow-up to the UGB change passed by the Council as Ordinance 02-969B. The annexation is being processed under provisions of ORS 198 and Metro Code 3.09.
3. **Anticipated Effects** - No significant effect is anticipated. The uses allowed on this site will be under the control of the City of Hillsboro and as anticipated by the Metro UGB expansion.
4. **Budget Impacts** - None

SECTION V: SUMMARY AND RECOMMENDATION

This petition seeks to annex approximately 14.268 acres of land into the Metro Jurisdictional boundary in order to provide for construction of an elementary school and eventual residential development within the City of Hillsboro. Based on the study above and the proposed Findings and Reasons For Decision found in Attachment 2, the staff recommends that Proposed Annexation No. AN-0108 be *approved*. This approval should be implemented by adoption of Ordinance No. 08-1185 (attached).

Ordinance No. 08-1185
ATTACHMENT 1

Proposal No. AN-01-08

V. RESPONSE TO CRITERIA FOR ANNEXATION

Oregon Revised Statute 198.850 (2)

(2) ORS 198.800 to 198.820 apply to the proceeding conducted by the county board and the rights, powers and duties of petitioners and other persons having an interest in the proceedings. However, when determining whether to approve an annexation petition filed under this section, the county board, in lieu of the criteria prescribed by ORS 198.805 (1) and 199.462, shall consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.

This ORS section makes it clear that the service agreement between the City of Hillsboro, Metro and Washington County and other local governments is the primary document to rely upon for these types of decisions, in lieu of other economic, demographic and sociological trends and projections, past or prospective physical development of land, and other criteria that might be pertinent if a service agreement was not in effect.

The directly applicable criteria for annexation to the Metro district include Chapter 3.09.050(b) and (d) of the Metro Code. Responses to each criterion are listed below, which can be considered findings of fact and conclusions from those findings.

METRO CODE, SECTION 3.09.050(B).

(1) The extent to which urban services presently are available to serve the affected territory including any extra territorial extensions of service;

RESPONSE: No extraterritorial extensions of service are necessary. The property has been annexed into the City of Hillsboro, which will supply water and sanitary sewer services. Currently, there are no public utilities within SW 229th Ave south of SE Alexander Street. Utilities will be extended within SW 229th Avenue as needed.

The City of Hillsboro currently is in the process of extending their sanitary sewer main from SE River Road to SW 229th Ave, along SE Davis Road and Gordon Creek. Once that is complete, the applicants can extend the gravity system from this point to the subject properties. (However, if this sewer has not been constructed at the time of occupancy of the new elementary school, the Hillsboro School District will

construct a private sanitary sewer pump station to pump the sanitary sewer to a manhole at the intersection of SE Alexander Street and SW 229th Avenue).

Storm water services will be provided by Clean Water Services and the City of Hillsboro. Storm water runoff will be routed through approved water quality facilities and will be piped along the west boundary line of the neighboring tax lot (1S210DC00100) to Gordon Creek, once an easement has been procured.

Street maintenance for local streets will be provided by the City of Hillsboro. SW 229th Avenue will continue to be maintained by Washington County until the City and the County both agree to transfer that responsibility to the City.

Police, Fire and Parks services will be provided by the City of Hillsboro.

All private utilities will be extended as required by the utility companies as well.

In addition to local services, Metro provides a variety of services that will be available to this site. These include regional land use planning, solid waste disposal, the Oregon Zoo and other regional facilities, and regional park and greenspaces acquisition. Similarly, Washington County provides services to this site, including the County Sheriff's services, the County court system, the County health services, and several other general services available to all properties within the County. The annexation of the properties to the Metro district will not impact the Metro or County services.

All necessary urban services are presently available to serve the affected territory, and therefore the proposed boundary change meets Criterion #1.

(2) A description of how the proposed boundary change complies with any urban service provider agreements adopted pursuant to ORS 195.065 between the affected entity and all necessary parties;

RESPONSE: There is currently a Hillsboro Urban Service Provider Agreement in place for this area, dated April 2, 2003, as required by ORS 195.065. The local governments which are a party to this agreement are as follows: Washington County, the City of Hillsboro, the City of Beaverton, Metro, Clean Water Services, TriMet, Tualatin Valley Park and Recreation District, Tualatin Valley Fire and Rescue District, Tualatin Valley Water District, and Washington County Fire District No. 2. The annexation is consistent with the applicable provisions of the Agreement, specifically Section 1, Roles and Responsibilities, subsections C. and G.

Approval of the Petition to Annex the site to the Metro District would be consistent with, and carry out the intent and stated purposes and objectives of, the Hillsboro Urban Service Agreement. The subject properties are included in that document and marked as "Future Urban" (Map C-2). Section III.C makes it clear that the agreement applies to properties identified on Map C-2. In fact, Section IX.E.2

automatically amends the boundary of the Hillsboro Urban Service Agreement (HUSA) to include the properties shown on Map C-2 "once the final action has been taken by Metro and the Department of Land Conservation and Development (DLCD) and appeals have been finalized".

Specifically, this annexation complies with that agreement as follows:

It fulfills Sections I.C., which designates the City of Hillsboro as the appropriate provider of services to citizens residing within the boundaries shown on Maps A-1 to A-6, which include the area shown on Map C-2.

Approval of this Annexation Petition will enable the City of Hillsboro to exercise full municipal governance of the site consistent with the following relevant provisions of the Hillsboro Urban Service Agreement.

Section I.C. Hillsboro is "designated as the appropriate provider of services to citizens residing within its boundaries and to unincorporated areas...as shown on Maps A-1 to A-6." (As noted above, Section III.C. added the properties identified on Map C-2 to Maps A-1 to A-6 when those properties were added to the UGB.)

Section I.D. Washington County recognizes the cities and special services districts as the ultimate municipal service providers as specified in this agreement, and recognizes cities as the "ultimate local governance provider to the urban area".

Section I.G.1. Consistent with Section I.C., I.D., and I.E, the County, City and Special Districts agree to develop a program for "the eventual annexation of all urban unincorporated properties into the cities". Further, Section I.G.2. states that the program will include the transfer of Washington County responsibilities, programs, equipment and personnel to the City for urban municipal services, including "law enforcement; road maintenance; engineering and construction; land use and transportation planning; land development; and building."

Approval of this annexation petition would be consistent with I.G of the Hillsboro Urban Services Agreement because it would expedite the transfer of law enforcement, road maintenance, engineering an construction, land use and transportation planning, land development and building services as contemplated by Section I.G. Pursuant to ORS 222.524, the City of Hillsboro has determined that upon its annexation to the City, assumption of law enforcement, road maintenance, engineering and construction, land use and transportation planning, land development and building services to the site would be in the best interest of the City.

Currently, the site is protected by the Washington County Fire District No. 2 (Dist. No. 2), which has primary fire protection responsibility for much of rural, unincorporated Washington County. Under the Hillsboro Urban Services Agreement, Dist. No. 2 and the City of Hillsboro have agreed that the City will ultimately be the

sole provider of fire protection services to the site. Approval of this annexation petition would be consistent with Exhibit 'A' of the Hillsboro Urban Services Agreement because it would expedite the transfer of fire protection services to the site from Dist. No. 2 to the City, as contemplated by Exhibit 'A'.

Pursuant to ORS 222.524, the City of Hillsboro has determined that upon its annexation to the City, withdrawal of the site from the Dist. No. 2 service area and subsequent City provision of fire protection services to the site would be in the best interest of the City.

Exhibit 'B' states that TriMet is currently the sole provider of public mass transit in the HUSD. Annexation to the Metro District would not alter that provision of the Agreement.

Exhibit 'C' states that the City will assume law enforcement services as annexations occur within the HUSA, and the area will be withdrawn from the Enhanced Sheriff's Patrol District. The subject properties are not in the Enhanced Sheriff's Patrol District, so they do not have to withdraw from that district. Annexation to the Metro District is consistent with this provision of the Agreement.

Exhibit 'D' states that the City, rather than the Tualatin Hills Park and Recreation District (THPRD), will be the designated provider of park, recreation and open spaces services to the HUSD. The subject properties are not within the THPRD boundary, so they do not have to withdraw from that district. Annexation to the Metro District is consistent with this provision of the Agreement.

Exhibit 'E' states that the County will continue to retain jurisdiction over the network of arterials and collectors within the HUSD, and that the City will accept responsibility for "public streets, local streets, neighborhood routes and collectors and other streets and roads that are not part of the County-wide road system" upon annexation. The City intends to accept responsibility for that portion of SW 229th Avenue that is within its city limits. Annexation to the Metro District is consistent with this provision of the Agreement.

Exhibit 'F' states that Clean Water Services (CWS) is responsible for sanitary sewage and storm water management within the City and the urban unincorporated area. Further, the City performs a portion of the local sanitary sewer and storm water management programs as defined in an operating agreement between the City and CWS. Annexation to the Metro district will not impact the agreement between the City and CWS, and is consistent with this provision of the Agreement.

Exhibit 'G' states that the City will be the designated water provider to properties in the HUSA west of Cornelius Pass Road between Sunset Highway and TV Highway, and the Tualatin Valley Water District will provide services north of Sunset Highway, east of Cornelius Pass Road between Sunset Highway and TV Highway, and east of SW 209th Avenue. The subject site will be served with City water services.

Annexation to the Metro district will not impact the agreement between the City and TVWD, and is consistent with this provision of the Agreement.

The proposed boundary change complies with the urban service provider agreements adopted pursuant to ORS 195.065 between the affected entity and all necessary parties, and therefore, meets Criterion #2.

(3) A description of how the proposed boundary change is consistent with the comprehensive land use plans, public facility plans, regional framework and functional plans, regional urban growth boundary goals and objectives, urban planning agreements of affected entity and of all necessary parties;

RESPONSE: The properties have been considered for eventual urbanization for a number of years. The South Hillsboro Concept Plan that was completed in 1998, though never officially adopted, included the subject properties.

UGB Amendment. Metro brought the area into the Metro Urban Growth Boundary in December 2002, via Ordinance #02-969B, as part of Study Area #71. At that time, the findings adopted by Metro included the following statements, found on Page 5 of Exhibit P to Ordinance No. 02-969B.

K. Westside Area, Study Areas 62 (partial), 63, 64, 67, 69 (partial), 71 and 0

These non-contiguous study areas lie west of and adjacent to the UGB as it existed prior to this expansion. The portions included are all exception lands and designated Inner Neighborhood on the 2040 Growth Concept Map (Exhibit N). Part of the included portion of Study Area 62 will be used by the City of King City as a park and storm-water retention area. The cities of Tigard, Beaverton and Hillsboro will use the other portions of the Westside Area to provide housing.

Study Areas 63, 64, 67, 69 (partial), 71 and 0 rate "easy" to "difficult" for sewer, water, storm-water and transportation services. The cities of Tigard, Beaverton and Hillsboro, Clean Water Services and the Tualatin Valley Water District will be the service providers; all have expressed a willingness to provide the services. These areas are adjacent to the UGB as it existed prior to this expansion; services can be extended in an orderly manner.

Adverse economic, energy, environmental and social consequences of urbanization in these areas will be relatively low. Compliance with Title 3 of the UGMFP will reduce the consequences to water quality and the few wetlands, streams, floodplains and riparian areas present.

Urbanization of the areas will bring urban development near agricultural activities to the west and south of the UGB. However, most of the areas are already developed

in a rural residential pattern. Application of General Condition 5 in Exhibit M will reduce incompatibility with farm practices.

The Council included these exception lands to provide opportunities for a wide range of housing types in a part of the region that was relatively "housing-poor."

Metro Planning Requirements. A "concept plan" for areas brought into the UGB is required prior to development. Metro's Urban Growth Management Plan (UGM) Functional Plan requires that all land annexed into the UGB "shall be subject to adopted comprehensive plan provisions consistent with the requirements of all applicable titles of the Metro Urban Growth Management Functional Plan and in particular Title 11"¹. The applicable provisions of Title 11 include the following statements:

B. Provision for average residential densities of at least 10 dwelling units per net developable residential acre or lower densities, which conform to the 2040 Growth Concept Plan design type designation for the area.

I. A concept school plan that provides for the amount of land and improvements needed, if any, for school facilities on new or existing sites that will serve the territory added to the UGB. The estimate of need shall be coordinated with affected local governments and special districts.

Witch Hazel Village Community Plan. The City of Hillsboro completed a concept plan for a portion of Area #71, which was completed in February 2004. That plan, called the "Witch Hazel Village Community Plan", did not include the subject site in the Witch Hazel Village Planning Area boundary. That is, the concept plan, which was adopted into the Hillsboro Comprehensive Plan, excluded any land use planning designations for that portion of Area 71 south and east of Gordon Creek. (It did include 10 acres in Area 71 north of Gordon Creek).

South Hillsboro Planning Process. The City intended to begin the concept planning process for the majority of Area 71 in 2003. That process was delayed by a few years, but commenced in earnest in January 2007, and is currently nearing completion. The subject site is included in the current land use planning process, which is called the "South Hillsboro Community Plan". Although earlier scenarios of this plan designated the site as "Single Family Neighborhood"² then as "School"³, the latest draft shows it as a combination of Civic/Institutional (labeled "School" on the map) and Recreational/Open Space (labeled "Park" on the map)⁴.

Comprehensive Plan Amendment application. The applicants applied for an amendment to the City of Hillsboro Comprehensive Plan, changing the designations

¹ Metro Code, UGM Functional Plan, Section 3.07.1120

² Scenarios "A" and "B", South Hillsboro News newsletter, Volume 1, Issue 3, July 2007

³ Hybrid Scenario, South Hillsboro New newsletter, Volume 1, Issue 4, September 2007

⁴ Final Concept map, Figure 7, December 14, 2007

of these properties from the Washington County "Future Development – 20 acre minimum" (FD-20) district to the City of Hillsboro "Public Facilities" (PF) for the 9 acres owned by the School District, and "Residential Low" Density (RL) district for the remaining 5+ acres. That application is pending, and is tentatively scheduled for a Planning Commission hearing on March 12, 2008.

