

A G E N D A

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METRO

Agenda

MEETING: METRO COUNCIL REGULAR MEETING
DATE: May 9, 2002
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

**3. A TALE OF FOUR COUNTIES, PATTERNS OF GROWTH
IN METROPOLITAN PORTLAND**

Northwest
Environmental
Watch

4. EXECUTIVE OFFICER COMMUNICATIONS

- PERS Update

5. MPAC COMMUNICATIONS

6. CONSENT AGENDA

6.1 Consideration of Minutes for the May 2, 2002, Metro Council Regular Meeting.

7. ORDINANCES - FIRST READING

7.1 **Ordinance No. 02-943**, For the Purpose of Amending the FY 2001-02 Budget and Appropriations Schedule Transferring \$200,000 from Capital Outlay to Operating Expenses and \$554,077 from Contingency to Operating Expenses in the Zoo Operating Fund, and Adding 1.0 FTE for A Budget and Finance Position, and Declaring an Emergency.

8. ORDINANCES - SECOND READING - QUASI-JUDICIAL PROCEEDING

8.1 **Ordinance No. 02-944**, For the Purpose of Amending the Urban Growth Boundary for Locational Adjustment Case 01-1; Christian Life Center Church.

McLain

9. RESOLUTIONS

9.1 **Resolution No. 02-3190**, For the Purpose of Authorizing the Executive Officer to Execute an Amended and Full Restated Agreement with the Oregon Zoo Foundation. Burkholder

10. COUNCILOR COMMUNICATION

ADJOURN

Cable Schedule for Week of May 9, 2002 (PCA)

	Sunday (5/12)	Monday (5/13)	Tuesday (5/14)	Wednesday (5/15)	Thursday (5/9)	Friday (5/10)	Saturday (5/11)
CHANNEL 11 (Community Access Network) (most of Portland area)		4:00 PM			1:00 AM (previous meeting)	2:00 PM (previous meeting)	
CHANNEL 21 (TVCA) (Washington Co., Lake Oswego, Wilsonville)					1:00 AM		
CHANNEL 30 (TVCA) (NE Washington Co. - people in Wash. Co. who get Portland TCI)					1:00 AM		
CHANNEL 30 (CityNet 30) (most of City of Portland)	8:30 PM	8:30 PM					
CHANNEL 30 (West Linn Cable Access) (West Linn, Rivergrove, Lake Oswego)	4:30 PM			5:30 AM	1:00 PM 5:30 PM	3:00 PM	
CHANNEL 32 (ATT Consumer Svcs.) (Milwaukie)		10:00 AM 2:00 PM 9:00 PM					

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

Portland Cable Access	www.pcatv.org	(503) 288-1515
Tualatin Valley Cable Access	www.tvca.org	(503) 629-8534
West Linn Cable Access	www.ci.west-linn.or.us/CommunityServices/htmls/wltvsked.htm	(503) 650-0275
Milwaukie Cable Access		(503) 652-4408

Agenda items may not be considered in the exact order. For questions about the agenda, call Clerk of the Council, Chris Billington, 797-1542. Public Hearings are held on all ordinances second read and on resolutions upon request of the public. Documents for the record must be submitted to the Clerk of the Council to be considered included in the decision record. Documents can be submitted by email, fax or mail or in person to the Clerk of the Council. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

Agenda Item Number 6.1

Consideration of the May 2, 2002 Regular Metro Council Meeting minutes.

**Metro Council Meeting
Thursday, May 9, 2002
Metro Council Chamber**

Agenda Item Number 7.1

Ordinance No. 02-943, For the Purpose of Amending the FY 2001-02 Budget and Appropriations Schedule Transferring \$200,000 from Capital Outlay to Operating Expenses and \$554,077 from Contingency to Operating Expenses in the Zoo Operating Fund, and Adding 1.0 FTE for A Budget and Finance Position, and Declaring an Emergency.

First Reading

**Metro Council Meeting
Thursday, May 9, 2002
Metro Council Chamber**

BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING THE FY 2001-02)	ORDINANCE NO. 02-943
BUDGET AND APPROPRIATIONS SCHEDULE BY)	
TRANSFERRING \$200,000 FROM CAPITAL)	
OUTLAY TO OPERATING EXPENSES AND \$554,077)	Introduced by Mike Burton,
FROM CONTINGENCY TO OPERATING EXPENSES)	Executive Officer
IN THE ZOO OPERATING FUND, AND ADDING 1.0)	
FTE FOR A BUDGET AND FINANCE POSITION;)	
AND DECLARING AN EMERGENCY)	

WHEREAS, the Metro Council has reviewed and considered the need to transfer appropriations within the FY 2001-02 Budget; and

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

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

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. That the FY 2001-02 Budget and Schedule of Appropriations are hereby amended as shown in the column entitled "Revision" of Exhibits A and B to this Ordinance for the purpose of transferring funds from capital outlay and contingency to operating expenses in the Zoo Operating Fund to support the operations at the Oregon Zoo and adding 1.0 FTE for a budget and finance position.

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

ADOPTED by the Metro Council this _____ day of _____, 2002.

Carl Hosticka, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

Exhibit A
Ordinance No. 02-943
FY 2001-02 SCHEDULE OF APPROPRIATIONS

	<u>Current</u> <u>Appropriation</u>	<u>Revision</u>	<u>Amended</u> <u>Appropriation</u>
ZOO OPERATING FUND			
Operating Expenses (PS & M&S)	\$18,924,940	\$754,077	\$19,679,017
Capital Outlay	434,000	(200,000)	\$234,000
Interfund Transfers	2,565,813	0	\$2,565,813
Contingency	850,512	(554,077)	\$296,435
Unappropriated Balance	4,064,007	0	\$4,064,007
Total Fund Requirements	\$26,839,272	\$0	\$26,839,272

All other Appropriations Remain as Previously Adopted

Exhibit B
Ordinance No. 02-943
FY 2001-02 LINE ITEM DETAIL

Zoo Operating Fund

ACCT	DESCRIPTION	Current Budget		Revision		Revised Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
Expenditures							
<i>Personal Services</i>							
<i>SALWGE</i>	<i>Salaries & Wages</i>						
5010	Reg Employees-Full Time-Exempt						
	Director II	1.00	108,618	0.00	0	1.00	108,618
	Events Coordinator	1.00	46,904	0.00	0	1.00	46,904
	Exhibits Coordinator	0.00	0	0.00	0	0.00	0
	Manager I	3.00	229,194	0.00	0	3.00	229,194
	Manager II	1.00	78,270	1.00	10,640	2.00	88,910
	Management Technician	1.00	44,366	0.00	0	1.00	44,366
	Program Analyst I	2.00	80,496	0.00	0	2.00	80,496
	Program Analyst II	1.00	45,261	0.00	0	1.00	45,261
	Program Analyst III	1.00	62,837	0.00	0	1.00	62,837
	Program Director I	1.00	90,691	0.00	0	1.00	90,691
	Program Director II	1.00	100,422	0.00	0	1.00	100,422
	Program Supervisor I	3.00	168,417	0.00	0	3.00	168,417
	Program Supervisor II	5.00	308,840	0.00	0	5.00	308,840
	Research Coordinator II	1.00	49,234	0.00	0	1.00	49,234
	Research Coordinator III	1.00	57,262	0.00	0	1.00	57,262
	Service Supervisor I	5.00	203,650	0.00	0	5.00	203,650
	Service Supervisor II	10.00	452,208	0.00	8,698	10.00	460,906
	Service Supervisor III	3.00	137,993	0.00	0	3.00	137,993
	Service Supervisor IV	1.00	62,837	0.00	0	1.00	62,837
	Veterinarian II	1.00	68,826	0.00	0	1.00	68,826
	Veterinarian I	1.00	51,546	0.00	0	1.00	51,546
	Administrative Assistant	1.00	40,206	0.00	0	1.00	40,206
	Assoc. Pub. Affairs Specialist	1.00	43,254	0.00	0	1.00	43,254
	Associate Program Supervisor	0.00	0	0.00	0	0.00	0
	Graphics/Exhibit Designer	1.00	44,366	0.00	0	1.00	44,366
	Program Coordinator	1.00	60,133	0.00	0	1.00	60,133
	Senior Public Affairs Specialist	0.00	0	0.00	0	0.00	0
5015	Reg Empl-Full Time-Non-Exempt						
	Administrative Assistant III	2.00	73,375	0.00	0	2.00	73,375
	Administrative Secretary	4.00	131,075	0.00	0	4.00	131,075
	Animal Keeper	28.00	1,108,307	0.00	0	28.00	1,108,307
	Custodian	7.00	275,847	0.00	0	7.00	275,847
	Exhibits Technician II	1.00	42,640	0.00	0	1.00	42,640
	Gardener 1	6.00	228,509	0.00	0	6.00	228,509
	Gardener 2	1.00	40,123	0.00	0	1.00	40,123
	Maintenance Electrician	1.00	59,301	0.00	0	1.00	59,301
	Maintenance Lead	1.00	52,395	0.00	0	1.00	52,395
	Maintenance Technician	1.00	50,149	0.00	0	1.00	50,149
	Maintenance Worker 1	2.00	74,755	0.00	0	2.00	74,755
	Maintenance Worker 2	12.00	513,164	0.00	0	12.00	513,164
	Master Mechanic	1.00	52,395	0.00	0	1.00	52,395
	Nutrition Technician	1.00	39,582	0.00	0	1.00	39,582

Exhibit B
Ordinance No. 02-943
FY 2001-02 LINE ITEM DETAIL

Zoo Operating Fund

ACCT	DESCRIPTION	Current Budget		Revision		Revised Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
Expenditures							
	Program Assistant 1	3.00	89,247	0.00	0	3.00	89,247
	Program Assistant 2	6.00	190,851	0.00	0	6.00	190,851
	Receptionist	1.00	25,711	0.00	0	1.00	25,711
	Secretary	0.00	0	0.00	0	0.00	0
	Security Officer 1	5.00	131,857	0.00	0	5.00	131,857
	Senior Animal Keeper	7.00	296,005	0.00	0	7.00	296,005
	Senior Gardener	1.00	45,469	0.00	0	1.00	45,469
	Typist/Receptionist-Lead	1.00	30,035	0.00	0	1.00	30,035
	Veterinary Technician	2.00	79,165	0.00	0	2.00	79,165
	Storekeeper	1.00	34,043	0.00	0	1.00	34,043
5020	Reg Employees-Part Time-Exempt						
	Graphics/Exhibit Designer	1.00	39,624	0.00	0	1.00	39,624
5025	Reg Empl-Part Time-Non-Exempt						
	Administrative Secretary	2.30	77,201	0.00	0	2.30	77,201
	Animal Keeper-PT	1.50	59,374	0.00	0	1.50	59,374
	Clerk/Bookkeeper	2.25	68,702	0.00	0	2.25	68,702
	Food Service/Retail Specialist	4.85	138,803	0.00	0	4.85	138,803
	Maintenance Worker 1-PT	0.65	24,295	0.00	0	0.65	24,295
	Maintenance Worker 2-PT	2.10	93,043	0.00	0	2.10	93,043
	Office Assistant	1.20	26,225	0.00	0	1.20	26,225
	Program Assistant 1	2.13	61,905	0.00	2,770	2.13	64,675
	Program Assistant 2	0.50	18,405	0.00	0	0.50	18,405
	Secretary	0.75	20,834	0.00	0	0.75	20,834
	Typist/Receptionist Reg.(Part Time)	0.85	24,328	0.00	0	0.85	24,328
	Video/Photography Technician	0.50	21,102	0.00	0	0.50	21,102
	Visitor Service Worker 3-reg	2.45	59,746	0.00	0	2.45	59,746
5030	Temporary Employees		836,673		63,583		900,256
5040	Seasonal Employees		1,040,416		0		1,040,416
5080	Overtime		219,483		22,819		242,302
<i>FRINGE</i>	<i>Fringe Benefits</i>						
5100	Fringe Benefits		2,928,460		14,361		2,942,821
Total Personal Services		166.03	\$12,058,450	1.00	\$122,871	167.03	\$12,181,321
Materials & Services							
<i>GOODS</i>	<i>Goods</i>						
5201	Office Supplies		92,457		35,600		128,057
5205	Operating Supplies		1,018,245		0		1,018,245
5210	Subscriptions and Dues		35,293		0		35,293
5214	Fuels and Lubricants		34,200		0		34,200
5215	Maintenance & Repairs Supplies		227,960		0		227,960
5219	Purchasing Card Expenditures		0		0		0
5220	Food		970,400		0		970,400
5225	Retail		600,920		0		600,920

Exhibit B
Ordinance No. 02-943
FY 2001-02 LINE ITEM DETAIL

Zoo Operating Fund

ACCT	DESCRIPTION	Current Budget		Revision		Revised Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
Expenditures							
<i>SVCS</i>	<i>Services</i>						
5240	Contracted Professional Svcs		1,034,644		138,784		1,173,428
5251	Utility Services		1,536,165		200,000		1,736,165
5255	Cleaning Services		31,000		0		31,000
5260	Maintenance & Repair Services		485,995		200,000		685,995
5265	Rentals		160,712		0		160,712
5280	Other Purchased Services		453,743		56,822		510,565
5290	Operations Contracts		0		0		0
<i>IGEXP</i>	<i>Intergov't Expenditures</i>						
5300	Payments to Other Agencies		24,858		0		24,858
<i>OTHEXP</i>	<i>Other Expenditures</i>						
5450	Travel		83,010		0		83,010
5455	Training and Conference Fees		25,960		0		25,960
5490	Miscellaneous Expenditures		50,928		0		50,928
Total Materials & Services			\$6,866,490		\$631,206		\$7,497,696
Capital Outlay							
<i>CAPNON</i>	<i>Capital Outlay (Non-CIP Projects)</i>						
5710	Improve-Oth thn Bldg (non-CIP)		102,700		(95,000)		7,700
5720	Buildings & Related (non-CIP)		160,000		(113,400)		46,600
5730	Exhibits and Related (non-CIP)		70,400		8,400		78,800
5740	Equipment & Vehicles (non-CIP)		100,900		0		100,900
5750	Office Furn & Equip (non-CIP)		0		0		0
5760	Railroad Eq & Facil (non-CIP)		0		0		0
<i>CAPCIP</i>	<i>Capital Outlay (CIP Projects)</i>						
5715	Improve-Oth thn Bldg (CIP)		0		0		0
5725	Buildings & Related (CIP)		0		0		0
5735	Exhibits and Related (CIP)		0		0		0
5765	Railroad Equip & Facil (CIP)		0		0		0
Total Capital Outlay			\$434,000		(\$200,000)		\$234,000
Interfund Transfers							
<i>INTCHG</i>	<i>Internal Service Transfers</i>						
5800	Transfer for Indirect Costs						
	* to Support Services		1,894,483		0		1,894,483
	* to Risk Mgmt-Liability		122,218		0		122,218
	* to Risk Mgmt-Worker Comp		116,879		0		116,879
<i>EQTCHG</i>	<i>Fund Equity Transfers</i>						
5810	Transfer of Resources						
	* to General Revnue Bond Fund		432,233		0		432,233
	* to Zoo Capital Fund		0		0		0
Total Interfund Transfers			\$2,565,813		\$0		\$2,565,813

Exhibit B
Ordinance No. 02-943
FY 2001-02 LINE ITEM DETAIL

Zoo Operating Fund

ACCT	DESCRIPTION	Current Budget		Revision		Revised Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
Expenditures							
<i>Contingency and Ending Balance</i>							
<i>CONT</i>	<i>Contingency</i>						
5999	Contingency		850,512		(554,077)		296,435
<i>UNAPP</i>	<i>Unappropriated Fund Balance</i>						
5990	Unappropriated Fund Balance		4,064,007		0		4,064,007
Total Contingency and Ending Balance			\$4,914,519		(\$554,077)		\$4,360,442
<hr/>							
TOTAL REQUIREMENTS		166.03	\$26,839,272	1.00	\$0	167.03	\$26,839,272

STAFF REPORT

CONSIDERATION OF ORDINANCE 02-943 AMENDING THE FY2001-02 BUDGET AND APPROPRIATIONS SCHEDULE BY TRANSFERRING \$200,000 FROM CAPITAL OUTLAY TO OPERATING EXPENSES AND TRANSFERRING \$554,077 FROM CONTINGENCY TO OPERATING EXPENDITURES IN THE ZOO OPERATING FUND, AND ADDING 1.0 FTE FOR A BUDGET AND FINANCE POSITION, AND DECLARING AN EMERGENCY

Date: March 18, 2002

Prepared by: Kathy Kiaunis

BACKGROUND

Every year in the spring, the Zoo comes forward with a budget adjustment to incorporate changes that have occurred since the budget was formulated, usually at least 17 months prior. We wait long enough into the year to see if the adopted budget will be a fair approximation of what is actually going to occur, and make any necessary adjustments.

The Zoo earns over 60% of its operating revenue. This revenue is highly dependent on attendance, which is highly dependent on weather. The Zoo prepares the budget conservatively. As a result of these factors, an adjustment is usually required to reflect any changes that have occurred during the year. The Zoo presently estimates that its year-end revenues will exceed the budgeted amount by approximately \$50,000 to \$100,000. If the estimate is correct, the beginning fund balance for FY02-03 will exceed the currently budgeted amount. It is important to understand that the revenue estimate is a volatile number. Two weekends of very good or very bad weather could double or eliminate the \$50,000 to \$100,000 estimate.

The adjustments needed in this fiscal year are needed for three primary reasons: delays in billing by the City of Portland for water and sewer costs, additional demand for education programs funded by grants or user fees not anticipated at budget adoption, and program additions to enhance revenues. In addition, a transfer of roofing project money from the capital outlay account to materials and services is planned. A total of \$554,077 is necessary to be transferred from the Zoo's operating fund contingency, and \$200,000 transferred from the operating fund capital outlay account.

The following adjustments are required to amend the Zoo's FY2001-02 budget:

MATERIALS AND SERVICES

Water/Sewer—Increased Costs and Delayed Billing

The Zoo requests a transfer of \$200,000 from contingency to materials and services to pay for utilities. Although the Zoo budgeted an 18.5% increase in utility costs for FY01-02 based on the best information available at the time, actual costs are \$75,000 higher than budgeted. In addition, the City's water and sewer billings for May and June 2001, totaling \$125,000, arrived too late to pay in FY00-01. The delayed bills resulted in a savings of \$125,000 in last year's budget that was carried forward as increased beginning fund balance for FY01-02. Thus there is a zero net impact on fund balance. The Zoo has an aggressive utility conservation program, and will continue to implement additional conservation measures as rate increases make them cost effective.

Roofing projects

Many roofs at the Zoo needed replacement based on the Zoo's capital replacement plan and roof inspections. A large roofing bid package was put together in order to obtain the best bid price for the series of roofs. Roofing and improvement funds budgeted in capital outlay were combined with roofing funds in materials and services to consolidate the funds for the roofing project contract. In addition, the swamp exhibit roof was unexpectedly found to have structural damage, and was repaired in this fiscal year, totaling \$96,000. To accomplish these roofing projects, a transfer of \$200,000 from the Construction and Maintenance division's capital outlay account to the materials and services account is needed.

Programs to Enhance Revenue

Concert - A premium concert is being added to the summer concert series to generate more revenue for FY02-03. The additional concert requires a budget increase of \$47,384 for associated materials and services. A premium concert produces approximately \$27,000 in net revenue over above expenses.