Zone Change. The applicants are applying for a zone change to R-7 (residential, 7000 square foot minimum lot size). The City does not have a corresponding zone district for the Open Space or Public Facilities Comprehensive Plan districts, but schools and parks are permitted in the R-7 zone. The corresponding zone for the RL Comprehensive Plan District is R-7. R-7 is also an appropriate implementing zone for the City's "Open Space" and "Public Facilities" Comprehensive Plan districts.

Transportation System Plan. The proposed annexation is consistent with the City's Transportation System Plan. SW 229th Avenue is a collector street in this location. It has an existing, 40'-wide right-of-way. The property owners will dedicate additional right-of-way and improve the west side of the street to collector standards with the development of those properties.

Natural Resources. The site does not contain any streams, wetlands, open water, flood areas, or steep slopes. A Clean Water Services Sensitive Area Pre-screening Site Assessment was completed in July 5, 2007. CWS noted that sensitive areas potentially exist on site or within 200 feet of the site. A jurisdictional wetland determination and delineation report on the property was completed by Schott & Associates, dated July 17, 2007. The report found no wetlands present on the site.

The site was included in the Tualatin Basin Partners for Natural Places report, and is included on Metro's Interactive web site. These maps do not show any streams, wetlands or open water, or any flood areas or steep slopes. One map shows a portion of the property as "Class A Wildlife". However, most of the site is shown on the "Metro Council's recommendation on habitat protection" map as "not affected". The remaining portion of the site is shown as "allow development".

The City of Hillsboro's website shows a portion of tax lot 1S210DC00600 as "Natural Resource Protection – Level 3". But the Significant Natural Resources Overlay District map also shows the site as "unincorporated – not regulated by SNRO [Significant Natural Resource Overlay] unless annexed". Therefore, the City SNRO regulations did not apply prior until the properties were annexed to the City.

There is a relatively small grouping of about 21 trees, mostly Douglas Firs, on the south portion of the site, basically all on or adjacent to tax lot 1S210DC00600. Some of the Douglas Fir trees were removed by the School District prior to annexation to the City, based on the preliminary site plans and the District's concern about potential risks to the public and to the school facilities from falling trees. An arborist report noted that none of these on-site Douglas Fir trees were in an "equilibrium environment", or appropriate for long term preservation. However, the

report noted that there are 14 trees (a mix of Douglas Fir, Incense Cedar, Silver Birch, and Garry Oak) along the south and west property lines that are viable, and which should be protected as the site is developed. The arborist report specifies how these trees should be protected during the development process.

The proposed boundary change is consistent with the comprehensive land use plans, public facility plans, regional framework and functional plans, regional urban growth boundary goals and objectives, urban planning agreements of affected entity and of all necessary parties, and therefore meets Criterion #3.

(4) Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party;

RESPONSE: The annexation to the Metro boundary will not result in the withdrawal of the affected territory from the legal boundary of any necessary party. However, annexation to the City of Hillsboro resulted in a withdrawal from Washington County Rural Fire Protection District No. 2.

Therefore, the proposed boundary change is meets Criterion #4.

(5) The proposed effective date of the decision.

RESPONSE: The proposed effective date is July 1, 2008.

METRO CODE, SECTION 3.09.050(D)

(1) Consistency with directly applicable provisions in an urban service provider agreement or annexation plan adopted pursuant to ORS 195.065;

RESPONSE: There is currently a Hillsboro Urban Service Provider Agreement in place for this area, dated April 2, 2003, as required by ORS 195.065. The local governments which are a party to this agreement are as follows: Washington County, the City of Hillsboro, the City of Beaverton, Metro, Clean Water Services, TriMet, Tualatin Valley Park and Recreation District, Tualatin Valley Fire and Rescue District, Tualatin Valley Water District, and Washington County Fire District No. 2. As noted in the previous section, the annexation is consistent with the applicable provisions of the Agreement.

This criterion is similar to Metro Section 3.09.050(B)(2). See the response to that criterion, above, for a more complete explanation of how the annexation to the Metro district is consistent with the provisions of the urban service provider agreement.

Annexation to the Metro district is consistent with directly applicable provisions in the urban service provider agreement, and therefore the proposed boundary change meets Criterion #1.

(2) Consistency with directly applicable provisions of urban planning or other agreements, other than agreements adopted pursuant to ORS 195.065, between the affected entity and a necessary party;

RESPONSE: There are no other applicable urban planning or other agreements between Metro and any other necessary party.

The City-County Urban Planning Area Agreement (UPAA), adopted as an element of the County Comprehensive Plan, outlines the planning responsibilities for areas outside the City limits that are expected to eventually annex to the City. The subject site (and the rest of Area 71) was not included in the UPAA, so the UPAA is not applicable in this case. Therefore, the City and County entered into a separate Memorandum of Understanding (MOU).

That MOU was executed in 2002, and expired in 2006. However, the City of Hillsboro and Washington County expect to enter into a new MOU soon which will formally assign concept planning responsibility for the "South Hillsboro Community Plan" area, which contains approximately 2,330 acres - including Area 71, which includes the subject site. The City of Hillsboro would then have the authority and responsibility to conduct and complete a concept plan as may be required by OAR 660 of the State Land Conservation and Development Commission (DLCD) rules and Section 3.07, Title 11, of Metro.

A draft concept plan for the South Hillsboro Community Plan area has been substantially completed by the City Planning Department, but not yet officially adopted by the City Council. Approval of the annexation to the Metro district, together with the recent annexation of the site to Hillsboro, would bring the site fully under Hillsboro's planning and land use regulatory jurisdiction. This would allow the City to implement Hillsboro Comprehensive Plan and Zoning provisions applicable to the site that would implement the concept plan, once it is adopted and approved by Metro in compliance with its Title 11 concept plan requirements.

The draft concept plan designates the subject site partly for "new civic/institutional", which would accommodate the proposed elementary school, and partly for "recreation/open space", which would accommodate a public park, if the City acquires the property, or a residential development, if the City does not acquire the property. The applicants applied for a Comprehensive Plan designation of "Public Facilities" on the portion of the site owned by the Hillsboro School District, and "Residential Low" density on the remainder of the site. An alternative designation for the 5.25-acre balance of the site is "Open Space". The decision on the Comprehensive Plan designation has not yet been made at this time, nor has a decision on the Concept Plan.

Annexation to the Metro district is consistent with directly applicable provisions of urban planning or other agreements, other than agreements adopted pursuant to ORS 195.065, between the affected entity and a necessary party, and therefore, the proposed boundary change meets Criterion #2.

(3) Consistency with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facility plans;

RESPONSE: The annexation is consistent with directly applicable standards or criteria for boundary changes are found in the City of Hillsboro Comprehensive Plan. Applicable policies and implementation measures include the following:

Section 2. Urbanization Policy (III)(A). Urbanization within the planning area shall be consistent with the goals and policies of this Plan. Development shall occur according to the availability of urban services and within the context of the Urban Planning Area Agreement. The City and other government agencies shall encourage property owners to maintain the present rural use and character of undeveloped or underdeveloped lands within the Hillsboro Planning Area until such land is required and proposed for urban use and the necessary urban services are available.

Section 2. Urbanization Implementation Measure (IV)(A). Urban development shall occur only where urban services exist or are available. It is the intent of this Plan to encourage development in those areas where such services are currently available or can be readily provided in a logical manner.

Section 2. Urbanization Implementation Measure (IV)(G). All land in the Hillsboro Planning Area is assumed to be available for annexation and/or development, consistent with the Comprehensive Plan, zoning, subdivision regulations, and the Urban Planning Area Agreement.

Section 12. Public Facilities and Services, Goal (A). Provide public facilities and services in an orderly and efficient manner consistent with the expansion of urbanization into rural areas.

Section 12. Public Facilities and Services, Goal (D). Public facilities and services shall be provided at a level sufficient to create and maintain an adequate supply of housing and serve an increasing level of commercial and industrial activity.

Section 12. Public Facilities and Services, Goal (G). The location of schools should be used as a tool in directing future growth within the planning areas.

Section 12. Public Facilities and Services, Goal (K). Utilization of schools and other public facilities as multi-purpose facilities should be encouraged to help meet the education, recreation and civic needs of the community.

Section 12. Public Services Implementation Measure (C)(2). The City shall require properties to annex to the City prior to the provision of sanitary sewer service.

Section 12. Public Services Implementation Measure (I)(2). The City shall require properties in the urban area to annex to the City prior to the provision of water service.

Section 12. Public Services Implementation Measure (J)(1). Public Facilities planning and projections shall be maintained in five year increments and shall be coordinated with the joint City/County urbanization studies.

Section 12. Public Services Implementation Measure (J)(2). The City shall coordinate with the school districts located in the Urban Area to help assure an adequate level of educational services. Areas of coordination shall include:

- (a) Location of school site;*
- (b) Reservation of potential school sites during the development approval process;*
- (c) Provision of adequate pedestrian, bicycle and bus access from residential districts to school sites;*
- (d) Consideration of school capacities, school population, and district assessed value during the development approval process; and*
- (e) Provision of population projections.*

The proposed annexation to the Metro district is consistent with these policies and implementation measures. Development will occur when all urban services currently available or can be readily provided in a logical, orderly and efficient manner. The elementary school will be located in an area in which the City of Hillsboro expects to grow, and will become a vital part of a new residential neighborhood. The school will help meet the educational, recreational needs of the community. The parcels have already been annexed to the City, which will provide sewer and water services. The School District has coordinated with the City of Hillsboro about potential locations for schools in the south Hillsboro planning area, including this particular site.

In addition to the policies and implementation measures noted above, there are goals, policies and implementation measures more directly related to the residential component of this application in Section 3 of the Hillsboro Comprehensive Plan. Some of these are quoted below, in whole or in part:

Section 3. Housing. (1) Goal: To provide for the housing needs of the citizens of Hillsboro and surrounding community by encouraging the construction, maintenance, development and availability of a variety of housing types, in sufficient number and at price ranges and rent levels which are commensurate with the financial capabilities of the community's residents.

Section 3. Housing. Policies:

(A). Buildable land sufficient to meet the community's project population growth and resulting housing needs shall be designated within the planning area. The development of housing shall be coordinated with the extension of public facilities and services necessary to assure safe, healthy, and convenient living conditions.

(B). A variety of housing units shall be encouraged throughout the planning area for households of all incomes, ages and living patterns.

(C) Housing in the planning area shall be designed and constructed in a manner that assures safe, healthy and convenient living conditions for the community's citizens. Residential projects shall be designed to promote a diverse, pedestrian-scale environment; respect surrounding context and enhance community character; consider security and privacy; and provide usable open spaces.

(D) The provision of housing of various types and prices/rents and developments which provide for an efficient and compatible mix of housing types shall be encouraged. This will increase the choice of housing and will act to disperse housing types throughout the planning area in developments of design and construction consistent with policy (C) of this Section.

(L) New residential areas shall have water, sewers, storm drainage, street lights and underground utilities. In addition, new residential areas shall have paved streets, curbs, and pedestrianways; and where site conditions are favorable to stormwater infiltration, the use of vegetated stormwater management facilities, pervious pavement and similar "green streets" elements is encouraged where technically feasible and appropriate.

(Y) Residential land shall develop within the density range designated by the Comprehensive Plan unless higher densities are approved by the City under the Planned Unit Development process. Density reductions and transfers may also be allowed within the Significant Natural Resource Overlay (SNRO) District and within Habitat Benefit Areas that fall outside of the SNRO District.

Annexation to the Metro district is consistent with all of the policies cited above. The policies basically require the City to assure that proposed new housing developments in undeveloped or newly annexed areas will be adequately serviced by necessary public facilities and services. The subject properties can be served by all necessary public facilities and services. This site is very appropriate for residential development because of its location adjacent to the proposed elementary school. Children and their parents will be able to walk to the school, and use the school open space/recreational facilities during non-school hours.

Lower density residential development is an ideal use next to an elementary school, as it will attract families with elementary school-age children, help maintain security for the school, encourage pedestrian activity, provide useable open spaces, and help build a sense of neighborhood identity and character.

The proposed R-7 zone is within the density range of the Low-Residential (LD) Comprehensive Plan designation, which the applicants have requested.

Annexation to the Metro district is consistent with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facility plans, and therefore the proposed boundary change meets Criterion #3.

(4) Consistency with specific directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plan;

RESPONSE: The annexation is consistent with directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan and functional plans. Specifically, site will be developed as an elementary school and a residential development appropriate with the appropriate density for an "Inner Neighborhood". Some or all of the property could also be developed as a park, if the city acquires it for such purposes.

The Metro Urban Growth Management Functional Plan has applicable policies.

Section 3.07.170 of the Metro Urban Growth Management Functional Plan defines Metro's 2040 Growth Concept design types. For "Inner Neighborhoods", which applies to this site, Metro recommends an average housing density of 14 persons per acre. If there are an average of 2.5 persons per house, that would come out to 5.6 houses per acre. If "acre" in this case means gross acre, that comes out the same density as 7 units per net acre, or the higher end of the Hillsboro R-7 zone. (The R-7 zone, which is the zone the property owners are requesting, allows 5 units per net acre.)

Section 3.07.920.B, Title 9: Performance measures, mentions the provision of schools and other community resources as part of what creates vibrant places to live and work.

The Framework Plan (which includes the regional urban growth goals and objectives and the 2040 Growth Concept) does not contain any directly applicable standards and criteria for boundary changes.

The Urban Growth Management Functional Plan contains only one provision in its Title 11 component which speaks to annexations and prescribes a directly applicable standard or criterion for an annexation boundary change. Title 11, Section 3.07.1110.A., interim Protection of Areas Brought into the Urban Growth Boundary, concerns annexations of land added to the UGB. It requires local comprehensive plans to ensure that land added to the UGB will include "provides for annexation to the (Metro) district and to a city or any necessary service district prior to

urbanization of the territory...to provide all necessary services.” Because the City of Hillsboro requires annexation of the subject site to the Metro district and to the Clean Water Services district prior to its development for urban uses, and because the City provides all other basic urban-level services itself (water, sanitary sewer, fire protection, police protection, parks and recreation, street maintenance, etc.), this provision of Title 11 is met.

The Regional Transportation Plan does not contain any directly applicable standards and criteria for boundary changes.

Annexation to the Metro district is consistent with directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plan, and therefore the proposed boundary change meets Criterion #4.

(5) Whether the proposed change will promote or not interfere with the timely, orderly and economic provisions of public facilities and services;

RESPONSE: The proposed change will promote the timely, orderly and economic provisions of public facilities and services. Water service is available to the properties from a 10-inch City water line located in SE Alexander Street right-of-way. Sanitary sewer service is available from a 10-inch City sewer line located in SE Alexander Street right-of-way. Fire and police protection will be provided by the City of Hillsboro.

Annexation to the Metro district promotes and does not interfere with the timely, orderly and economic provisions of public facilities and services, and is therefore the proposed boundary change meets criterion #5.

(6) If the proposed boundary change is for annexation of territory to Metro, a determination by the Metro Council that the territory should be included in the Urban Growth Boundary shall be the primary criterion for approval;

RESPONSE: The property was brought into the Urban Growth Boundary in December 2002, under Metro Council Ordinance #02-969B. Therefore, the proposed boundary change meets Criterion #6.

(7) Consistency with other applicable criteria for the boundary change in question under state and local law.

RESPONSE: There are no other state or local laws containing applicable criteria.

Annexation petitions to Metro and local governments are permitted by ORS 222.111(2) and governed generally by ORS 222.111 et. seq. ORS 222.125 permits the City and Metro not to call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing on the annexation otherwise required by ORS 222.120 “...when all of the owners of land in that territory and not

less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body." Approval of the annexation petition would be consistent with the applicable provisions in ORS 222.111. In accordance with Metro Code Section 3.09.045(a) and ORS 222.125, this annexation petition is supported by written consent of 100% of the owners residing on the properties to be annexed to the Metro District. There are not electors living on any of the properties. (See attached Annexation Consent Forms).

Annexation to the Metro district is consistent with other applicable criteria for the boundary change in question under state and local law, and therefore the proposed boundary change meets Criterion #7.

Ordinance No. 08-1185 Attachment 2
FINDINGS

Based on the study and the public hearing, the Council found:

1. The territory is located on the west edge of the District on the west side of SW 229th Ave. south of Tualatin Valley Highway. The territory contains 14.26 acres and 2 vacant single family dwellings.
2. The annexation is being sought to continue the process which will lead to development of the property. The property has been included in the Urban Growth Boundary and annexed to the City of Hillsboro. The City is developing the Concept Plan for the area. The Metro Functional Plan requires that the entity responsible for the Concept Plan make annexation to the Metro jurisdictional boundary a requirement of the Plan. This annexation will meet that requirement. The Hillsboro School District plans to construct an elementary school on approximately 9 acres. The remaining 5+ acres would be utilized for low density residential uses but there are no current development plans in place.
3. Oregon Revised Statute 198.850 (2) directs the Council to consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.

A second set of criteria can be found in Chapter 3.09 of the Metro Code. That Code states:

(e) The following criteria shall apply in lieu of the criteria set forth in subsection (d) of section 3.09.050. The Metro Council's final decision on a boundary change shall include findings and conclusions that demonstrate:

1. The affected territory lies within the UGB;
2. The territory is subject to measures that prevent urbanization until the territory is annexed to a city or to service districts that will provide necessary urban services; and
3. The proposed change is consistent with any applicable cooperative or urban service agreements adopted pursuant to ORS chapter 195.

Additionally Metro Code 3.09.050 (b) requires issuance of a report that addresses:

- (1) The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
- (2) Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and
- (3) The proposed effective date of the boundary change."

The applicants have prepared a detailed response to each of the criteria listed above:

Oregon Revised Statute 198.850 (2)

(2) ORS 198.800 to 198.820 apply to the proceeding conducted by the county board and the rights, powers and duties of petitioners and other persons having an interest in the proceedings. However, when determining whether to approve an annexation petition filed under this section, the county board, in lieu of the criteria prescribed by ORS 198.805 (1) and 199.462, shall consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.

This ORS section makes it clear that the service agreement between the City of Hillsboro, Metro and Washington County and other local governments is the primary document to rely upon for these types of decisions, in lieu of other economic, demographic and sociological trends and projections, past or prospective physical development of land, and other criteria that might be pertinent if a service agreement was not in effect.

The directly applicable criteria for annexation to the Metro district include Chapter 3.09.050(b) and (d) of the Metro Code. Responses to each criterion are listed below, which can be considered findings of fact and conclusions from those findings.

(3) A description of how the proposed boundary change is consistent with the comprehensive land use plans, public facility plans, regional framework and functional plans, regional urban growth boundary goals and objectives, urban planning agreements of affected entity and of all necessary parties;

RESPONSE: The properties have been considered for eventual urbanization for a number of years. The South Hillsboro Concept Plan that was completed in 1998, though never officially adopted, included the subject properties.

UGB Amendment. Metro brought the area into the Metro Urban Growth Boundary in December 2002, via Ordinance #02-969B, as part of Study Area #71. At that time, the findings adopted by Metro included the following statements, found on Page 5 of Exhibit P to Ordinance No. 02-969B.

K. Westside Area, Study Areas 62 (partial), 63, 64, 67, 69 (partial), 71 and 0

These non-contiguous study areas lie west of and adjacent to the UGB as it existed prior to this expansion. The portions included are all exception lands and designated Inner Neighborhood on the 2040 Growth Concept Map (Exhibit N). Part of the included portion of Study Area 62 will be used by the City of King City as a park and storm-water retention area. The cities of Tigard, Beaverton and Hillsboro will use the other portions of the Westside Area to provide housing.

Study Areas 63, 64, 67, 69 (partial), 71 and 0 rate "easy" to "difficult" for sewer, water, storm-water and transportation services. The cities of Tigard, Beaverton and Hillsboro, Clean Water Services and the Tualatin Valley Water District will be the service providers; all have expressed a willingness to provide the services. These areas are adjacent to the UGB as it existed prior to this expansion; services can be extended in an orderly manner.

Adverse economic, energy, environmental and social consequences of urbanization in these areas will be relatively low. Compliance with Title 3 of the UGMFP will reduce the consequences to water quality and the few wetlands, streams, floodplains and riparian areas present.

Urbanization of the areas will bring urban development near agricultural activities to the west and south of the UGB. However, most of the areas are already developed in a rural residential pattern. Application of General Condition 5 in Exhibit M will reduce incompatibility with farm practices.

The Council included these exception lands to provide opportunities for a wide range of housing types in a part of the region that was relatively "housing-poor."

Metro Planning Requirements. A "concept plan" for areas brought into the UGB is required prior to development. Metro's Urban Growth Management Plan (UGM) Functional Plan requires that all land annexed into the UGB "shall be subject to adopted comprehensive plan provisions consistent with the requirements of all applicable titles of the Metro Urban Growth Management Functional Plan and in particular Title 11"¹. The applicable provisions of Title 11 include the following statements:

B. Provision for average residential densities of at least 10 dwelling units per net developable residential acre or lower densities, which conform to the 2040 Growth Concept Plan design type designation for the area.

¹ Metro Code, UGM Functional Plan, Section 3.07.1120
Findings, Page 3 of 13

1. A concept school plan that provides for the amount of land and improvements needed, if any, for school facilities on new or existing sites that will serve the territory added to the UGB. The estimate of need shall be coordinated with affected local governments and special districts.

Witch Hazel Village Community Plan. The City of Hillsboro completed a concept plan for a portion of Area #71, which was completed in February 2004. That plan, called the "Witch Hazel Village Community Plan", did not include the subject site in the Witch Hazel Village Planning Area boundary. That is, the concept plan, which was adopted into the Hillsboro Comprehensive Plan, excluded any land use planning designations for that portion of Area 71 south and east of Gordon Creek. (It did include 10 acres in Area 71 north of Gordon Creek).

South Hillsboro Planning Process. The City intended to begin the concept planning process for the majority of Area 71 in 2003. That process was delayed by a few years, but commenced in earnest in January 2007, and is currently nearing completion. The subject site is included in the current land use planning process, which is called the "South Hillsboro Community Plan". Although earlier scenarios of this plan designated the site as "Single Family Neighborhood"² then as "School"³, the latest draft shows it as a combination of Civic/Institutional (labeled "School" on the map) and Recreational/Open Space (labeled "Park" on the map)⁴.

Comprehensive Plan Amendment application. The applicants applied for an amendment to the City of Hillsboro Comprehensive Plan, changing the designations of these properties from the Washington County "Future Development – 20 acre minimum" (FD-20) district to the City of Hillsboro "Public Facilities" (PF) for the 9 acres owned by the School District, and "Residential Low" Density (RL) district for the remaining 5+ acres. That application is pending, and is tentatively scheduled for a Planning Commission hearing on March 12, 2008.

Zone Change. The applicants are applying for a zone change to R-7 (residential, 7000 square foot minimum lot size). The City does not have a corresponding zone district for the Open Space or Public Facilities Comprehensive Plan districts, but schools and parks are permitted in the R-7

² Scenarios "A" and "B", South Hillsboro News newsletter, Volume 1, Issue 3, July 2007

³ Hybrid Scenario, South Hillsboro New newsletter, Volume 1, Issue 4, September 2007

⁴ Final Concept map, Figure 7, December 14, 2007

zone. The corresponding zone for the RL Comprehensive Plan District is R-7. R-7 is also an appropriate implementing zone for the City's "Open Space" and "Public Facilities" Comprehensive Plan districts.

Transportation System Plan. The proposed annexation is consistent with the City's Transportation System Plan. SW 229th Avenue is a collector street in this location. It has an existing, 40'-wide right-of-way. The property owners will dedicate additional right-of-way and improve the west side of the street to collector standards with the development of those properties.

Natural Resources. The site does not contain any streams, wetlands, open water, flood areas, or steep slopes. A Clean Water Services Sensitive Area Pre-screening Site Assessment was completed in July 5, 2007. CWS noted that sensitive areas potentially exist on site or within 200 feet of the site. A jurisdictional wetland determination and delineation report on the property was completed by Schott & Associates, dated July 17, 2007. The report found no wetlands present on the site.

The site was included in the Tualatin Basin Partners for Natural Places report, and is included on Metro's Interactive web site. These maps do not show any streams, wetlands or open water, or any flood areas or steep slopes. One map shows a portion of the property as "Class A Wildlife". However, most of the site is shown on the "Metro Council's recommendation on habitat protection" map as "not affected". The remaining portion of the site is shown as "allow development".

The City of Hillsboro's website shows a portion of tax lot 1S210DC00600 as "Natural Resource Protection – Level 3". But the Significant Natural Resources Overlay District map also shows the site as "unincorporated – not regulated by SNRO [Significant Natural Resource Overlay] unless annexed". Therefore, the City SNRO regulations did not apply prior until the properties were annexed to the City.

There is a relatively small grouping of about 21 trees, mostly Douglas Firs, on the south portion of the site, basically all on or adjacent to tax lot 1S210DC00600. Some of the Douglas Fir trees were removed by the School District prior to annexation to the City, based on the preliminary site plans and the District's concern about potential risks to the public and to the school facilities from falling trees. An arborist report noted that none of these on-site Douglas Fir trees were in an "equilibrium environment", or appropriate for long term preservation. However, the report noted that there are 14 trees (a mix of Douglas Fir, Incense Cedar, Silver Birch, and Garry Oak) along the

south and west property lines that are viable, and which should be protected as the site is developed. The arborist report specifies how these trees should be protected during the development process.

The proposed boundary change is consistent with the comprehensive land use plans, public facility plans, regional framework and functional plans, regional urban growth boundary goals and objectives, urban planning agreements of affected entity and of all necessary parties, and therefore meets Criterion #3.

(2) A description of how the proposed boundary change complies with any urban service provider agreements adopted pursuant to ORS 195.065 between the affected entity and all necessary parties;

RESPONSE: There is currently a Hillsboro Urban Service Provider Agreement in place for this area, dated April 2, 2003, as required by ORS 195.065. The local governments which are a party to this agreement are as follows: Washington County, the City of Hillsboro, the City of Beaverton, Metro, Clean Water Services, TriMet, Tualatin Valley Park and Recreation District, Tualatin Valley Fire and Rescue District, Tualatin Valley Water District, and Washington County Fire District No. 2. The annexation is consistent with the applicable provisions of the Agreement, specifically Section 1, Roles and Responsibilities, subsections C. and G.

Approval of the Petition to Annex the site to the Metro District would be consistent with, and carry out the intent and stated purposes and objectives of, the Hillsboro Urban Service Agreement. The subject properties are included in that document and marked as "Future Urban" (Map C-2). Section III.C makes it clear that the agreement applies to properties identified on Map C-2. In fact, Section IX.E.2 automatically amends the boundary of the Hillsboro Urban Service Agreement (HUSA) to include the properties shown on Map C-2 "once the final action has been taken by Metro and the Department of Land Conservation and Development (DLCD) and appeals have been finalized".

Specifically, this annexation complies with that agreement as follows:

It fulfills Sections I.C., which designates the City of Hillsboro as the appropriate provider of services to citizens residing within the boundaries shown on Maps A-1 to A-6, which include the area shown on Map C-2.

Approval of this Annexation Petition will enable the City of Hillsboro to

exercise full municipal governance of the site consistent with the following relevant provisions of the Hillsboro Urban Service Agreement.

Section I.C. Hillsboro is "designated as the appropriate provider of services to citizens residing within its boundaries and to unincorporated areas...as shown on Maps A-1 to A-6." (As noted above, Section III.C. added the properties identified on Map C-2 to Maps A-1 to A-6 when those properties were added to the UGB.)