Butterfly Exhibit – A temporary butterfly exhibit is being developed to increase attendance and revenues for FY02-03. Some of the expenses for the exhibit need to be incurred in the current fiscal year. The amendment requests \$52,000 to cover current year expenses. The revenues from the exhibit will cover the exhibit expenses and increase Zoo revenues in FY02-03 by \$288,000.

Administration

An increase in professional services of \$50,000 for legal and consultant fees related to pending land use issues and City of Portland planning requirements related to new exhibits and parking issues. The use of outside counsel was approved by Metro's General Counsel.

Living Collections and Education

Several projects, including Pygmy rabbits, condors, and cold-blooded kingdom expenditures necessitate increases in the Living Collections budget of \$64,350. Grant funding covers the majority of the conservation project expenditures.

Grant funding allowed the Zoo to connect the Steller Cove exhibit to the Zoo network, and requires an increase to the budget of \$9,689. Grant funding also supported the development of new Bird of Prey curriculum, and necessitates an increase of \$7,783.

PERSONAL SERVICES

Administration

The Zoo is adding 1.0 FTE for a Budget and Finance Manager. The total cost for the remainder of this year for this new position is \$16,000. The Zoo must continually wear two hats, as both a government entity and a business. The Zoo earns over 60% of its operating revenue through enterprise activities, which represents over \$12 million in FY02-03. The costs of operating in this setting continue to rise, and the Zoo would benefit from the addition of a position dedicated to budget and financial issues. The new position would be responsible for the development of a business plan that should help identify strategies for ensuring the Zoo's long-term financial health. The position will oversee budget development, internal financial controls and reporting procedures. The position will coordinate closely with Metro ASD to ensure compliance with Metro requirements, standards, and requests.

Construction and Maintenance

Additional labor, due to exhibit construction and repairs and needed backfilling for illness, necessitates an increase of \$34,300 in Personal Services.

Education

Several programs benefited from increased registrations or additional grant funding, that necessitated increases in temporary staffing to carry out the program. Programs include summer camp, overnights, Zoo Animal Presenters, Urban Nature Overnights, Birds of Prey, Animal Quest, and sidewalk naturalists. The total adjustment for these programs is \$56,665. Education programs will generate over \$100,000 in program revenues over budgeted amounts.

Class and Compensation Study

Study results require an adjustment of \$15,906 to regular salaries and benefits in the Education and Marketing divisions.

Summary Table

Personal Services	122,871
Materials and Services	631,206
Capital Outlay	(200,000)
Contingency	(554,077)

ANALYSIS/INFORMATION

Anticipated Effects. Adopted legislation will allow the Zoo to meet obligations and comply with Oregon Budget Law.

Budget Impacts. A total of \$554,077 transferred from the Zoo's operating fund contingency, and \$200,000 transferred from the operating fund capital outlay account.

RECOMMENDED ACTION

Passage of Ordinance No. 02-943 for the purpose of adopting a budget amendment for FY2001-02.

Agenda Item Number 8.1

Ordinance No. 02-944, For the Purpose of Amending the Urban Growth Boundary for Locational Adjustment Case 01-1; Christian Life Center Church.

Second Reading - Quasi-Judicial Proceeding

**Metro Council Meeting
Thursday, May 9, 2002
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE) ORDINANCE NO. 02-944
URBAN GROWTH BOUNDARY FOR)
LOCATIONAL ADJUSTMENT CASE 01-1:) Introduced by Susan McLain,
CHRISTIAN LIFE CENTER CHURCH) Metro Councilor

WHEREAS, Metro received a petition for a locational adjustment for 13.57 acres located within Washington County at 5585 SW 209th Avenue in Aloha, as shown in Exhibit A; and

WHEREAS, Metro staff reviewed and analyzed the petition, and completed a written report to the Hearings Officer, recommending denial of the petition due to insufficient evidence demonstrating that the proposed urban growth boundary is superior to the Urban Growth Boundary (UGB) as presently located; and

WHEREAS, Metro held a hearing to consider the petition on June 11, 2001, conducted by an independent Hearings Officer; and

WHEREAS, the Hearings Officer continued the hearing until August 27, 2001, to allow the petitioner to submit additional information; and

WHEREAS, the Hearings Officer submitted his report on October 11, 2001, recommending approval of the petition for 13.57 acres subject to a condition of approval; and

WHEREAS, the Hearings Officer's condition of approval states that before the effective date of an ordinance amending the UGB to include the subject property, the owner of the property shall provide proof that it has filed a covenant in the deed records for Washington County, in a form acceptable to Metro General Counsel, requiring that the subject property shall continue to provide school services; and

WHEREAS, the Metro Council adopted Resolution No. 02-3153, expressing its intent to amend the Urban Growth Boundary as requested in the petition subject to the Hearings Officer's condition of approval, on February 7, 2002; and

WHEREAS, the Metro Council adopted Ordinance No. 02-941, annexing the land subject to this petition to the Metro jurisdictional boundary, on April 18, 2002; now, therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The UGB is amended to include the land shown in Exhibit A, attached and incorporated into this ordinance;
2. The amendment to the UGB meets the criteria for a locational adjustment, based upon the findings and conclusions of the Hearings Officer in Exhibit B, upon Resolution No. 02-3153 in Exhibit C, and upon Ordinance No. 02-941 in Exhibit D, all attached and incorporated in this ordinance;

3. Within 90 days of the adoption of this ordinance, the owner of the property shall provide proof that it has filed a covenant in the deed records for Washington County, in a form acceptable to Metro General Counsel, requiring that the subject property shall continue to provide school services and shall only be utilized for church, school or other church-related purposes, until such time as all of the immediately contiguous parcels of property are included inside the UGB.
4. The amendment to the UGB provided for in this ordinance shall not become effective until the covenant provided for in Section 3 above has been recorded.

ADOPTED by the Metro Council this ____ day of _____ 2002.

Carl Hosticka, Presiding Officer

ATTEST:


Approved as to Form:

Recording Secretary

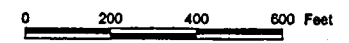
Daniel B. Cooper, General Counsel

Exhibit A UGB Amendment

Ord. No. 02-944
Christian Life Center Church
Case 01-1

 Metro Urban Growth Boundary

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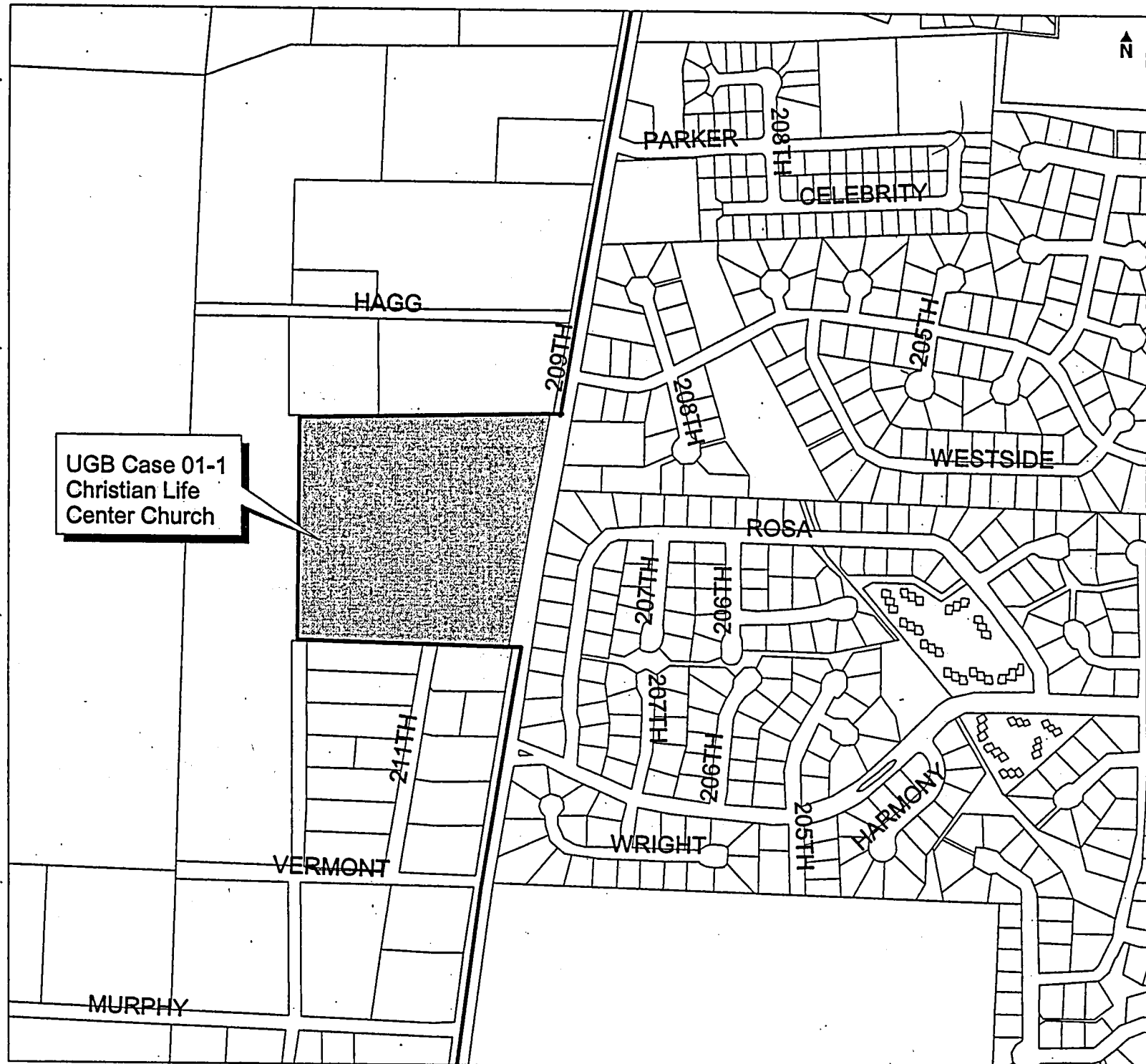