Section I.D. Washington County recognizes the cities and special services districts as the ultimate municipal service providers as specified in this agreement, and recognizes cities as the "ultimate local governance provider to the urban area".

Section I.G.1. Consistent with Section I.C., I.D., and I.E, the County, City and Special Districts agree to develop a program for "the eventual annexation of all urban unincorporated properties into the cities". Further, Section I.G.2. states that the program will include the transfer of Washington County responsibilities, programs, equipment and personnel to the City for urban municipal services, including "law enforcement; road maintenance; engineering and construction; land use and transportation planning; land development; and building."

Approval of this annexation petition would be consistent with I.G of the Hillsboro Urban Services Agreement because it would expedite the transfer of law enforcement, road maintenance, engineering and construction, land use and transportation planning, land development and building services as contemplated by Section I.G. Pursuant to ORS 222.524, the City of Hillsboro has determined that upon its annexation to the City, assumption of law enforcement, road maintenance, engineering and construction, land use and transportation planning, land development and building services to the site would be in the best interest of the City.

Currently, the site is protected by the Washington County Fire District No. 2 (Dist. No. 2), which has primary fire protection responsibility for much of rural, unincorporated Washington County. Under the Hillsboro Urban Services Agreement, Dist. No. 2 and the City of Hillsboro have agreed that the City will ultimately be the sole provider of fire protection services to the site. Approval of this annexation petition would be consistent with Exhibit 'A' of the Hillsboro Urban Services Agreement because it would expedite the transfer of fire protection services to the site from Dist. No. 2 to the City, as contemplated by Exhibit 'A'.

Pursuant to ORS 222.524, the City of Hillsboro has determined that upon its annexation to the City, withdrawal of the site from the Dist. No. 2 service area and subsequent City provision of fire protection services to the site would be in the best interest of the City.

Exhibit 'B' states that TriMet is currently the sole provider of public mass transit in the HUSD. Annexation to the Metro District would not alter that provision of the Agreement.

Exhibit 'C' states that the City will assume law enforcement services as annexations occur within the HUSA, and the area will be withdrawn from the Enhanced Sheriff's Patrol District. The subject properties are not in the Enhanced Sheriff's Patrol District, so they do not have to withdraw from that district. Annexation to the Metro District is consistent with this provision of the Agreement.

Exhibit 'D' states that the City, rather than the Tualatin Hills Park and Recreation District (THPRD), will be the designated provider of park, recreation and open spaces services to the HUSD. The subject properties are not within the THPRD boundary, so they do not have to withdraw from that district. Annexation to the Metro District is consistent with this provision of the Agreement.

Exhibit 'E' states that the County will continue to retain jurisdiction over the network of arterials and collectors within the HUSD, and that the City will accept responsibility for "public streets, local streets, neighborhood routes and collectors and other streets and roads that are not part of the County-wide road system" upon annexation. The City intends to accept responsibility for that portion of SW 229th Avenue that is within its city limits. Annexation to the Metro District is consistent with this provision of the Agreement.

Exhibit 'F' states that Clean Water Services (CWS) is responsible for sanitary sewage and storm water management within the City and the urban unincorporated area. Further, the City performs a portion of the local sanitary sewer and storm water management programs as defined in an operating agreement between the City and CWS. Annexation to the Metro district will not impact the agreement between the City and CWS, and is consistent with this provision of the Agreement.

Exhibit 'G' states that the City will be the designated water provider to properties in the HUSA west of Cornelius Pass Road between Sunset Highway

and TV Highway, and the Tualatin Valley Water District will provide services north of Sunset Highway, east of Cornelius Pass Road between Sunset Highway and TV Highway, and east of SW 209th Avenue. The subject site will be served with City water services. Annexation to the Metro district will not impact the agreement between the City and TVWD, and is consistent with this provision of the Agreement.

The proposed boundary change complies with the urban service provider agreements adopted pursuant to ORS 195.065 between the affected entity and all necessary parties, and therefore, meets Criterion #2.

(6) If the proposed boundary change is for annexation of territory to Metro, a determination by the Metro Council that the territory should be included in the Urban Growth Boundary shall be the primary criterion for approval;

RESPONSE: The property was brought into the Urban Growth Boundary in December 2002, under Metro Council Ordinance #02-969B. Therefore, the proposed boundary change meets Criterion #6.

(1) The extent to which urban services presently are available to serve the affected territory including any extra territorial extensions of service;

RESPONSE: No extraterritorial extensions of service are necessary. The property has been annexed into the City of Hillsboro, which will supply water and sanitary sewer services. Currently, there are no public utilities within SW 229th Ave south of SE Alexander Street. Utilities will be extended within SW 229th Avenue as needed.

The City of Hillsboro currently is in the process of extending their sanitary sewer main from SE River Road to SW 229th Ave, along SE Davis Road and Gordon Creek. Once that is complete, the applicants can extend the gravity system from this point to the subject properties. (However, if this sewer has not been constructed at the time of occupancy of the new elementary school, the Hillsboro School District will construct a private sanitary sewer pump station to pump the sanitary sewer to a manhole at the intersection of SE Alexander Street and SW 229th Avenue).

Storm water services will be provided by Clean Water Services and the City of Hillsboro. Storm water runoff will be routed through approved water quality facilities and will be piped along the west boundary line of the neighboring tax

lot (1S210DC00100) to Gordon Creek, once an easement has been procured.

Street maintenance for local streets will be provided by the City of Hillsboro. SW 229th Avenue will continue to be maintained by Washington County until the City and the County both agree to transfer that responsibility to the City.

Police, Fire and Parks services will be provided by the City of Hillsboro.

All private utilities will be extended as required by the utility companies as well.

In addition to local services, Metro provides a variety of services that will be available to this site. These include regional land use planning, solid waste disposal, the Oregon Zoo and other regional facilities, and regional park and greenspaces acquisition. Similarly, Washington County provides services to this site, including the County Sheriff's services, the County court system, the County health services, and several other general services available to all properties within the County. The annexation of the properties to the Metro district will not impact the Metro or County services.

All necessary urban services are presently available to serve the affected territory, and therefore the proposed boundary change meets Criterion #1.

(4) Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party;

RESPONSE: The annexation to the Metro boundary will not result in the withdrawal of the affected territory from the legal boundary of any necessary party. However, annexation to the City of Hillsboro resulted in a withdrawal from Washington County Rural Fire Protection District No. 2.

Therefore, the proposed boundary change is meets Criterion #4.

(5) The proposed effective date of the decision.

RESPONSE: The proposed effective date is July 1, 2008.

4. The site consists of level ground mostly cleared of vegetation with trees along the west and south edges.

To the east (across SW 229th) lies farmland. To the north, west and south of the property are rural residential properties.

5. This territory abuts the Metro jurisdictional boundary on the north, east and south.

The law that requires Metro to adopt criteria for boundary changes specifically states that Metro shall “. . . ensure that a boundary change is in compliance with the Metro regional framework plan as defined in ORS 197.015 and cooperative agreements and urban service agreements adopted pursuant to ORS 195.” ORS 197.015 says “Metro regional framework plan means the regional framework plan required by the 1992 Metro Charter or its separate components.” The Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes.

There are two adopted regional functional plans, the Urban Growth Management Plan and the Regional Transportation Plan.

The Urban Growth Management Functional Plan contains only one provision in its Title 11 component which speaks to annexations and prescribes a directly applicable standard or criterion for an annexation boundary change. Title 11, Section 3.07.1110.A, Interim Protection of Areas Brought into the Urban Growth Boundary, concerns “annexations” of land added to the UGB. It requires local comprehensive plan amendments for land added to the UGB to include “provisions for annexation to the (Metro) district and to a city or any necessary service district prior to urbanization of the territory . . . to provide all required urban services”. By its terms, this Title 11 provision requires local comprehensive plans to assure the provision of adequate public facilities and services to land added to the UGB through annexation of such lands to the Metro District, the affected city and/or any special service district responsible for providing such facilities and services to the land prior to its urban development.

The Regional Transportation Plan was examined and found not to contain any directly applicable standards and criteria for boundary changes.

This area was added to the UGB by the Metro Council in December, 2002 (Metro Ordinance No. 02-969B).

6. The territory was recently annexed to the City of Hillsboro. The territory has been designated FD-20 (Future Development, 20 Acre District) as a way to prevent premature development prior to adoption of a Concept Plan and rezoning in compliance with that plan. The area is covered by an Urban Services Agreement which identifies Hillsboro as the appropriate provider of urban services. The subject site is included in a currently underway Concept Plan (South Hillsboro Planning Process). The applicants have applied for an amendment to the City Comprehensive Plan from Washington County’s Future Development – 20 acre minimum to Public Facilities (for the 9 acres owned by the Hillsboro School District) and Residential Low for the remaining 5+ acres. A corresponding zone change to R-7 has also been applied for.

7. All major public Services are available from the City of Hillsboro.
8. Metro provides a number of services on the regional level. Primary among these is regional land use planning and maintenance of the regional Urban Growth Boundary. Metro has provided this service to this site through the process of reviewing and approving the inclusion of this area in the UGB.

Metro provides some direct park service at what are basically regional park facilities and has an extensive green spaces acquisition program funded by the region's voters. Metro is responsible for solid waste disposal including the regional transfer stations and contracting for the ultimate disposal at Arlington. The District runs the Oregon Zoo and other regional facilities such as the Convention Center and the Performing Arts Center. These are all basically regional services provided for the benefit of and paid for by the residents within the region. These facilities are funded through service charges, excise taxes and other revenues including a small tax base for operating expenses at the Zoo and tax levies for bonded debt.

CONCLUSIONS AND REASONS FOR DECISION

Based on the Findings, the Council concluded:

1. Oregon Revised Statutes 198 requires the Council to consider the local comprehensive plan when deciding a boundary change. The Council has reviewed the applicable comprehensive plan which is the Hillsboro Comprehensive Plan and finds that it contains no directly applicable criteria for making district boundary change decisions.
2. Oregon Revised Statutes 198 also requires consideration of "any service agreement executed between a local government and the affected district." As noted in Finding No. 3 Metro is a party to an Urban Service Agreement which identifies Hillsboro as the appropriate provider of urban services for this area.
3. Metro Code 3.09.070 (e) (1) establishes inclusion of the territory within the Urban Growth Boundary as one criterion for any annexation subject to the Metro rules. The Council has made such a determination as noted in Finding No. 5. Therefore the Council finds this proposed annexation to be consistent with that criterion.
4. The final criterion to be considered under the Metro Code 3.09.120 (e) (2) is "The territory is subject to measures that prevent urbanization until the territory is annexed to a city or to service districts that will provide necessary urban services." As noted in Finding 6 the territory has been protected from premature development by application of FD-20 zoning. The territory has been annexed to Hillsboro and as stated in Finding 3 the City has necessary urban services available. The Council concludes this criterion is met.

Agenda Item Number 4.2

Ordinance No. 08-1186A, For the Purpose of Amending Metro Code Chapter 5.02 to Establish Metro's Solid Waste Disposal Charges and System Fees for Fiscal Year 2008-09.

Second Reading

Metro Council Meeting
Thursday, May 15, 2008
Forest Grove Community Auditorium

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING) ORDINANCE NO. 08-1186A
METRO CODE CHAPTER 5.02)
TO ESTABLISH METRO'S SOLID WASTE) Introduced by: Michael Jordan, Chief Operating
DISPOSAL CHARGES AND SYSTEM FEES) Officer, with the concurrence of David Bragdon,
FOR FISCAL YEAR 2008-09) Council President

WHEREAS, Metro Code Chapter 5.02 establishes charges for disposal of solid waste at Metro South and Metro Central transfer stations;

WHEREAS, Metro Code Chapter 5.02 establishes fees assessed on solid waste generated within the District or delivered to solid waste facilities regulated by or contracting with Metro;

WHEREAS, Metro's costs for solid waste services and programs have changed;

WHEREAS, pursuant to its charge under Metro Code section 2.19.170, the Solid Waste Rate Review Committee has reviewed the Solid Waste & Recycling department's proposed FY 2008-09 budget, rate methodology and cost allocations;

WHEREAS, Solid Waste Rate Review Committee recommends that the Metro Council adopt the rates set forth in this ordinance; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Metro Code Section 5.02.025 is amended to read:

5.02.025 Disposal Charges at Metro South & Metro Central Station

(a) The fee for disposal of solid waste at the Metro South Station and at the Metro Central Station shall consist of:

(1) The following charges for each ton of solid waste delivered for disposal:

(A) A tonnage charge of \$~~47.09~~49.00 per ton,

(B) The Regional System Fee as provided in Section 5.02.045,

(C) An enhancement fee of \$.50 per ton, and

(D) DEQ fees totaling \$1.24 per ton;

(2) All applicable solid waste taxes as established in Metro Code Chapter 7.01, which excise taxes shall be stated separately; and

(3) The following Transaction Charge for each Solid Waste Disposal Transaction:

(A) For each Solid Waste Disposal Transaction completed at staffed scales, the Transaction Charge shall be \$8.50.

(B) For each Solid Waste Disposal Transaction that is completed at the automated scales, the Transaction Charge shall be \$3.00.

(C) Notwithstanding the provisions of subsection (A), the Solid Waste Disposal Transaction Charge shall be \$3.00 in the event that a transaction that is otherwise capable of being completed at the automated scales must be completed at the staffed scales due to a physical site limitation, a limit or restriction of the computer operating system for the automated scales, or due to a malfunction of the automated scales.

(b) Notwithstanding subsection (a) of this section,

(1) There shall be a minimum solid waste disposal charge at the Metro South Station and at the Metro Central Station for loads of solid waste weighing ~~240-440~~ pounds or less of ~~\$1725~~, which shall consist of a minimum Tonnage Charge of ~~\$8.50~~~~16.50~~ plus a Transaction Charge of \$8.50 per Transaction.

(2) The Chief Operating Officer may waive collection of the Regional System Fee on solid waste that is generated outside the District, and collected by a hauler that is regulated by a local government unit, and accepted at Metro South Station or Metro Central Station.

(c) Total fees assessed in cash at the Metro South Station and at the Metro Central Station shall be rounded to the nearest whole dollar amount, with any \$0.50 charge rounded down.

(d) The Director of the Solid Waste & Recycling Department may waive disposal fees created in this section for Non-commercial Customers of the Metro Central Station and of the Metro South Station under extraordinary, emergency conditions or circumstances.

Section 2. Metro Code Section 5.02.045 is amended to read:

5.02.045 System Fees

(a) The Regional System Fee shall be ~~\$14.08-15.04~~~~16.04~~ per ton of solid waste, prorated based on the actual weight of solid waste at issue rounded to the nearest one-hundredth of a ton.

(b) Any waste hauler or other person transporting solid waste generated, originating, or collected from inside the Metro region shall pay Regional System Fees to Metro for the disposal of such solid waste. Payment of applicable system fees to the operator of a Designated Facility shall satisfy the obligation to pay system fees, provided that, if such solid waste is transported to a Designated Facility outside of the Metro region, then such waste hauler or other person must have informed the operator of the Designated Facility that the solid waste was generated, originated or collected inside the Metro region. In any dispute regarding whether such waste hauler or other person informed such operator that the solid waste was generated, originated, or collected inside the Metro region, such waste hauler or other person shall have the burden of proving that such information was communicated.

(c) Designated Facility operators shall collect and pay to Metro the Regional System Fee for the disposal of solid waste generated, originating, collected, or disposed of within Metro boundaries, in accordance with Metro Code Section 5.01.150.

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

(e) System fees described in this Section 5.02.045 shall not apply to exemptions listed in Section 5.01.150(b) of this Code.

Section 3. Metro Code Section 5.02.047 is amended to read:

5.02.047 Regional System Fee Credits

(a) A solid waste facility which is certified, licensed or franchised by Metro pursuant to Metro Code Chapter 5.01 or a Designated Facility regulated by Metro under the terms of an intergovernmental agreement shall be allowed a credit against the Regional System Fee otherwise due each month under Section 5.02.045 for disposal of Processing Residuals from the facility. The Facility Recovery Rate shall be calculated for each twelve-month period before the month in which the credit is claimed. The amount of such credit shall be in accordance with and no greater than as provided on the following table:

System Fee Credit Schedule

| Facility Recovery Rate | | |
|------------------------|-------------------|-----------------------------------|
| From Above | Up To & Including | System Fee Credit of no more than |
| 0% | 30% | 0.00 |
| 30% | 35% | 9.92 |
| 35% | 40% | 11.46 |
| 40% | 45% | 13.28 |
| 45% | 100% | 14.00 |

(b) The Chief Operating Officer:

(1) Shall establish administrative procedures to implement subsections (b) and (c) of Metro Code Section 5.02.046; and

(2) May establish additional administrative procedures regarding the Regional System Fee Credits, including, but not limited to establishing eligibility requirements for such credits and establishing incremental System Fee Credits associated with Recovery Rates which fall between the ranges set forth in paragraph (a) of this section.

(c) Any person delivering Cleanup Material Contaminated By Hazardous Substances that is derived from an environmental cleanup of a nonrecurring event, and delivered to any Solid Waste System

Facility authorized to accept such substances shall be allowed a credit in the amount of \$~~11.5812.54~~13.54 against the Regional System Fee otherwise due under Section 5.02.045(a) of this Chapter.

(d) During any Fiscal Year, the total aggregate amount of credits granted under the Regional System Fee credit program shall not exceed the dollar amount budget without the prior review and authorization of the Metro Council.

(e) The Director of the Solid Waste and Recycling Department shall make a semi-annual report to the Council on the status of the credit program. The report shall include that aggregate amount of all credits paid during the preceding six months and the amount paid to each facility eligible for the credit program. The report shall also project whether the appropriation for the credit program will be sufficient to meet anticipated credit payment requests and maintain existing contingency funding.

Section 4. Effective Date

The provisions of this ordinance shall become effective on September 1, 2008, or 90 days after adoption by Metro Council, whichever is later.

ADOPTED by the Metro Council this _____ day of _____, 2008.

David Bragdon, Council President

ATTEST:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 08-1186 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.02 TO ESTABLISH METRO'S SOLID WASTE DISPOSAL CHARGES AND SYSTEM FEES FOR FISCAL YEAR 2008-09

Date: May 8, 2008

Prepared by: Douglas Anderson

EXECUTIVE SUMMARY

Adoption of the FY 2008-09 Solid Waste Rate Ordinance would implement the rates shown in boldface in the following table. As a result, on September 1, 2008, the Metro tip fee would rise by \$3.61 per ton to \$74.75 and the Regional System Fee collected from privately-owned disposal sites would rise 96¢ to \$15.04 per ton.

Solid Waste Disposal Charges Effective September 1, 2008 through August 31, 2009

| Solid Waste Rates | Current Rates | This Ordinance | Change |
|----------------------------|---------------|----------------|--------|
| Transaction Fees | | | |
| Scalehouse users | \$8.50 | \$8.50 | - 0 - |
| Automated scale users | \$3.00 | \$3.00 | - 0 - |
| <u>Per-ton rates:</u> | | | |
| Tonnage charge | \$47.09 | \$49.00 | \$1.91 |
| Regional System Fee | \$14.08 | \$15.04 | \$0.96 |
| Excise tax | \$8.23 | \$8.97 | \$0.74 |
| DEQ & host fees | \$1.74 | \$1.74 | - 0 - |
| Metro Tip Fee | \$71.14 | \$74.75 | \$3.61 |
| Minimum charge | \$17 | \$25 | \$8.00 |

Notes

Boldface type indicates the rates that are amended by this ordinance.
See Background section for more on the recommended minimum charge.

The rates recover the net solid waste operating costs of the FY 2008-09 Proposed Budget released April 3, 2008. The rates also meet the other requirements of law: (a) they meet the Rate Covenant of the Solid Waste Revenue Bonds relating to the debt service coverage; (b) they comply with the requirement that charges for goods or services may not exceed the costs of providing the goods or services [Metro Charter, Section 15]; and comply with the state statute limiting the use of Metro's disposal fee revenue to solid waste uses [Oregon Revised Statutes section 459.335].

BACKGROUND

Solid Waste Rates

The proposed FY 2008-09 solid waste rates are based on the same rate policies and methodology as have been used for the past several fiscal years. All differences between the FY 2007-08 adopted rates and the FY 2008-09 proposed rates are due to changes in costs and tonnage flows.

Minimum Load Charge

The Rate Review Committee recommends increasing the minimum load charge from the current rate of \$17 for loads weighing up to 240 pounds, to \$25 for loads weighing up to 440 pounds. The proposed minimum charge consists of the \$8.50 transaction fee plus \$16.50 for the 440 pounds (.22 tons) of waste at the proposed tip fee of \$74.75 per ton.

The increase in the minimum charge is intended to provide an economic signal to self-haulers to consolidate loads; and thereby reduce traffic, queuing and delays at the transfer stations. A higher minimum charge is but one of a number of self-haul demand management options that have emerged from the recommendations of the Rate Policy Subcommittee of SWAC (2005-06), and the April 1, 2008 report of the department's self-haul study to Council.

INFORMATION/ANALYSIS

- 1. Known Opposition.** There is no known opposition.
- 2. Legal Antecedents.** Metro's solid waste rates are set in Metro Code Chapter 5.02. Any change in these rates requires an ordinance amending Chapter 5.02. Metro Council reviews solid waste rates annually, and has amended Chapter 5.02 when changes are warranted.
- 3. Anticipated Effects:** The proposed increase of \$3.61 in the tip fee (from \$71.14 to \$74.75 per ton) is similar to the \$3.78 change between FY 2003-04 and FY 2004-05, when the rate rose from \$67.18 to \$70.96 per ton. No significant effects were observed from this earlier change. Accordingly, staff anticipates no significant effects stemming from adoption of Ordinance No. 08-1186.
- 4. Budget Impacts.** These rates are designed to recover the department's net operating costs for FY 2008-09 as set forth in the Chief Operating Officer's Proposed Budget released on April 3, 2008.

RECOMMENDATION

The Chief Operating Officer recommends adoption of Ordinance No. 08-1186.

Agenda Item 4.3

Ordinance No. 08-1187A, For the Purpose of Amending
Metro Code Chapter 7.01 Relating to Excise Tax,
Regarding Exemptions and Calculations

Second Reading

Metro Council Meeting
Thursday, May 15, 2008
Forest Grove Community Auditorium

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO) ORDINANCE NO. 08- 1187A
CODE CHAPTER 7.01 RELATING TO EXCISE)
TAX, REGARDING EXEMPTIONS AND) Introduced by Chief Operating Officer
CALCULATIONS.) Michael Jordan with the concurrence of
) Council President David Bragdon

WHEREAS, the Metro solid waste excise tax is a component of the Metro solid waste tip fee and an ambiguity regulating its calculations should be clarified; and

WHEREAS, the Metro Council finds is appropriate to eliminate the excise tax on the Oregon Zoo since the zoo is now a component of the Metro General Fund; and

WHEREAS, the Metro Council finds that policies for establishing appropriate reserves should be adopted as budget policies; and

WHEREAS, The Solid Waste Department’s Excise Tax effective date for modifications is September 1. To avoid additional modification dates for excise tax, the exemption of the Zoo from Excise Tax should be effective the same date; now therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Metro Code Section 7.01.020 Tax Imposed and the amendments there to adopted by Ordinance 07-1147B are amended as follows:

(a) For the privilege of the use of the facilities, equipment, systems, functions, services, or improvements owned, operated, certified, licensed, franchised, or provided by Metro, 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 Metro 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 Metro which is extinguished only by payment of the tax directly to Metro or by the operator to Metro. The user shall pay the tax to Metro 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 Metro. If the Council so establishes a lower rate of tax, the Chief Operating 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, licensed, franchised, or provided by Metro, 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 Metro’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 Metro's contractor for disposal of putrescible waste shall also pay the additional tax in the amount set forth under Section 7.01.023 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 Metro which is extinguished only by payment of the tax directly to Metro or by the operator to Metro. The user shall pay the tax to Metro 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, 2002, the tax rate imposed and calculated under [subsections \(c\) through \(g\)](#) of this section shall be sufficient to generate net excise tax revenue of \$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 subsection (d) by the amount of solid waste tonnage which the Chief Operating Officer reports to the Council under subsection (f)(2). Subject to the provisions of subsection 7.01.020(b), the rate so determined shall be Metro's excise tax rate on solid waste during the subsequent Metro fiscal year. Commencing with Metro fiscal year 2006-07, and each fiscal year thereafter, the rate determined by this subsection shall be effective as of September 1st unless another effective date is adopted by the Metro Council.

(2) The excise tax rate for each ton of solid waste constituting Cleanup Materials Contaminated by Hazardous Substances shall be \$1.00.

(f) By March 1st of each year, the Chief Operating Officer shall provide a written report to the Metro Council stating the following:

(1) For the twelve (12) 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 | Regional Recovery Rate |
|------|------------------------|
| 2005 | 56% |
| 2006 | 56.5% |

| | |
|------|-------|
| 2007 | 57% |
| 2008 | 57.5% |
| 2009 | 58% |

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

(g) (1) A solid waste facility which is 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 twelve (12) 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 no greater than as provided on the following table:

Excise Tax Credit Schedule

| Facility Recovery Rate | Excise Tax | |
|------------------------|-------------------|------------------------|
| From Above | Up To & Including | Credit of no more than |
| 0% | 30% | 0.00 |
| 30% | 35% | 1.92 |
| 35% | 40% | 2.75 |
| 40% | 100% | 3.51 |

(2) During any Fiscal Year, the total aggregate amount of excise tax credits granted under the provisions of this subsection shall not exceed the dollar amount budgeted for such purpose without the prior review and authorization of the Metro Council.

(3) The Chief Operating Officer may establish procedures for administering the Excise Tax Credits set forth in subsection (g)(1), including, but not limited to, establishing eligibility requirements for such credits and establishing incremental Excise Tax Credits associated with Recovery Rates which fall between the ranges set forth in paragraph (g)(1).

2 Metro Code Section 7.01.023 Additional Excise Tax is amended as follows:

7.01.023 ~~Amount of~~ Additional Excise Tax; ~~Budgeting of Additional Revenue for Regional Parks and Greenspaces Programs and Tourism Opportunity and Competitiveness Account~~

Commencing September 1, 2006, the additional excise tax authorized in Section 7.01.020(c) shall be \$3.14 per ton. For each fiscal year following fiscal year 2006-07, the additional excise tax 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 (6) 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 Chief Operating Officer deems appropriate, and shall be effective as of September 1st each year unless another effective date is adopted by the Metro Council.

Section 3: Metro Code 7.01.028 Budgeting of Excess Revenues is repealed and the amendments there to that would have gone into effect on July 1, 2009 are also repealed.

Section 4: Metro Code Section 7.01.050 Exemptions is amended as follows:

(a) The following persons, users and operators are exempt from the requirements of this chapter:

(1) Persons, users and operators whom Metro is prohibited from imposing an excise tax upon under the Constitution or Laws of the United States or the Constitution or Laws of the state of Oregon.

(2) Persons who are users and operators of the Portland Center for the Performing Arts.

(3) Persons whose payments to Metro or to an operator constitute a donation, gift or bequest for the receipt of which neither Metro nor any operator is under any contractual obligation related thereto.

(4) Any persons making payment to Metro for a business license pursuant to ORS 701.015.

(5) Any person which is a state, a state agency or a municipal corporation to the extent of any payment made directly to Metro for any purpose other than solid waste disposal, use of a Metropolitan Exposition and Recreation Commission (Metro ERC) facility, or use of the Oregon Zoo.