1" = 450 feet



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UGB Case 01-1
Christian Life
Center Church

BEFORE THE METRO COUNCIL

In the matter of the petition of the Christian Life Center)
Church for a Locational Adjustment to the Urban Growth)
Boundary south of the City of Hillsboro, west of 209th)
Avenue in unincorporated Washington County)

) RECOMMENDED
) FINDINGS AND
) CONCLUSIONS
) Contested Case No. 01-01

A. BASIC FACTS, PUBLIC HEARINGS AND THE RECORD

1. On March 14, 2001, Christian Life Center Church ("petitioner") completed filing a petition for a locational adjustment to the Urban Growth Boundary ("UGB"). See Exhibit 1 for the petition for locational adjustment (the "petition"). Basic facts about the petition include the following:

a. The land to be added to the UGB is described as Tax Lot 6200, Map 1S2-14DC, Washington County, Oregon (the "subject property"). The subject property is a roughly rectangular shaped parcel 750 feet north-south by about 700 to 820 feet east-west. It contains 13.57 acres. The subject property is west of and adjoins SW 209th Street between SW Hagg Lane and SW Vermont Street. The UGB forms the east boundary of the subject property. See Exhibits 1, 11 and 13 for maps showing the subject property.

b. The subject property is designated and zoned AF-10 (Agriculture/Forest, 10-acre minimum lot size) on the acknowledged Washington County Comprehensive Plan Map. It is in an exception area to Statewide Planning Goals 3 and 4. The subject property is bounded on the north by land zoned AF-5 (Agriculture and Forest, 5-acre), on the west by land zoned AF-20 (Agriculture and Forest, 20-acre), on the south by land zoned RR-5 (Rural Residential, 5-acre), and on the east by SW 209th Avenue, which serves as the Urban Growth Boundary (UGB). Lands across SW 209th Avenue are within the UGB and are zoned R-5 (Residential, 5 units per acre) and R-15 (Residential, 15 units per acre). See Attachment 3 of Exhibit 1.

c. The subject property is developed with a 38,000-square foot church and associated 235-space parking lot on the eastern third of the site. The western two-thirds of the subject property is developed with a private park including a soccer field and two softball fields. Washington County approved the church use in 1993, Casefile 93-184-SU/D(INS), Attachment 19 of Exhibit 1. Washington County approved the park/recreation use in 1996, Casefile 96-288-SU/SU/D(INS), Exhibit 24. Public sewer and water are currently supplied to the subject property pursuant to an exception to Statewide Planning Goals 11 and 14. The petitioner also operates a private school on the subject property for pre-school through grade 12 serving approximately 200 students. The school is not an approved use on the subject property. Washington County previously determined that the school is not permitted in the rural area, because it is not "scaled to serve the rural population." See Washington County Casefile 96-288-SU/SU/D(INS), Exhibit 24, and Washington County Casefile 98-206-SU/D(INS), Exhibit 25. Enforcement by the County is stayed during pendency of this petition.

d. The petition was accompanied by comments from affected jurisdictions and service providers, although several jurisdictions declined to provide comments. See Exhibit 1, Attachments 9 & 15, and Exhibits 2, 3, 5, 9, 10, 20 & 21.

i. Metro waived the requirement for a written statement from the Washington County Board of Commissioners. Exhibit 10. The Board of Commissioners never did comment on the petition.

ii. The Tualatin Valley Water District ("TVWD") commented that it could provide water service to the subject property, but approval of the petition would not improve efficiency of service delivery in the UGB. TVWD expressed support for the petition. Exhibit 1, Attachment 9.

iii. Tualatin Valley Fire and Rescue District ("TVFR") commented that it could provide fire and emergency service to the subject property, but approval of the petition would not improve efficiency of service delivery in the UGB. TVFR took a neutral position in regard to the petition. Exhibit 3.

iv. The Hillsboro School District declined to comment on the petition. Exhibits 2 and 21.

v. Tri-Met commented that the subject property is "currently a little greater than 1/4 mile away" from the nearest transit stop, which is on 198th Avenue. "A property is considered served if it is 1/4 mile or less from transit." Tri Met took a neutral position regarding the petition. Exhibit 5.

vi. The Unified Sewerage Agency (USA) commented that sanitary and storm sewer services are currently provided to the subject property, and approval of the petition would have no impact on the efficiency of service delivery in the UGB. Exhibit 9.

vii. The petitioner did not submit comments from the Washington County's Sheriff's Office or the Tualatin Hills Parks and Recreation District ("THPRD") regarding the petition. However both agencies commented regarding the 1998 land use application for the school, which Washington County denied. See Exhibit 1, Attachment 15. The Sheriff's Office stated that emergency services are currently provided to the subject property, and the service level is adequate to serve the existing and proposed development. THPRD noted that the subject property is outside its boundaries. However the subject property is within one-half mile of an existing park, and park services are adequate to serve the subject property (contrary to the Washington County Community Plan Map for the area).

viii. After the public hearing while the public record was open, the Beaverton School District commented that approval of the petition will increase the efficiency of public school services within the existing UGB. Exhibit 20.

2. Metro staff mailed notices of a hearing to consider the petition by certified mail to the owners of property within 500 feet of the subject property, to the petitioner, to Washington County, to the City of Hillsboro and to the Department of Land Conservation and Development ("DLCD"). See Exhibit 1, Attachment 30. A notice of the hearing also was published in *The Oregonian* at least 10 days before the hearing.

3. On June 11, 2001, Metro hearings officer Larry Epstein (the "hearings officer") held a public hearing at the Washington County Public Services Building Auditorium to consider the petition. All exhibits and records of testimony have been filed with the Growth Management Services Division of Metro. At the beginning of the hearing, the hearings officer made a declaration consistent with ORS 197.763. The hearings officer disclaimed any *ex parte* contacts, bias or conflicts of interest. Eight witnesses, including Metro staff and consultants, testified in person. Other persons testified in writing. Exhibits 22 and 23.

a. Metro consulting planner Eric Eisemann verified the contents of the record and summarized the staff report (Exhibit 15), including basic facts about the subject property, the UGB and urban services, and comments from the various service providers

and affected jurisdictions. He testified that the petitioner failed to show that the proposed locational adjustment complies with all of the applicable approval criteria. He argued:

i. The petitioner demonstrated that urban services can be provided to the subject property in an orderly and economical fashion. However the petitioner failed to bear the burden of proof that adding the subject property to the UGB will result in a net improvement in efficiency of services to lands within the existing UGB. Sewer and water services are currently provided to the subject property and abutting lands within the UGB. He disputed the petitioner's conclusion that approval of the petition will result in a net improvement in the efficiency of school services by relieving pressure on urban public schools. The existing school is not an approved use on the subject property, and it might not be permitted even if the petition is approved or carried on after such approval. In addition, there is no evidence that approval of the petition is needed to make the urban school system more efficient.

(A) He argued that the lower burden of proof allowed in Contested Case 95-01 (Harvey) is inapplicable. In that case, the UGB abutted the property on three sides rather than on one side, and the site was used for permitted purposes. The subject property is not developed with approved urban uses. The existing school is not an approved use on the subject property.

ii. The petitioner failed to demonstrate that approval of the petition would facilitate needed development within the existing UGB. Existing urban lands near the subject property are fully developed, and urban services have been provided to them.

iii. Approval of the petition will not result in a superior UGB, because the petition fails to comply with the above criteria.

b. Attorneys Bill Cox and Gary Shepherd, Pastor Werner Rienas and Education Minister Jerry Huber appeared on behalf of the petitioner, Christian Life Center Church.

i. Mr. Cox argued that the subject property is fully developed for urban uses. Approval of the petition will allow the petitioner to continue providing educational and social services to urban residents, thereby promoting land use stability within the existing UGB.

(A) He noted that there is an undeveloped area of residentially-zoned property southeast of the subject property within the UGB. Approval of the petition will facilitate development of that property. In addition, based on the Metro Council's decision in Contested Case 88-3 (St. Francis), the fact that the abutting urban area is largely developed is irrelevant. The school on the subject property will serve this existing development.

(B) He argued that approval of the petition will increase the efficiency of school services within the UGB. The majority of students attending school on the subject property live in the Beaverton area. The Beaverton School District projects a capacity deficit of 15,000 students in 2020. See Exhibit 16, Attachment 8. Approval of the petition will help alleviate the deficit to some extent by allowing the petitioner to continue providing educational services for 250 students on the subject property. Denial of the petition will increase the demand for school services, because it will eliminate the existing school on the subject property.

(C) He argued that approval of the petition will increase the efficiency of urban services which are currently provided to the subject property. Approval of the petition would allow the petitioner to continue operating the school, thereby making more efficient use of existing urban services without requiring additional infrastructure.

(D) He argued that the petition is subject to a lower burden of proof, because the subject property is currently provided with urban services and developed with an urban school use, citing Metro Contested Case 95-01 (Harvey). Approval of the petition will maintain the existing service efficiencies generated by the petitioner's school.

(E) He requested the hearings officer continue the hearing to allow the petitioner an opportunity to provide additional evidence.

ii. Mr. Rienas testified that the County encouraged the petitioner to pursue a UGB amendment in order to allow continued operation of the private school on the subject property. He argued that education is part of the Church's ministry. Denial of the petition will conflict with their religious mission and curtail their ability to practice their religion. He argued that the subject property increases the efficiency of recreational facilities within the UGB. There is a shortage of recreational facilities within the UGB. The petitioner helps alleviate that shortage by allowing the public to use its recreational facilities on the subject property.

iii. Mr. Huber argued that approval of the petition will improve the efficiency of school services within the UGB, because the petitioner's school accommodates students who would otherwise attend public schools within the UGB. More than 90-percent of the students attending school on the subject property live in the urban area. There is a significant demand for education opportunities in the area. The existing school on the subject property is operating at full capacity with a 60-student waiting list. The petitioner expects to turn away more than 100 students who apply for the 2001-02 school year due to a lack of capacity.

iv. Mr. Shepherd argued that approval of the petition will result in a net increase in the efficiency of urban services.