(6) Users of the following facilities:

(A) Facilities that are licensed, franchised or exempt from regulation under Metro Code Chapter 5.01 other than Disposal Sites or Transfer Stations that are not subject to the requirements of Metro Code Section 5.01.125(a);

(B) Facilities that treat to applicable DEQ standards Cleanup Material Contaminated by Hazardous Substances;

(C) Tire processing facilities that sort, classify or process used tires into fuel or other products and thereafter produce a Processing Residual that is regulated under Metro Code Chapter 5.01 and that conforms to standards established pursuant to ORS 459.710(2) by the Oregon Environmental Quality Commission.

(7) Persons making payments to Metro for the following purposes:

(A) Individual or corporate sponsorship or naming rights contracts. A naming rights contract is any contract under which a Metro or Metro ERC facility or part of a facility (as authorized by Metro Code Chapter 2.16) will be named for the sponsor in exchange for payment from the sponsor. A sponsorship contract is a contract under which the sponsor's name or logo will be used in connection with a district facility's goods, buildings, parts of buildings, services, systems, or functions in exchange for payment from the sponsor. This exemption applies to any payments pursuant to sponsorship or naming rights contracts, including payments of money, goods, services, labor, credits, property, or other consideration.

(B) Payments for advertising at Metro facilities and Metro ERC facilities.

(C) Contributions, bequests, and grants received from charitable trusts, estates, nonprofit corporations, or individuals regardless of whether Metro agrees to utilize the payment for a specific purpose including all payments to the Oregon Zoo Parents program;

(D) Corporate sponsorships or co-promotional efforts for events that are open to the general public, or for specific capital improvements, educational programs, publications, or research projects;

(E) Payments that entitle a person to admission to a fund-raising event benefiting the Oregon Zoo that is not held on the grounds of the Oregon Zoo;

(F) Payments that entitle a person to admission to a special fund-raising event held at the Oregon Zoo where the event is sponsored and conducted by a nonprofit organization approved by the Council and the primary purpose of which is to support the Oregon Zoo and the proceeds of the event are contributed to the Oregon Zoo;

~~(G) Payments collected with admission to the Oregon Zoo in the form of a Conservation Admission Surcharge;~~

~~(H) Notwithstanding the provisions of subsections (C) through (G) above, all payments received by Metro for admission to the Oregon Zoo, or which entitle individuals to receipt of food, beverages, goods, or rides on the Oregon Zoo train shall be subject to tax regardless of whether payment is received from an individual or otherwise on behalf of special groups including but not limited to employee and family member picnics, corporate or family parties, or similar events.~~

(8) Users and operators paying compensation to any person who is operating and lease property at the Glendoveer Golf Course pursuant to a long-term agreement entered into with Multnomah County prior to January 1, 1994.

(9) A tire processor which is regulated pursuant to Metro Code Chapter 5.01 and which sorts, classifies or processes used tires into fuel or other products, shall be exempt from payment of excise tax on disposal of residual material produced directly as a result of such process, provided said residual conforms to Environmental Quality Commission standards established pursuant to ORS 459.710(2). This exemption is only granted to the extent, and under the terms, specified in the Metro certificate, license or franchise.

(10) Persons who deliver useful material to disposal sites, provided that such sites are listed as a Metro Designated Facility under Metro Code Chapter 5.05 or are named in a Metro Non-System License and provided further that the Useful Material: (A) is intended to be used, and is in fact used, productively in the operation of such site for

purposes including roadbeds and alternative daily cover; and (B) is accepted at such site at no charge.

(11) Persons making the following payments:

- (A) Payments that entitle a person to admission to an event that is held in a Metro ERC facility pursuant to a license agreement between Metro ERC and an operator; and
- (B) Payments to an operator that entitle a person to purchase booth space or exhibit space, or utilities or services associated with such booth or exhibit space, at an event that is held in a Metro ERC facility pursuant to a license agreement between Metro ERC and an operator; and
- (C) Payments to a user or operator that entitle a person to purchase goods, services, food, or beverages from a user or operator selling such goods, services, food, or beverages at a Metro ERC facility.
- (D) Notwithstanding the provisions of subsections (A) through (C) above, all payments made to any operator authorized by a management agreement or services agreement with Metro ERC to provide catering services, to provide food and beverage concessions services (other than vending machines), or to operate parking lots at Metro ERC facilities shall be subject to tax.

(12) Persons making the following payments:

- (A) Payments to a person or entity other than Metro that entitle a person to admission to an event that is held at a Metro regional park; and
- (B) Payments to an operator that entitle a person to buy goods, services, food or beverages from an operator selling such goods, services, food or beverages at an event being held at a Metro regional park pursuant to the terms of a special use permit issued by Metro; and
- (C) Payments to an operator that entitle a person to buy goods, services, food or beverages from an operator selling such goods, services, food, or beverages at an event that is being sponsored and conducted by Metro at a Metro regional park.
- (D) Notwithstanding the provisions of subsections (A) through (C) above, all payments made to an operator authorized by Metro to sell goods, food or beverages or to provide services at a Metro regional park shall be subject to tax.

(13) Persons, users or operators making payments received by Metro for admission to the Oregon Zoo, or which entitle individuals to receipt of food, beverages, goods, or rides on the Oregon Zoo train shall not be subject to tax

regardless of whether payment is received from an individual or otherwise on behalf of special groups including but not limited to employee and family member picnics, corporate or family parties, or similar events.

_____(b) Any person, user or operator that is exempt for the payment of an excise tax pursuant to this section shall nonetheless be liable for compliance with this chapter and the payment of all taxes due pursuant to any activity engaged in by such person which is subject to this chapter and not specifically exempted from the requirements hereof. Any operator whose entire compensation from others for use of a Metro facility is exempt from the provisions of this chapter shall be deemed to be a user and not an operator.

Section 5: This ordinance takes effect September 1, 2008.

ADOPTED by the Metro Council this _____ day of _____ ~~2005~~2008.

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 08-1187, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 7.01 RELATING TO EXCISE TAX, REGARDING EXEMPTIONS AND CALCULATIONS

Date: April 24, 2008

Prepared by: Dan Cooper/Karen Feher

BACKGROUND

One of the main purposes of this legislation is to continue aligning the Metro Excise Tax Code with Metro Financial Policies and the intent of the consolidation of the General Fund. By way of background on these issues, the FY 2005-06 budget introduced changes in both process and presentation in order to provide greater transparency, provide stronger adherence to Financial Policies and dovetail with the Council's strategic planning process. This action is a continuation of those changes as well as accomplishing necessary housekeeping changes to Metro Code Chapter 7.01.

Over the years, Metro's growth has involved taking on unique activities that are deemed regional in nature. During that process Metro tacked on each of those activities budgetarily by creating separate budget funds for each activity. This was partially done to meet funding restrictions for those new activities or allow for time to decide or formalize permanent acceptance of the activities. Effective July 1, 2005 Metro combined all discretionary budgetary funds into one fund in order to more effectively accomplish the following:

- Provide fiscal and budgetary transparency.
- Emphasize agency programs rather than department budgetary funds.
- Relate programs to Council objectives.
- Enable flexibility in setting of priorities for the overall agency as well as funding those priorities.

This was the first step in changing Metro's operational culture of separate department activities by setting Council priorities and constructing programs that meet those priorities.

An ongoing review of the excise tax code demonstrated inconsistencies with Metro's financial policies and constraints on the Metro Council's flexibility to meet the changing needs of Metro's programs. When the Oregon Zoo became a Metro responsibility, as was the practice, a separate fund was established to record all financial transactions of the zoo. As enterprise revenues generated by the zoo contained the excise tax for the use of the zoo facilities, this excise tax was recorded separately as General Fund revenue. Now that the zoo revenues are recorded directly into the General Fund, a separate recording of excise tax is unnecessary. In addition the zoo's "Future Vision" master plan report, presented to Council last year, recommended eliminating excise tax on zoo activities. Therefore this ordinance presents, for your consideration, amending section 7.01.050 to exempt the users of the Oregon Zoo from excise tax effective September 1, 2008. In the coming year Metro will evaluate exempting other general fund functions from excise tax.

Staff Report for Ordinance 08-1187

In addition to the above, several needed housekeeping changes to code are as follows:

- Clarifies section 7.01.02(d). This section is ambiguous leading the reader to possibly interpret it as applying not only to the per ton tax calculation but also to the “7.5%” tax calculation in section 7.01.02(a). To resolve this, the code is amended specifying the sections these criteria apply to.
- Repeals Metro Code Section 7.01.028, that sets a “Recovery Rate Stabilization Reserve” as establishing reserves are more properly a Council budget responsibility rather than a code provision. The following is the deleted section:

7.01.028 Budgeting of Excess Revenue

Commencing with the Metro fiscal year beginning July 1, 2000, and each year thereafter, if the tax revenues collected under the tax rate imposed by Section 7.01.020(e) exceed the net excise tax revenue amount set forth in Section 7.01.020(d) as adjusted by Section 7.01.022, such additional revenue shall be apportioned as follows:

- (a) Such excess net excise tax revenue shall first be placed in a Recovery Rate Stabilization Reserve established in the Metro General fund. The amount of excess net excise tax revenues in such account shall not exceed an amount equal to 10 percent of the total amount of excise tax collected under Metro Code Chapter 7.01 during the period of the two (2) most recent Metro fiscal years. The budgeting or expenditure of all such funds within this account shall be subject to review and approval by the Metro Council.
- (b) If at the end of any fiscal year the maximum permitted balance for the Recovery Rate Stabilization Account has been reached, during the following fiscal year any additional excess net excise tax revenues shall be used to increase the tax credit provided under Metro Code Section 7.01.020(g) for any solid waste facility that has achieved a Facility Recovery Rate greater than 45%. Such excess revenue shall be used on a dollar-for-dollar basis to reduce the tax liability of all such qualifying facilities. The amount of the additional tax credit shall not exceed the total excise tax otherwise due from the facility under this chapter.
- (c) Any remaining excess revenue over the amounts apportioned in subsections (a) and (b) of this section shall be placed in the account established in subsection (a).

(Ordinance No. 00-857B, Secs. 5-6. Amended by Ordinance No. 06-1116, Sec. 3; Ordinance 07-1147B, Sec. 13.)

Note: The amendments to Metro Code Section 7.01.028 pursuant to Section 13 of Ordinance No. 07-1147B become operative July 1, 2009, and are set forth as follows:

Commencing with the Metro fiscal year beginning July 1, 2000, and each year thereafter, if the tax revenues collected under the tax rate imposed by Section 7.01.020(e) exceed the net excise tax revenue amount set forth in Section 7.01.020(d) as adjusted by Section 7.01.022, such excess net excise tax revenue shall be placed in a Recovery Rate Stabilization Reserve established in the Metro General fund. The budgeting or expenditure of all such funds within this account shall be subject to review and approval by the Metro Council.”

- A previous ordinance (Ordinance 06-1116: For the Purpose of Amending Metro Code Chapter 7.01 Relating to the Metro Solid Waste Excise Tax. Adoption: March 30, 2006) removed code dedications of the “other” excise tax to specific departments amended 7.01.23 of the code. That amendment did not change the title of the section consistent with the changes to the code and it still calls out specific department dedications for the “other tax”. The new title will be “7.01.012 Calculation of Amount of Additional Excise Tax”

Staff Report for Ordinance 08-1187

ANALYSIS/INFORMATION

1. Known Opposition: None known
2. Legal Antecedents: This amends the Metro Code Chapter 7.01.
3. Anticipated Effects.
 - a. Provides consistency with Financial Policies
 - b. Maintains Council flexibility in budgeting and strategic planning
 - c. Accomplishes housekeeping changes for consistency with other portions of the Metro Code
4. Budget Impacts. Allows ease in calculation of anticipated and actual expenditure of Excise Tax in any given year. The Proposed Budget is consistent with the proposed changes to code.

Agenda Item Number 5.1

Resolution No. 08-3935, Authorizing the Chief Operating Officer to Execute an Intergovernmental Agreement with the City of Forest Grove for Trail Development.

Metro Council Meeting
Thursday, May 15, 2008
Forest Grove Community Auditorium

BEFORE THE METRO COUNCIL

| | | |
|---|-----------------------|--|
| AUTHORIZING THE CHIEF OPERATING OFFICER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF FOREST GROVE FOR TRAIL DEVELOPMENT |))))) | RESOLUTION NO. 08-3935 Introduced by Chief Operating Officer Michael J. Jordan, with the concurrence of Council President David Bragdon |
|---|-----------------------|--|

WHEREAS, Metro owns certain real property partly within and partly adjacent to the City of Forest Grove, Oregon, which property is commonly known as Tax Lot 2700 in Township 1 South, Range 3 West, Section 6C (the "Metro Property"); and

WHEREAS, the City of Forest Grove (the "City") owns certain property adjacent to the Metro Property commonly known as Tax Lot 2100 in Township 1 South, Range 3 West Section 6C, which property is a former railroad right-of-way (the "City Property"); and

WHEREAS, Metro and the City wish to enter into an Intergovernmental Agreement ("IGA") to allow the City to construct a pedestrian and bicycle trail across the Metro Property and along the City Property (the "Trail"), and, upon completion of Trail construction, for Metro to grant to the City a permanent, recordable pedestrian and bicycle trail easement across the Metro Property providing for the ongoing use, maintenance, repair, and reconstruction of the Trail; and

WHEREAS, the City has adopted a Community Trail Master Plan that identifies the Trail as an important connection for both recreation and transportation purposes and the City has received a grant from the State of Oregon Parks and Recreation Department for Trail construction; and

WHEREAS, the City adopted Resolution No. 2008-16, "Authorizing City Manager to endorse intergovernmental agreement between the city of Forest Grove and Metro for trail development" on February 11, 2008, approving this IGA; and

WHEREAS, the Metro Council concludes that such a trail use on the Metro Property is a park use and is consistent with Metro's Metropolitan Greenspace Master Plan and, more specifically, with Metro's easement policy as described in Metro Resolution No. 97-2539B, "For the Purpose of Approving General Policies Related to the Review of Easements, Right of Ways, and Leases For Non-Park Uses Through Properties Managed By the Regional Parks and Greenspaces Department" approved on November 6, 1997; now therefore

BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer to execute an Intergovernmental Agreement with the City of Forest Grove in substantially the form attached as Exhibit A to this resolution, to provide the City with temporary authority to enter certain portions of the Metro Property to construct the Trail and to grant a trail easement to the City as provided in such IGA.