(A) He argued that denial of this petition would be inefficient. There is an existing school on the subject property which is currently provided with urban services. Denial of the petition will force the petitioner to abandon the existing school, reducing the efficiency of the existing urban uses and services on and serving the subject property. The petitioner will need to construct additional facilities within the UGB, consuming additional vacant urban land.

(B) He argued that, based on the Council's decision in Contested Case 87-04 (Brennt), any net increase in efficiency is sufficient to establish that the petition will result in a superior UGB. He disagreed with staff's interpretation that the Brennt decision is limited to parcels of five acres or less. When the Council decided Brennt the Metro Code limited locational adjustments to a maximum of 10 acres. The current Code limits locational adjustments to a maximum of 20 acres. Therefore this petition to include the 13.57-acre subject property is consistent with Brennt, and any increase in efficiency is sufficient to comply with the Code.

(C) He noted that urban services are currently provided to the subject property. Therefore, based on the Council's decision in Contested Case 95-01 (Harvey), he argued the petition is subject to a lower burden of proof.

(D) He argued that Metro Code section 3.01.035(c)(2) — “facilitate needed development on adjacent existing urban land” — is not limited to developable land. Existing development within the UGB also benefits from the recreational opportunities and educational and social services provided by the uses on the subject property. Approval of the petition will facilitate continued occupancy of this existing development.

c. Gerald Brian argued that Metro needs to consider the long term use of entire area, including the need for a western bypass. He argued that a school on the subject property will impact the use of his abutting property. Establishment of a school will create a “school zone” and reduce the speed limit on the abutting road.

4. At the close of the June 11, 2001 hearing, the hearings officer continued the hearing to August 27, 2001. The hearings officer received the following evidence and testimony at the August 27, 2001 hearing:

a. Metro planner Tim O’Brien verified the contents of the record, including evidence submitted after the initial hearing, and summarized the staff report addendum. Exhibit 18.

i. He disputed the petitioner’s conclusion that “any increase in efficiency is enough to demonstrate that the petition results in a superior UGB.” He argued that, based on Metro Ordinance 81-05, the larger the parcel proposed for inclusion, the greater the benefit required. The subject property is much larger than the property involved in the Brennt case. Therefore the applicant has a greater burden of proof that approval of the petition will result in a superior UGB.

ii. He argued that the petitioner failed to bear the burden of proof that the petition will result in greater net efficiencies for public services.

(A) Public services are currently available to the subject property and surrounding properties within the UGB. Including the subject property in the UGB will have no impact on the efficiency of these services.

(B) Approval of the petition will have no impact on the efficiency of recreational facilities. There is no agreement between the petitioner and THPRD allowing public use of the recreational facilities on the subject property. In addition, the recreational facilities already exist on the site. Washington County approved the facilities in 1996, Washington County Casefile 96-288-SU/SU/D(INS). It is unnecessary to add the subject property to the UGB to obtain the alleged efficiency.

(C) There is no substantial evidence that students attending the petitioner’s school would attend public school if the petitioner’s school was unavailable. There is no evidence from the affected school districts that approval of the petition would increase their efficiency. In addition, given the limited capacity of the petitioner’s school, approval of the petition will have only a minor impact on the efficiency of the public school services.

iii. There is no substantial evidence that approval of the petition will facilitate development on adjacent land within the UGB. He argued that land within a three-mile radius of the subject property is not “adjacent.”

iv. He argued that the Religious Land Use and Institutionalized Persons Act of 2000 is inapplicable. The petition falls outside the scope of the Act as defined by section 2.A.ii of the Act, because approval or denial of the petition is not a "land use decision" as defined by the Act.

b. Mr. Cox responded to the staff report addendum.

i. He argued that the Code only requires a net increase in efficiency. It does not require a "significant" increase in efficiency. Approval of the petition will result in a small net improvement in the efficiency of school services, because the petitioner's school will accommodate a small percentage of the students within the Beaverton and Hillsboro School Districts.

ii. He argued that the petition will increase the efficiency of park and recreation services, because the soccer and baseball fields on the subject property will be available for public use at no cost to THPRD. Based on THPRD's Master Plan, Exhibit 16, Attachment 20, there is a need for 10 new soccer fields and five baseball fields in the area. Therefore the subject property will fulfill 10 to 20 percent of the need identified in the Master Plan. The petitioner currently allows the public to use the facilities. However the petitioner may be unable to maintain the facilities without the income from the school. The petitioner is likely to reduce or eliminate public use of the facilities if the petition is denied. In addition, use of the facilities by urban residents may create a zoning violation by allowing urban uses in the rural area.

iii. He argued that the Metro Code is a zoning law and therefore the petition is subject to the Religious Land Use and Institutionalized Persons Act of 2000. In addition, Metro is subject to the Act, because it receives federal funding.

iv. He testified that the petitioner would agree to a condition of approval requiring the property to be used for church and school purposes.

v. He requested the hearings officer hold the record open for two weeks to allow the Beaverton School District and the THPRD an opportunity to submit a written response.

c. Church member Matt Newman argued that approval of the petition will result in a net improvement in the efficiency of school and parks/recreation services and will facilitate needed development on adjacent urban land. He introduced a map illustrating schools, parks, land uses, census tracts and development approvals located within a three-mile radius of the subject property. Exhibit 16, Attachment 18. Many (although not a majority) of the students who now attend petitioner's school live within three miles of the subject property.

i. He argued that the term "adjacent" must be construed in context. School and park services cover a broader area than sewer and water facilities.

ii. He noted that significant growth has occurred in the surrounding area in recent years. 2500 new residential dwelling units have been approved within the three mile radius in the past four years.

iii. He argued that the petitioner's school results in a net economic benefit for local public schools. The majority of schools in the area exceed their capacity and must provide modular classrooms at \$100,000 each. The petitioner's school eliminates

the need for three modular classrooms by accommodating 200 students on the subject property, resulting in a net economic efficiency of \$300,000.

iv. He argued that approval of the petition will increase the efficiency of park and recreation services, because it eliminates the need for construction of additional facilities inside the UGB. Adding the subject property to the UGB would allow THPRD to use the petitioner's recreation facilities, fulfilling a need for such facilities identified in the THPRD's Master Plan. The THPRD cannot enter an agreement to allow public use the petitioner's recreational facilities under current conditions, because the subject property is located outside the UGB.

d. Pastor Rienas testified that the public currently uses the soccer and baseball fields on the subject property for practices and games. However the petitioner must limit public use to ensure it does not become an urban use in violation of the County's approval. He testified that several families have moved to the area in order to send their children to the petitioner's school.

e. The hearings officer held the record open for two weeks to allow the petitioner an opportunity to submit additional testimony and evidence in support of the petition. The record in this case closed at 5:00 p.m., September 10, 2001.

5. On October 11, 2001, the hearings officer filed with the Council a report, recommendation, and draft final order approving the petition for the reasons provided therein. Copies of the report and recommendation were timely mailed to parties of record together with an explanation of rights to file exceptions thereto and notice of the Council hearing to consider the matter.

6. The Council held a duly noticed public hearing to consider testimony and timely exceptions to the report and recommendation. After considering the testimony and discussion, the Council voted to conditionally approve the petition for Contested Case No. 01-01 (Christian Life Center), based on the findings in this final order, the report and recommendation of the hearings officer, and the public record in this matter.

B. APPLICABLE APPROVAL STANDARDS AND RESPONSIVE FINDINGS

1. Metro Code section 3.01.035(b) and (c) contain approval criteria for all locational adjustments. Metro Code section 3.01.035(g) contains additional approval criteria for locational adjustments to add land to the UGB. The relevant criteria from those sections are reprinted below in italic font. Following each criterion are findings explaining how the petition does or does not comply with that criterion.

Area of locational adjustments. All locational adjustment additions and administrative adjustments for any one year shall not exceed 100 net acres and no individual locational adjustment shall exceed 20 net acres...

Metro Code section 3.01.035(b)

2. No locational adjustments or administrative adjustments have been approved in 2001. Therefore not more than 100 acres has been added to the UGB this year. The petition in this case proposes to add 13.57 acres to the UGB, which is less than 20 acres. No other locational adjustment petitions are pending in 2001. Therefore, as proposed, the petition complies with Metro Code section 3.01.035(b).

Orderly and economic provisions of public facilities and services. A locational adjustment shall result in a net improvement in the efficiency of

public facilities and services, including but not limited to, water, sewerage, storm drainage, transportation, parks and open space in the adjoining areas within the UGB; and any area to be added must be capable of being served in an orderly and economical fashion.

Metro Code section 3.01.035(c)(1)

3. The subject property can be served by public water, storm and sanitary sewers, police, fire and emergency services based on the comments from the various service providers. See Exhibit 1, Attachments 9 & 15, and Exhibits 3 & 9. Therefore the area to be added is capable of being served in an orderly and economical fashion.

4. The Council has not adopted rules describing how to assess the relative efficiency of urban services. In the absence of such rules, the Council must construe the words in practice. It does so consistent with the manner in which it has construed those words in past locational adjustments to the extent the facts in this case are similar to the facts in prior cases.

a. In the past, where a petition before the Council proposed including developed land with urban services in-place, the Council has imposed a lower burden of proof than where a petition involved undeveloped land without in-place services. For instance, contrast the relevant findings in Council Orders regarding UGB 91-04 (PCC Rock Creek), UGB 91-01 (Dammasch), UGB 88-03 (St. Francis), UGB 95-01 (Harvey) and UGB 98-05 (VVMC) with corresponding findings in Council Orders regarding UGB 94-01 (Starr/Richards), UGB 90-01 (Wagner) and UGB 88-02 (Mt. Tahoma).

i. In this case the subject property has urban services connected to and indistinguishable from services inside the UGB. However it is not developed with urban uses. Washington County approved the existing church and park as rural uses. See Washington County Casefile 93-184-SU/D(INS), Attachment 19 of Exhibit 1, and Washington County Casefile 96-288-SU/SU/D(INS), Exhibit 24. Washington County granted an exception to Statewide Planning Goals 11 and 14 to allow extension of public sewer service to the church on the subject property. See Exhibit 1, Attachment 18. The applicant is operating the existing school in violation of Washington County zoning, without County land use approval. See Exhibit 24.

ii. Based on prior decisions, the lower burden of proof is only available where both urban services and urban development are provided on the property subject to the petition. In this case, urban services are already in place, but the subject property does not contain urban development. Therefore this petition is subject to the higher burden of proof.

b. Including the subject property in the UGB does not increase the net efficiency of park and recreation services, because it does not result in any additional public park and recreation facilities nor does it result in increased public use of the existing recreational facilities.

i. The THPRD Master Plan identifies a need for additional park and recreation facilities in the vicinity.¹ See Exhibit 16, Attachment 20. The THPRD 20-year

¹ The subject property is not located within the boundaries of the THPRD. The THPRD Boundary is roughly 800 feet south of the subject property at its nearest point. See Exhibit 16, Attachment 18. However the THPRD includes a number of existing and planned facilities located outside of its boundaries, whose "service area" extends into the District.

Master Plan identifies a need for additional an additional 11.3-acres of Neighborhood Park land in the "southwest quadrant" of THPRD's service area. The Master Plan also identifies a need for 5 new ballfields and 10 new soccer fields in the southwest quadrant. This is consistent with the Washington County Aloha-Reedville-Cooper Mountain Community Plan Map which identifies this as a "park deficient area."²

ii. The petitioner's sports fields help meet the identified need for park and recreation facilities without additional cost to the public. The petitioner testified that it makes its facilities available for a variety of public groups including Beaverton Little League, Reedville Softball, Westside Softball League & Umpires Association and Community Basketball & Volleyball. See Exhibit 16, Attachment 9. Public use of the petitioner's sports fields reduces the demand on other existing park/recreation facilities, that otherwise would draw users who now use the petitioner's facilities.

iii. However the locational adjustment is not necessary to create the this efficiency. The facilities exist and are permitted by law. But, the petitioner argued, without the location adjustment, they might not be able to afford to maintain the facilities and may have to reduce or prohibit public use of the facilities or eliminate the facilities altogether.

(A) Whether the recreational facilities will remain in existence if the locational adjustment is not approved and, consequently, the school is required to close eventually, is a question of fact. There is no substantial evidence in the record to support the petitioner's assertion that the sports fields will not remain in existence if the locational adjustment is not approved. The petitioner's assertion is evidence, but their self-interest and lack of financial or other relevant data to support the assertion detracts from its probative value so much that the evidence is not persuasive. It is speculative to conclude that denial of the locational adjustment will or is reasonably likely to result in loss of the sports fields for public use. Moreover the impacts of DENIAL of the locational adjustment are not relevant. Only the impacts of APPROVING the locational adjustment are relevant. Arguably approving the locational adjustment assures the sports fields will remain in existence, because they will be necessary at least for the recreational needs of the school. But that does not increase the efficiency of public park/recreation services

iv. The only way that the sports fields increase park/recreation service efficiency is if they are available to the public. The petitioner testified the facilities are available to a variety of public groups as noted above. However nothing obligates the petitioner to retain the facilities or to continue to allow public use of its private property. The petitioner did not propose a specific measure to assure public access to the sports fields when it agreed to be subject to a condition requiring the property to be used for school and church purposes. Thus approving the locational adjustment without more, or subject to a condition that requires the subject property be used for church and school purposes as proposed by the petitioner, does not assure the sports fields will be available by to public.

v. Approval of the petition subject to a condition of approval requiring that the petitioner make the sports fields available to the public would ensure that approval of the petition results in a net efficiency in parks/recreation services, because it would ensure that the facilities are and remain available to the public. The Council cannot impose such a condition unless it approves the petition. The Council has imposed conditions before in Contested Case 91-01 (Dammach State Hospital) and Contested Case

² The hearings officer takes official notice of the Aloha-Reedville-Cooper Mountain Community Plan Map, which was not included in the record as an exhibit.

94-01 (Starr/Richards) pursuant to authority granted by Metro Code section 3.01.40(a) as it existed when those petitions were approved.

vi. However a condition of approval requiring the petitioner to make the sports fields available to the public could be problematic to articulate and enforce³ and may be beyond the Council's authority under the existing Metro Code. Such a condition also may violate the Religious Land Use and Institutionalized Persons Act of 2000 and could be deemed an unconstitutional infringement on the petitioner's freedom of religion and association. The petitioner could propose a condition of approval requiring the petitioner to make the sports fields available to the public during daylight non-school hours when not otherwise needed for church or school purposes, waiving any constitutional or other rights. The Council could accept such a condition. But the petitioner has not expressly done so.

c. Based on the testimony from the Beaverton School District,⁴ Exhibit 20, including the subject property in the UGB increases the net efficiency of school services, because the petitioner's school accommodates students who would otherwise attend public school.⁵ The subject property must be located in the UGB in order for the petitioner to continue operating its school. See Exhibits 24 and 25. Therefore approval of the petition is necessary to achieve the net efficiency in school services identified by the Beaverton School District. The petitioner proposed and Council accepts a condition of approval requiring that the subject property continue to provide school services at at least current levels. The Council construes the term "school services" as "a comprehensive educational program similar to that offered in public preschool, grade, middle and/or high schools." Subject to that condition, including the subject property in the UGB does result in a net increase in the efficiency of school services.

d. It is not apparent from the record that including the subject property in the UGB will increase the net efficiency of water, surface water management/storm drainage, and fire/police protection, transit, transportation, for land already in the UGB. Most of these services are already in place, serving the existing church and recreational development on the subject property and abutting developed properties within the UGB. The inclusion of the subject property in the UGB is not necessary to maintain the existing efficiency of urban services to the subject property. Approval of the petition would increase the use of these facilities by allowing the petitioner to continue operating its school from the subject property. But it would not affect the efficiency of these services for land already in the UGB.

³ There is no legal process for adjudicating disputes about implementation or enforcement of such a condition; i.e., when and how is the petitioner required to allow public use of the facilities, whether the petitioner can charge a fee for such use, etc.. In addition, future development on the subject property, including but not limited to expansion of the church or school, could alter the recreational facilities in violation of the condition.

⁴ The petitioner also submitted letters from the Washington County Counsel's office, State Representative Bruce Starr and State Senator Charles Starr opining that including the subject property will result in a net increase in the efficiency of public school facilities within the existing UGB. Exhibits 14, 22 and 23. However the petitioner failed to provide any evidence that these persons are experts in the efficiency of school facilities. Their unsupported opinions are not substantial evidence.

⁵ The subject property is not within the boundaries of the Beaverton School District. The school district boundary is roughly 800 feet south of the subject property at its nearest point. See Exhibit 16, Attachment 18. However the petitioner's school currently serves more than 70 students who reside within the Beaverton School District. See Exhibit 16, Attachment 17.

Maximum efficiency of land uses. The amendment shall facilitate needed development on adjacent existing urban land. Needed development, for the purposes of this section, shall mean consistent with the local comprehensive plan and/or applicable regional plans.
Metro Code section 3.01.035(c)(2)

5. Including the subject property in the UGB facilitates development on adjacent existing urban land consistent with the local comprehensive plan, because it provides additional school capacity to serve residential development within the UGB.

a. Development within the adjacent urban area will increase the existing demand for school facilities and services in the area. School facilities on the subject property can facilitate development by accommodating some of that demand.

b. There is a dispute about whether approval of this petition will facilitate development on "adjacent" urban land.

c. The term "adjacent" is ambiguous and is not defined by the Metro Code. The majority of prior cases approved by the Council involved the extension of sewer, water and transportation services to abutting properties. By their nature this type of service must be physically connected to adjacent land in order to provide the service. Therefore "adjacent" properties have been predominantly limited to adjacent properties. However school and park/recreation services have a broader scope, attracting users from further away. (See the THPRD Master Plan which assumes a roughly 1500-foot radius service area around neighborhood parks). Black's Law Dictionary, 1968 Ed., defines the term "adjacent" as "lying near or close to; sometimes contiguous; neighboring."

i. Abutting properties within the UGB, directly across 209th Avenue from the subject property, are fully developed consistent with the R-6 (Residential, 6 dwelling units per acre) designation in the Washington County comprehensive plan, specifically the Aloha-Reedville-Cooper Mountain Community Plan Map. Therefore approval of the petition cannot facilitate needed development on those properties.

ii. There is a roughly 50-acre vacant parcel located approximately 800 feet south of the subject property, on the east side of 209th Avenue. See Exhibits 13 and 16, attachment 18. This property is "adjacent" as defined by the dictionary, because it is nearby. The property is designated medium density residential (15 units per acre) on the Aloha-Reedville-Cooper Mountain Community Plan Map. That property also is located within the boundaries of the THPRD and Beaverton School District. Amendment of the UGB to include the subject property would facilitate needed development on that "adjacent" vacant urban property if the petitioner continues to provide school and public recreation services. The petitioner proposed, and the Council accepts, a condition requiring that the subject property continue to provide school services similar to current levels which will ensure that approval of this petition actually facilitates needed development on this "adjacent" urban land.

iii. The petitioner defined "adjacent existing urban land" as vacant properties located within a three-mile radius of the subject property. See Exhibit 16. However the petitioner failed to provide adequate support in law or fact for this extremely broad definition, and Council finds "adjacent" land does not include all vacant urban land within three miles of the site.