ADOPTED by the Metro Council this _____ day of _____, 2008.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement (“Agreement”) is by and between Metro, an Oregon municipal government, located at 600 Northeast Grand Avenue, Portland, Oregon, 97232-2736 (“Metro”), and the City of Forest Grove, an Oregon municipal corporation, located at 1924 Council Street, Forest Grove, Oregon 97116-0326 (“the City”). This Agreement shall be effective on the last date of signature of a party, below (the “Effective Date”).

RECITALS:

WHEREAS, the City owns certain property commonly known as Tax Lot 2100 in Township 1 South, Range 3 West, Section 6C, which property is a former railroad right-of-way (“City Right of Way Parcel”);

WHEREAS, Metro owns certain property adjacent to the City Right of Way Parcel commonly known as Tax Lot 2700 in Township 1 South, Range 3 West, Section 6C (“Metro Property”);

WHEREAS, the City has received a grant from the Oregon Parks and Recreation Department to construct a bicycle and pedestrian trail along a route that includes the City Right of Way Parcel and the Metro Property;

WHEREAS, the Metro Council concludes that such a trail use on the Metro Property is a park use and is consistent with Metro’s Metropolitan Greenspaces Master Plan;

WHEREAS, Metro and the City wish to enter into this Agreement to provide the City with temporary authority to enter certain portions of the Metro Property to construct a pedestrian and bicycle trail, subject to the conditions herein; and

WHEREAS, upon the conclusion of the satisfactory construction of the trail described herein on Metro Property, Metro agrees, subject to the provisions herein, to provide the City with a recordable easement for the ongoing use, maintenance, repair, and reconstruction of such trail;

Now, therefore, the parties agree as follows:

- 1. City’s Access and Use of the Metro Property.** The City and the City’s officers, employees, agents, invitees, contractors, and subcontractors are hereby authorized to temporarily access and use a portion of the Metro Property identified as the “Trail Construction Area,” as more specifically depicted in Exhibit A attached hereto and incorporated herein, between the Effective Date of this Agreement and September 30, 2009, for the purpose of constructing an all-weather paved bicycle and pedestrian trail pathway, including related surface and subsurface utilities and related safety improvement and landscape amenities (the “Trail”), within the portion of the Metro Property identified as the “Trail Corridor,” as more specifically depicted in Exhibit A. Such access may include use of the Trail Construction Area for staging trail construction equipment and supplies. All areas of the Metro Property that are accessed or disturbed by the City in any way pursuant to this paragraph shall be restored to their pre-work

condition as provided in Section 4 of this Agreement. The City shall coordinate its use of the Trail Construction Area with Metro to ensure that the City's activities do not have any detrimental impact on agricultural activities on the Metro Property.

- 2. Trail Specifications; Metro Approval of Deviations.** The trail constructed by the City shall be not more than twelve (12) feet wide and 375 feet long, and shall be constructed of permeable asphalt or concrete over approximately six (6) inches of crushed rock laid at existing grade. Prior to the City's commencement of construction, if the final trail design deviates from such specifications in any respect, then the City shall provide such design deviations to Metro for Metro's review and approval at least one (1) month prior to the start of construction. Metro shall have two (2) weeks to review and approve any such deviation, provided that Metro's approval shall not be unreasonably withheld.
- 3. Limitations; Hazardous Substances Prohibited.** Except as specifically authorized by this Agreement, no other use may be made of the Trail Construction Area without the prior written approval of Metro. Except for fuel and lubricants stored within equipment necessary and incidental to the authorized use of the Trail Construction Area pursuant to this Agreement, no Hazardous Substances (as defined below) may be used, handled, stored, or transported on, to, or from the Trail Construction Area. Under no circumstances shall any use be made of, or conduct occur on, the Trail Construction Area which would cause such areas, or any part thereof, to be deemed a hazardous waste treatment, storage, or disposal facility requiring a permit, interim status, or any other special authorization under any applicable law, rule, or regulation.
- 4. Repair of Surface Damages; Compensation If Not Repaired.** The City shall repair to their pre-work condition all areas of the Metro Property, including personal property, improvements, and agricultural crops, that are impacted or damaged by the City or the City's officers, employees, agents, invitees, contractors, or subcontractors. In the event that such impacts or damages relate to removal of native vegetation, landscaping, or landscaping material, the City shall restore the vegetation and landscaping as provided below. If the City fails to repair such impacts and damages, then the City shall compensate Metro for its costs to repair such impacts and damages. If such impacts and damages result in the loss of any agricultural crops then the City shall compensate Metro's lessee farmer for the value of such lost crops. In making any installation in the Trail Construction Area, the City shall restore any landscaping to its condition and size prior to such installation, as well as replace, as applicable, any sidewalks, pavement, curbs, driveways, signs, irrigation systems, or other improvements affected by the installation. The City shall perform all work in the Trail Construction Area in a prompt and workmanlike manner.
- 5. Metro to Provide Easement Upon Receipt of Survey and Legal Description of Easement Area.** Upon the City's completion of construction of the trail, the City shall provide to Metro a survey and legal description of the specific area on the Metro Property where the Trail is located and, subject to Metro's approval of such survey and description, at Metro's sole reasonable discretion, Metro shall grant the City a bicycle and pedestrian trail easement substantially in the form attached hereto as Exhibit B.

- 6. Indemnity.** To the maximum extent permitted by law and subject to the Oregon Constitution and the Oregon Tort Claims Act, ORS Chapter 30, the City shall fully defend, indemnify, and save harmless Metro and Metro's officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys', paralegals', and experts' fees and expenses at trial and on appeal, relating to or arising out of: (a) an intentional or negligent act or omission of the City or the City's officers, employees, agents, invitees, contractors, or subcontractors acting within the scope of their employment or duties occurring within the Trail Construction Area; (b) the installation, construction, maintenance, or operation of any improvements, utilities, or other systems installed in the Trail Construction Area, including the installation, construction, maintenance, or operation of the Trail; and (c) any breach, violation, or failure to perform any of the City's obligations under this Agreement.
- 7. Environmental Indemnity.** To the maximum extent permitted by law and subject to the Oregon Constitution and the Oregon Tort Claims Act, the City shall fully defend, indemnify, and save harmless Metro and Metro's officers and employees from and against the costs of any necessary or required sampling, testing, study, remediation, cleanup, or monitoring, and against all actual or alleged claims, actions, demands, judgments, and damages, and all costs, expenses, and fees incidental to the investigation and defense thereof, including, but not limited to attorney, accountant, paralegal and expert fees through all appeals, arising out of or related to the City's activities on the Metro Property authorized herein and based upon or arising out of the release, disposal, generation, or transport within the Trail Construction Area of Hazardous or Toxic Materials or Substances, as those terms are defined in ORS chapters 465 and 466, as amended, or the federal Resource Conservation and Recovery Act ("RCRA"), Toxic Substances Control Act ("TSCA"), Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended 42 USC § 960 et seq., or any other federal, state, or local law, ordinance, rule, or regulation pertaining to the protection of the environment; provided, however, that by entering this Agreement, the City is not accepting liability for any preexisting release of hazardous substances onto or from the Trail Construction Area, and Metro is not attempting to convey any such liability.
- 8. Insurance.** The City shall require all contractors and subcontractors working on the Metro Property to maintain the following types of insurance, covering the Contractor and the Contractor's employees and agents, and naming the City and Metro, and their elected officials, departments, employees, and agents as ADDITIONAL INSURED, and requiring that notice of any material change or policy cancellation shall be provided to the City and Metro not less than thirty (30) days prior to such change or cancellation:

 - (a) Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability, shall be a minimum of \$1,000,000 per occurrence. The policy must be endorsed with contractual liability coverage; and
 - (b) Automobile bodily injury and property damage liability insurance coverage shall be a minimum of \$1,000,000 per occurrence.

- 9. Signage.** The City may provide on-site signage informing the public that the City is constructing a trail on the site. The City shall install additional on-site signage, provided by Metro, stating that funding for the acquisition of some of the land on which the Trail is located came from proceeds of the 1995 Metro Open Spaces Bond Measure. The City also shall document in any publication, media presentation, or other presentations that acquisition of some of the land on which the Trail is located was paid for with proceeds from the 1995 Metro Open Spaces Bond Measure. All signage shall be consistent with Metro guidelines for Open Spaces/Natural Areas Projects.
- 10. Term.** This Agreement shall be in effect from the Effective Date until December 31, 2009, provided, however, that the requirements of Sections 4, 6, 7, and 9 shall survive the expiration of this Agreement.
- 11. Joint Termination for Convenience.** Metro and the City may, by written agreement signed by both parties, jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision shall be effective as provided in such termination agreement.
- 12. Termination for Cause.** Either party may terminate this Agreement in full, or in part, at any time if that party (the “terminating party”) has determined, in its sole discretion, that the other party has failed to comply with the conditions of this Agreement and is therefore in default (the “defaulting party”). The terminating party shall promptly notify the defaulting party in writing of that determination and document such default as outlined herein. The defaulting party shall have thirty (30) days to cure the default described by the terminating party. If the defaulting party fails to cure the default within such thirty (30) day period, then this Agreement shall terminate ten (10) days following the expiration of such thirty (30) day period.
- 13. Laws of Oregon; Public Contracts.** The laws of the State of Oregon shall govern this Agreement, and the parties agree to submit to the jurisdiction of the courts of the State of Oregon. All applicable provisions of ORS chapters 279A, 279B, and 279C, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated by this reference as if such provisions were a part of this Agreement. Specifically, the City’s construction activities shall fully comply with all applicable zoning, development, land use, public contracting, prevailing wage, and workers’ compensation laws, rules, and regulations.
- 14. Assignment.** Neither party may assign any of its rights or responsibilities under this Agreement without prior written consent from the other party, except that a party may delegate or subcontract for performance of any of its responsibilities under this Agreement.
- 15. Notices.** All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by both (1) electronic mail or fax, and (2) regular mail. Notices shall be deemed delivered on the date personally delivered or the date of such electronic or fax correspondence, unless such delivery is on a weekend day, on a holiday, or after 5:00

p.m., in which case such notice shall be deemed delivered on the next following weekday that is not a holiday.

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

To City: [Authorized Representative's name] _____
City of _____
[Parks Dept. Name] _____
[Address] _____
[City, OR Zip] _____

16. Severability. If any covenant or provision of this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement.

17. Entire Agreement; Modifications. This Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written agreements or representations relating to the Properties. No waiver, consent, modification, amendment, or other change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

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

CITY OF FOREST GROVE

METRO

By: _____
Print Name: _____
Title: _____

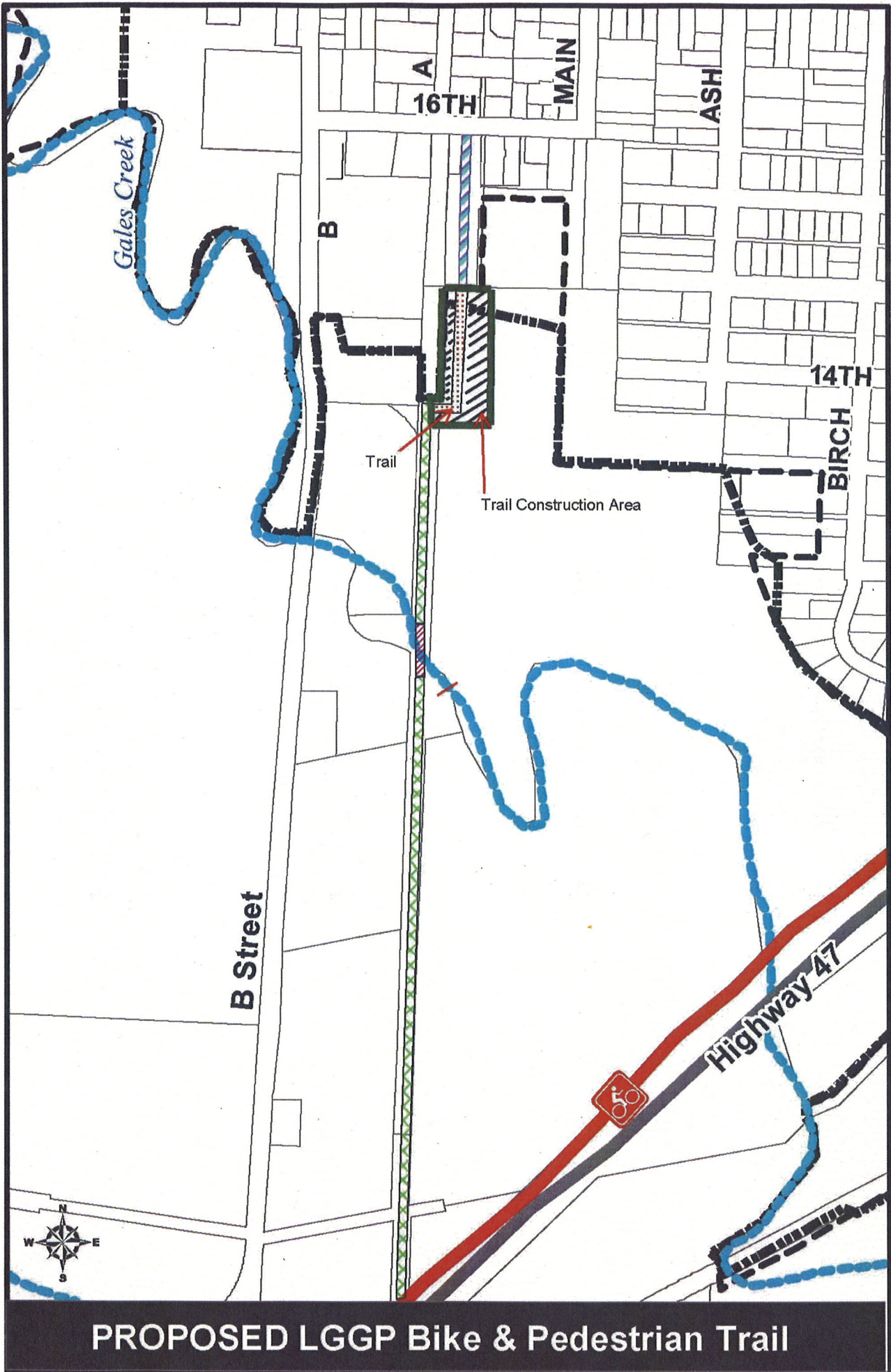
Michael Jordan, Chief Operating Officer

Date: _____

Date: _____

Exhibits:

- Exhibit A – List of Properties Subject to Existing Management IGAs
- Exhibit B – Form of Bicycle and Pedestrian Easement



PROPOSED LGGP Bike & Pedestrian Trail

DRAFT

GRANTOR: METRO
600 NE Grand Avenue
Portland, OR 97232-2736

GRANTEE: THE CITY OF FOREST GROVE, OREGON
[Address]
Forest Grove, Oregon 97xxx

Until a change is requested, all tax statements should be sent to:
METRO
600 NE Grand Avenue
Portland, OR 97232-2736

After Recording Return to:
The City of Forest Grove, Oregon
[Address]
Forest Grove, Oregon 97xxx

GRANT OF BICYCLE AND PEDESTRIAN TRAIL EASEMENT

METRO, an Oregon municipal corporation ("Grantor"), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants, subject to the terms hereof, to THE CITY OF FOREST GROVE, OREGON, an Oregon municipal corporation ("Grantee" or "City"), an exclusive, perpetual, public bicycle and pedestrian trail easement and right-of-way over and through that certain real property commonly known as Tax Lot 2700 in Township 1 South, Range 3 West, Section 6C, as more fully described in the legal description attached hereto as Exhibit 1 (the "Metro Property"), for the purposes outlined herein and within an area not more than 400 feet long and 15 feet wide, as more fully described and depicted in Exhibit 2, attached hereto and incorporated herein (the "Easement Area").

The cash consideration paid for this grant is \$0; however, the true and actual consideration includes other value given or promised which is the whole of the consideration.

1. PURPOSE. The purpose of this Easement is for Metro to grant the City with the right to use, maintain, repair, and reconstruct the Easement Area as an all-weather, paved bicycle and pedestrian trail.
2. RIGHTS GRANTED. This Easement hereby grants to Grantee and the public the perpetual, exclusive right of ingress and egress to and from, over and across the Easement Area along the Trail for all-hours public bicycle and pedestrian access. Forest Grove shall have the right to access the Easement Area to use, maintain, repair, and reconstruct the Trail.
3. LIMITATIONS. Except as specifically authorized by this Easement, no other use may

DRAFT

be made of the Easement Area without the prior written approval of Grantor. Except for fuel and lubricants stored within equipment necessary and incidental to the authorized use of the Easement Area pursuant to this Easement, no Hazardous Substances may be used, handled, stored, or transported on, to, or from the Easement Area. Under no circumstances shall any use be made of, or conduct occur on, the Easement Area which would cause such areas, or any part thereof, to be deemed a hazardous waste treatment, storage, or disposal facility requiring a permit, interim status, or any other special authorization under any applicable law, rule, or regulation.

4. SURFACE DAMAGES. Grantee shall compensate Grantor for all damages to Grantor's real and/or personal property improvements, including all damages and impacts to the Metro Property and to any agricultural activities occurring on the Metro Property, caused by the construction, maintenance, repair, replacement, or removal of the Trail in the Easement Area or, in the event that the damages relate to removal of native vegetation, landscaping, or landscaping material, Grantee shall restore the vegetation and landscaping as provided below. In making any installation in the Easement Area, the Grantee shall restore any landscaping to its condition and size prior to such installation, as well as replace, as applicable, any sidewalks, pavement, curbs, driveways, signs, irrigation systems, or other improvements affected by the installation. Grantee shall perform any work in the Easement Area in a prompt and workmanlike manner.
5. RELEASE OF LIABILITY. By granting this Easement, the Grantor shall have no liability or responsibility for the costs of any installation made by Grantee in the Easement Area, including the cost of constructing, maintaining, repairing, replacing, reconstructing, or removing the Trail. Grantor is hereby released from all liability for damages to any improvements, utilities, or systems installed in the Easement Area caused by members of the public entering on the Easement Area, except to the extent such damages arise from or are caused by Grantor's negligence.
6. INDEMNITY. To the maximum extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Grantee shall fully indemnify, hold harmless, and defend the Grantor and Grantor's officers, employees, and agents from and against all actual or alleged claims, actions, demands, judgments, and damages, and all costs, expenses, and fees incidental to the investigation and defense thereof, including, but not limited to, attorney, accountant, paralegal, and expert fees through all appeals, based upon or arising out of: (a) an intentional or negligent act or omission of Grantee or Grantee's officers, employees, agents, invitees, contractors, or subcontractors acting within the scope of their employment or duties occurring on the Easement Area; (2) the installation, construction, maintenance, or operation of any improvements, utilities, or other systems installed in the Easement Area, including the installation, construction, maintenance, or operation of the Trail; and (3) any breach, violation, or failure to perform any of Grantee's obligations under this Easement.
7. ENVIRONMENTAL INDEMNITY. To the maximum extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Grantee shall fully indemnify, hold harmless, and defend the Grantor, its officers, and employees from and against the costs

DRAFT

of any necessary or required sampling, testing, study, remediation, cleanup, or monitoring, and against all actual or alleged claims, actions, demands, judgments, and damages, and all costs, expenses, and fees incidental to the investigation and defense thereof, including, but not limited to attorney, accountant, paralegal and expert fees through all appeals, arising out of or related to Grantee's activities on the Metro Property authorized herein and based upon or arising out of the release, disposal, generation, or transport within the Easement Area of Hazardous or Toxic Materials or Substances, as those terms are defined in ORS chapters 465 and 466, as amended, or the federal Resource Conservation and Recovery Act ("RCRA"), Toxic Substances Control Act ("TSCA"), Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended 42 USC § 960 et seq., or any other federal, state, or local law, ordinance, rule, or regulation pertaining to the protection of the environment; provided, however, that by accepting this Easement, Grantee is not accepting liability for any preexisting release of hazardous substances onto or from the Easement Area, and Grantor is not attempting to convey any such liability.

8. RIGHT OF RE-ENTRY; TERMINATION. This Easement is granted on the express condition that the Grantee use the Easement solely for the purposes stated in Sections 1 and 2, above. In the event the Grantee uses the Easement for another purpose or fails to use the Easement Area for a continuous period of one (1) year at any time after the initial Trail construction authorized by this Easement, or, in the event the parties mutually agree to terminate this Easement, then Grantor may re-enter and terminate this Easement. Within ninety (90) days from the date of written notice from Grantor upon non-continuous use for the one (1) year period or mutual termination of this Easement, the Grantee shall remove any installation from the Easement Area, including the Trail, shall restore the land to a grade consistent with the surrounding area, said restoration to be at Grantee's sole cost as directed by and to the satisfaction of the Grantor, and shall deliver to the Grantor a recordable document or documents sufficient to remove this Easement as an encumbrance on the Easement Area.
9. RESERVATIONS. Grantor reserves the right to use and enjoy the Easement Area provided that such use shall not hinder, conflict with, or interfere with Grantee's rights hereunder or disturb its installations within the Easement Area, and Grantor shall neither authorize nor construct, create, or maintain any road, reservoir, excavation, change in surface grade, obstruction, or structure on, over, along, or within the Easement Area without Grantee's prior written consent.
10. COVENANTS. The rights granted herein shall be covenants running with the land and be binding upon Grantor, its successors and assigns in perpetuity, except as otherwise set forth herein. Grantee covenants and agrees to maintain and repair all improvements, utilities, and systems installed within the Easement Area by Grantee, including the Trail. Grantee covenants and agrees that, in the conduct of any and all of its activities and operations hereunder, it will comply strictly with all present and future rules and regulations of all federal, state, and local government bodies having jurisdiction over the construction activities occurring within the Easement Area and, if applicable, on adjacent real property owned by Grantor.

DRAFT

This instrument was acknowledged before me on the ____ day of _____
2007 by _____, the _____ of the City
of Forest Grove, Oregon.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

DRAFT

Exhibit 1
Metro Property Legal Description
[to be included with final easement]

DRAFT

Exhibit 2
Easement Area Legal Description
[to be appended upon completion of survey]

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 08-3935 AUTHORIZING THE CHIEF OPERATING OFFICER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF FOREST GROVE FOR TRAIL DEVELOPMENT

Date: May 15, 2008

Prepared by: Jim Morgan

BACKGROUND

City of Forest Grove (“the City”) is seeking an easement through an intergovernmental agreement from Metro for the construction and use of a public pedestrian and bike trail section on Metro property. The proposed trail section is within a 43-acre parcel acquired in 1996 with funds from the 1995 Open Space, Parks, and Streams bond measure. The trail section on Metro property, measuring approximately 12 feet by 375 feet, will provide continuity for the City’s proposed LGGP Bike and Pedestrian Trail. The trail is identified as an important connection for recreation and transportation purposes in the City’s Community Trail Master Plan.

With the support of Metro, the City obtained significant funding for trail construction from an Oregon State Parks and Recreation grant program. In compliance with grant requirements, the City is requesting from Metro an intergovernmental agreement to allow construction of the trail and to grant a perpetual easement to the City for intended trail uses upon completion of the trail. The proposed trail is for park use and is consistent with Metro’s easement policy. The intended trail use on the Metro natural area is consistent with Metro’s Metropolitan Greenspaces Master Plan.

The City’s request and support for this trail easement is conveyed through the resolution passed by Forest Grove City Council (Attachment 1) authorizing the City Manager to execute an intergovernmental agreement with Metro that provides the trail easement.

ANALYSIS/INFORMATION

1. Known Opposition

None identified.

2. Legal Antecedents

On November 6, 1997, Metro Council approved Resolution 97-2539B For the Purpose of Approving General Policies Related to the Review of Easements, Right of Ways, and Leases for Non-Park Uses Through Properties Managed by the Regional Parks and Greenspaces Department.

The City adopted Resolution No. 2008-16 “Authorizing an Intergovernmental Agreement between the City of Forest Grove and Metro for Trail Development” on February 11, 2008 authorizing an intergovernmental agreement between the City of Forest Grove and Metro for trail development.

3. Anticipated Effects

Upon adoption of this resolution, the Chief Operating Officer is authorized to enter into an intergovernmental agreement with the City in substantially the form attached as Exhibit A to the resolution. This agreement will commit Metro to granting the City temporary authority to access and construct a section of trail and granting a perpetual easement over approximately 15 feet in width and 400 feet in length on Metro property. This will allow completion of an important trail connection as outlined in the City's Community Trail Master Plan.

4. Budget Impacts

The City will bear all expenses for trail permitting, construction, ongoing trail use, maintenance, and repair. The City will submit the legal description documenting the perpetual easement location after the trail is constructed.

RECOMMENDED ACTION

It is recommended that Council adopt Resolution No. 08-3935 authorizing the Chief Operating Officer to execute an intergovernmental agreement with the City of Forest Grove for trail development.

RESOLUTION NO. 2008-16

**RESOLUTION OF THE CITY OF FOREST GROVE
AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF FOREST GROVE AND METRO
FOR TRAIL DEVELOPMENT**

WHEREAS, the partners, including the City of Forest Grove and Metro, wish to enter into an Intergovernmental Agreement (IGA) for trail development; and

WHEREAS, the City of Forest Grove owns certain property commonly known as Tax Lot 2100 in Township 1 South, Range 3 West Section 6C, which property is a former railroad right-of-way; and

WHEREAS, Metro owns certain property adjacent to the City Right-of-Way Parcel commonly known as Tax Lot 2700 in Township 1 South, Range 3 West, Section 6C; and

WHEREAS, the City has received a grant from the State of Oregon Parks and Recreation Department to construct a bicycle and pedestrian trail along a route that includes the City Right-of-Way and the Metro Property; and

WHEREAS, the Metro Council concludes that such a trail use on the Metro Property is a park use and is consistent with Metro's Metropolitan Greenspace Master Plan; and

WHEREAS, the City of Forest Grove has adopted a Community Trail Master Plan that identifies this section of trail as an important connection for both recreation and transportation purposes; and

WHEREAS, upon the conclusion of the satisfactory construction of the trail described herein on the Metro Property, Metro agrees, subject to the provisions of the IGA, to provide the City of Forest Grove with recordable Easement for the ongoing use, maintenance, repair and reconstruction of such trail.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:

Section 1. The Forest Grove City Council approves and authorizes the City Manager, or designee, to endorse and finalize with Metro any minor changes to the Intergovernmental Agreement, attached as Exhibit A, on behalf of the City of Forest Grove.

Section 2. Upon execution of the IGA, the City of Forest Grove agrees to work cooperatively with Metro to successfully complete the B Street Trail.

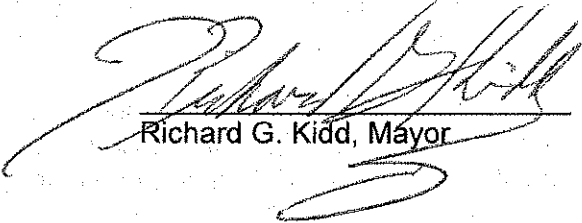
Section 3. Upon the conclusion of the satisfactory construction of the trail described herein on the Metro Property, Metro agrees, subject to the provisions of the IGA, to provide the City of Forest Grove with recordable Easement for the ongoing use, maintenance, repair and reconstruction of such trail.

Section 4. This resolution is effective immediately upon its enactment by the City Council.

PRESENTED AND PASSED this 11th day of February, 2008.


Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 11th day of February, 2008


Richard G. Kidd, Mayor