Environmental, energy, social & economic consequences. Any impact on regional transit corridor development must be positive and any limitations imposed by the presence of hazard or resource lands must be addressed. Metro Code section 3.01.035(c)(3)

6. Including the subject property in the UGB would not have any impact on regional transit corridor development, because the nearest regional transit corridor is distant from the subject property (at Tualatin Valley Highway, more than a mile north of the subject property). The subject property is not subject to hazards and does not contain resource lands identified by Washington County. Therefore the petition complies with Metro Code section 3.01.035(c)(3).

Retention of agricultural land. When a petitioner includes land with Agricultural Class I-IV soils designated in the applicable comprehensive plan for farm or forest use, the petition shall not be approved unless it is factually demonstrated that:

(A) Retention of any agricultural land would preclude urbanization of an adjacent area already inside the UGB, or

(B) Retention of the agricultural land would make the provision of urban services to an adjacent area inside the UGB impracticable. Metro Code section 3.03.035(c)(4)

7. The subject property contains Class II soils. However the Washington County comprehensive plan designates the subject property and surrounding non-urban lands as AF-10 (Agriculture & Forest, 10-acre minimum lot size). This is not considered an exclusive farm or forest use designation. Therefore this criterion does not apply.

Compatibility of proposed urban uses with nearby agricultural activities. When a proposed adjustment would allow an urban use in proximity to existing agricultural activities, the justification in terms of this subsection must clearly outweigh the adverse impact of any incompatibility. Metro Code section 3.01.035(c)(5)

8. There are limited agricultural activities on adjacent lands to the north and west of the subject property, a commercial nursery and a Christmas tree farm. A fence on the subject property separates these uses from activities on the subject property. The subject property has been used as a church and park for several years without any significant conflicts with agricultural activities. Based on the historic lack of conflict between the existing urban development and the existing agricultural uses, it can be found that urban development on the subject property will not have a significant adverse impact on existing agricultural activities.

Superiority. [T]he proposed UGB must be superior to the UGB as presently located based on a consideration of the factors in subsection (c) of this section. Metro Code section 3.01.035(g)(2)

9. In prior cases the Council has required a lesser showing of superiority for smaller parcels. See Contested Case 87-04 (Brennt) where the Council concluded that "[f]or a proposed addition to the UGB of 10 acres or less, any improvement at all from the proposed change in relationship to UGB land abutting the addition area is enough of an improvement in the UGB to establish superiority." However the burden of proof is a "sliding scale" which increases with the size of the parcel to be included. See Contested

Case 84-02 (PGE) and the Findings In Support Of Metro Ordinance No. 81-105 (For the Purpose of Establishing Procedures for Locational Adjustments to Metro's Urban Growth Boundary). The subject property contains more than 10 acres. Therefore the facts in Brennt are different enough to conclude that the petition in this case is not justified by any improvement in the UGB.

10. Based on the evidence in the record and the findings above, the proposed UGB is superior to the existing UGB "based on a consideration of the factors in subsection (c) of [section 3.01.035]", because:

a. Approval of the petition results in a net increase in the efficiency of school services to land already within the UGB, provided the applicant accepts a condition of approving requiring the subject property to continue to be used for school purposes as defined by Council.

b. The amendment facilitates needed development on adjacent urban land.

Similarly situated land. The proposed UGB amendment must include all similarly situated contiguous land which could also be appropriately included within the UGB as an addition based on the factors above. Metro Code section 3.01.035(g)(3)

11. There are no manmade or natural geographical boundaries between the subject property and the adjoining properties to the north, west or south. However the subject property, the only AF-10 zoned property in the area, is developed with a church and park/playfields. Adjacent lands are being actively farmed or are developed with low density rural uses. In addition, only the subject property is served by public sewer pursuant to an exception to Statewide Planning Goals 11 and 14. See Exhibit 1, Attachment 18. There is no similarly situated property which could also be appropriately included within the UGB based on the factors above.

[Average Density]. Demonstrate 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 designation for the area. 3.01.035(c)(6)

12. The subject property will be used for church, school and recreational purposes. Therefore this criterion is not applicable to this petition.

[Compliance with the Regional Framework Plan]. Petitions for locational adjustments shall demonstrate compliance with the Regional Framework Plan and implementing policies. 3.01.035(d).

13. The petition complies with the Regional Framework Plan, because the subject property does not contain identified Exclusive Farm Use (EFU) or Open Space lands. The subject property is designated exception land which may be used for purposes other than rural resource production or protection. In addition, urban services are currently provided to the subject property as an exception to statewide planning Goals 11 and 14. Therefore the petition is consistent with the Regional Framework Plan.

C. CONCLUSIONS AND DECISION

The following conclusions are adopted based on the foregoing findings.

1. Public services and facilities, including water, sanitary sewer, storm drainage, transportation, and police and fire protection, can be provided to the subject property in an orderly and economical fashion.

2. The petition complies with Metro Code section 3.01.035(c)(1), because the petition demonstrated that including the subject property in the UGB will result in a net improvement in the efficiency of school facilities and services for properties within the existing UGB, provided the petitioner agrees to be subject to a condition requiring the property to continue to be used for school purposes as defined by the Metro Council.

3. The petition complies with Metro Code section 3.01.035(c)(2), because the petition demonstrated that the proposed addition will facilitate needed development on adjacent existing urban land, subject to the aforementioned condition of approval.

4. The petition complies with Metro Code section 3.01.035(c)(3), because the locational adjustment will have no impact on regional transit corridor development and will not have significant adverse energy, social and environmental consequences.

5. Metro Code section 3.01.035(c)(4) is inapplicable, because the subject property does not include agricultural land

6. The petition complies with Metro Code section 3.01.035(c)(5), because the petition demonstrates that urban uses on the subject property will not conflict with existing agricultural activities.

7. The average density requirement of Metro Code section 3.01.035(c)(6) is inapplicable to this institutional site.

8. The petition does comply with the Regional Framework Plan and implementing policies. Metro Code section 3.01.035(d).

9. The locational adjustment will result in a superior UGB, Metro Code section 3.01.035(g)(2), because it results in a net improvement in school service and facilitates development on adjacent urban land.

10. The petition includes all similarly situated contiguous land outside the UGB, Metro Code section 3.01.035(g)(3).

11. For the foregoing reasons, the Metro Council hereby declares its intention to approve the petition in Contested Case 01-01, subject to applicable requirements of the Metro Code for an ordinance amending the UGB and the following condition:

Before the effective date of an ordinance amending the UGB to include the subject property, the owner of the property shall provide proof that it has filed a covenant in the deeds records for Washington County, in a form acceptable to Metro General Counsel, requiring that the subject property shall continue to provide school services. For purposes of this covenant, "school services" shall be defined to mean "a comprehensive educational program similar to that offered in public pre-school, grade, middle and/or high schools with capacity for 200 or more students. The covenant shall expire automatically when the subject property is surrounded by land in the UGB. The Metro Council or their successors in interest may enforce the covenant. The Metro Council or their successors in interest may approve amendments to or deletion of the covenant if it finds such amendments or deletion continues to assure the use of the subject property will result in a net increase in the efficiency of public services to land already in the UGB when such amendment or deletion is proposed.

An application to amend or delete the covenant shall be subject to applicable fees and standards for a locational adjustment or closest equivalent process at the time of application.

ATTACHMENT "A" TO THE FINAL ORDER
IN THE MATTER OF CONTESTED CASE 01-01 (Christian Life Center):
EXHIBITS

<u>Exhibit No.</u>	<u>Subject matter</u>
1	Petition for locational adjustment and attached exhibits
2	Hillsboro School Dist. Service Provider Comment dated March 7, 2001
3	Tualatin Valley Fire and Rescue Service Provider Comment dated March 20, 2001
4	Letter from M. Weber, Metro, to W. Cox dated March 20, 2001
5	Tri Met Service Provider Comment dated March 26, 2001
6	Letter from Washington County DLUT re pending Service Provider Comment dated March 28, 2001
7	Letter from W. Cox to M. Weber, Metro dated April 2, 2001
8	Letter from W. Cox to Metro Councilor D. Bragdon dated April 2, 2001
9	Unified Sewerage Agency Service Provider Comment dated April 2, 2001
10	Letter from M. Weber, Metro, to W. Cox dated April 9, 2001
11	Metro Staff Report dated June 1, 2001 with attachments
12	Letter from DLCD to L. Epstein dated June 5, 2001
13	Notice of Hearing
14	Letter from A. Rappleyea, Washington County Counsel, to L. Epstein dated July 5, 2001
15	Letter from W. Rienas to L. Epstein dated July 10, 2001
16	Petitioner's Supplemental Information, dated July 23, 2001 and attachments
17	Letter from W. Cox to M. Weber, Metro dated July 23, 2001
18	Addendum to the Metro Staff Report dated August 13, 2001
19	Letter from W. Cox to L. Epstein dated August 27, 2001
20	Letter from Beaverton School District to L. Epstein dated September 5, 2001
21	Letter from W. Cox to L. Epstein dated September 10, 2001
22	Letter from Representative Bruce Starr to L. Epstein dated September 10, 2001
23	Letter from Senator Charles Starr to L. Epstein dated September 10, 2001
24	Washington County Hearings Officer Decision Casefile 96-288-SU/SU/D(INS) dated August 15, 1996
25	Washington County Hearings Officer Decision Casefile 98-206-SU/D(INS) dated August 4, 1998
26	Religious Land Use and Institutionalized Persons Act of 2000

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF EXPRESSING
COUNCIL INTENT TO AMEND THE URBAN
GROWTH BOUNDARY FOR LOCATIONAL
ADJUSTMENT CASE 01-1: CHRISTIAN LIFE
CENTER CHURCH

) RESOLUTION NO. 02-3153
)
)
) Introduced by Mike Burton,
) Executive Officer

WHEREAS, Metro received a petition for a locational adjustment for 13.57 acres located within Washington County at 5585 SW 209th Avenue in Aloha, as shown in Exhibit A;

WHEREAS, Metro staff reviewed and analyzed the petition, and completed a written report to the Hearings Officer, recommending denial of the petition due to insufficient evidence demonstrating that the proposed Urban Growth Boundary (UGB) is superior to the UGB as presently located; and

WHEREAS, Metro held a hearing to consider the petition on June 11, 2001, conducted by an independent Hearings Officer; and

WHEREAS, The Hearings Officer continued the hearing until August 27, 2001, to allow the petitioner to submit additional information; and

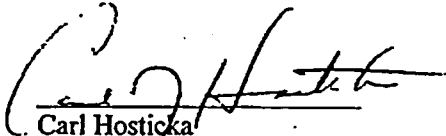
WHEREAS, The Hearings Officer submitted his report on October 11, 2001, recommending approval of the petition for 13.57 acres subject to a condition of approval; now therefore,

BE IT RESOLVED, THAT THE METRO COUNCIL


1. Based on the findings in Exhibit B attached hereto, expresses its intent to adopt an ordinance amending the Urban Growth Boundary as shown in Exhibit A attached hereto, within 30 calendar days of receiving notification that the property has been annexed to Metro, provided such notification is received within six (6) months of the date on which the resolution is adopted, and

2. Approves and endorses the request by the owners of the land and elector residing on the land that the subject property be annexed to Metro.

ADOPTED by the Metro Council this 7th day of February, 2002.


Carl Hosticka
Presiding Officer

Approved as to Form:


Daniel B. Cooper
General Counsel



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BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ANNEXING)	ORDINANCE NO. 02-941
LANDS CONTAINING THE)	
CHRISTIAN LIFE CENTER CHURCH)	
TO THE METRO JURISDICTIONAL)	
BOUNDARY)	
)	Introduced by:
)	Councilor Susan McLain
)	

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 Resolution No. 02-3153 has expressed its intent to adopt an ordinance amending the Urban Growth Boundary to include the territory described in Exhibit A within 30 days of receiving notification that the territory has been annexed to Metro; 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;

1. The territory described in Exhibit A and depicted on the attached map is hereby annexed to the Metro jurisdictional boundary.
2. Pursuant to Metro Code 3.09.050 (f), the effective date of this annexation decision shall be immediately upon adoption of this ordinance.

3. This ordinance is necessary for the immediate preservation of public health, safety and welfare because it is necessary to allow the Council to subsequently change the Urban Growth Boundary in a timely fashion. An emergency is therefore declared to exist, and this ordinance shall take effect immediately, pursuant to Metro Charter Section 39 (1).

ADOPTED by the Metro Council this _____ day of _____ 2002.

Carl Hosticka, Presiding Officer

ATTEST:

Approved as to Form

Recording Secretary

Daniel Cooper, General Counsel

STAFF REPORT

FOR THE PURPOSE OF AMENDING THE URBAN GROWTH BOUNDARY FOR LOCATIONAL ADJUSTMENT CASE 01-1: CHRISTIAN LIFE CENTER CHURCH

Date: April 4, 2002

Prepared by: Tim O'Brien, Planning Department

I. PROPOSED ACTION

Adoption of Ordinance No. 02-944, For The Purpose of Amending the Urban Growth Boundary for Locational Adjustment Case 01-1: *Christian Life Center Church*. The proposed amendment area is shown on Exhibit A.

II. BACKGROUND AND ANALYSIS

On March 15, 2001, the Christian Life Center Church filed a petition for a 13.57-acre locational adjustment to the Urban Growth Boundary (UGB). The site consists of one tax lot in Washington County at 5585 SW 209th Avenue, Aloha. The subject property is zoned AF-10 (Agriculture and Forestry District-10 acre minimum) by Washington County. The site is currently used as a church with associated recreational activities and educational ministries.

The Hearings Officer, Larry Epstein, conducted a public hearing at the Washington County Public Services Building on June 11, 2001. The hearing was continued until August 27, 2001. The Hearings Officer submitted a report and recommendation to Metro on October 11, 2001, recommending approval of the petition subject to a condition of approval. The condition of approval, as recommended by the Hearings Officer is as follows:

Before the effective date of an ordinance amending the UGB to include the subject property, the owner of the property shall provide proof that it has filed a covenant in the deed records for Washington County, in a form acceptable to Metro General Counsel, requiring that the subject property shall continue to provide school services. For purposes of this covenant, "school services" shall be defined to mean "a comprehensive educational program similar to that offered in public pre-school, grade, middle and/or high schools with capacity for 200 or more students. The covenant shall expire automatically when the subject property is surrounded by land in the UGB. The Metro Council or their successors in interest may enforce the covenant. The Metro Council or their successors in interest may approve amendments to or deletion of the covenant if it finds such amendments or deletion continues to assure the use of the subject property will result in a net increase in the efficiency of public services to land already in the UGB when such amendment or deletion is proposed. An application to amend or delete the covenant shall be subject to applicable fees and standards for a locational adjustment or closest equivalent process at the time of application.

III. PREVIOUS COUNCIL ACTION

On February 7, 2002, the Metro Council adopted Resolution No. 02-3153, expressing its intent to amend the Urban Growth Boundary within 30 days of receiving notification that the property has been annexed to Metro, provided such notification is received within six (6) months of the date on which the resolution is adopted.

On April 18, 2002, the Metro Council adopted Ordinance No. 02-941, for the purpose of annexing lands containing the Christian Life Church to the Metro jurisdictional boundary.

IV. BUDGET IMPACT

There is no budget impact from adopting this ordinance.

Agenda Item Number 9.1

Resolution No. 02-3190, For the Purpose of Authorizing the Executive Officer to Execute an Amended and Full Restated Agreement with the Oregon Zoo Foundation.

**Metro Council Meeting
Thursday, May 9, 2002
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE)
EXECUTIVE OFFICER TO EXECUTE AN)
AMENDED AND FULLY RESTATED)
AGREEMENT WITH THE OREGON ZOO)
FOUNDATION)

RESOLUTION NO. 02-3190

Introduced by Executive Officer Mike Burton

WHEREAS, The Oregon Zoo Foundation is a tax exempt non-profit Oregon corporation organized and operated exclusively for charitable, scientific, and educational purposes permitted by Section 501c(3) of the Internal Revenue Code of 1986; and

WHEREAS, the exclusive purpose of The Oregon Zoo Foundation is to support and benefit The Oregon Zoo, a Metro owned and operated facility; and

WHEREAS, Metro and The Oregon Zoo Foundation desire to define their mutual roles, rights, and responsibilities in accordance with the Amended and Fully Restated Agreement attached as Exhibit A; now therefore

BE IT RESOLVED that the Metro Council authorizes the Executive Officer to execute Exhibit A.

ADOPTED by the Metro Council this ____ day of ____, 2002

Carl Hosticka, Presiding Officer

APPROVED AS TO FORM:

Daniel B. Cooper, General Counsel

AMENDED AND FULLY RESTATED AGREEMENT

This Agreement, dated March 29, 1985, amended as of November 28, 1989 and April 2, 1997, and amended and fully restated as of May 9, 2002, is between Metro (formerly Metropolitan Service District) and the Oregon Zoo Foundation (formerly Friends of the Washington Park Zoo).

Metro and the Oregon Zoo Foundation ("Foundation") agree that the March 29, 1985 Agreement is amended and restated as follows:

RECITALS

Metro, a municipal corporation, maintains and operates the Oregon Zoo, formerly the Washington Park Zoo (Zoo), pursuant to Oregon law.

Foundation is a tax-exempt non-profit Oregon corporation organized to encourage and aid the development of the Zoo as an educational and recreational center and to provide citizen support for the Zoo.

The purpose of this agreement is to define the relationship between Metro and Foundation in regard to their duties and purposes with respect to the Zoo.

Metro and Foundation, in consideration of their promises to each other as outlined below, agree to the following terms:

1. Term of Agreement. This amended agreement will become effective when signed by both parties and will continue in force until terminated by either party.
2. Termination of Agreement. This agreement may be terminated by either party without cause by giving no less than 30 days written notice. The 30-day period begins to run on the date written notice is received.
3. Amendments. This agreement may be amended at any time by a written agreement signed by both parties.
4. Duties of Foundation. During the term of this agreement, Foundation shall:
 - a. Raise significant funding for the Zoo in consultation with the Zoo Director.
 - b. Recruit a broad-based membership in the Foundation from throughout Oregon and Southwest Washington.
 - c. Develop general community support for the Zoo.

- d. Promote volunteer participation at the Zoo.
- e. Maintain a provision in its Articles of Incorporation that, upon dissolution of Foundation, all assets of Foundation will be distributed to the Zoo or its tax-exempt successor. Assets may be subject to restrictions as provided in Section 7d.
- f. Upon termination of this agreement, distribute to the Zoo or its tax-exempt successor all restricted assets raised for the benefit of the Zoo, and all sums owed the Zoo, cease using the Oregon Zoo name, and cease representing the Zoo in fund raising activity.
- g. Include on its Board two Metro Councilors ex-officio appointed by the Council Presiding Officer or Council President, and the Zoo Director, ex-officio, all of whom shall be ex-officio non-voting members and shall not be counted for purposes of calculating the Foundation Board quorum and voting requirements.
- h. Perform such other services to benefit the Zoo as agreed to by the parties, provided that Foundation will not do anything inconsistent with its status as a tax-exempt, non-profit corporation.
- i. Undertake the above activities at the expense of Foundation, and in cooperation with the Zoo staff, except as provided below or as otherwise agreed to by the parties.
- j. The Foundation shall purchase and maintain at Foundation's expense, the types of insurance listed below covering Foundation, its employees and agents. The Foundation shall provide Metro with a certificate of insurance complying with this article within thirty (30) days of executing this Agreement. Notice of any material change or policy cancellation shall be provided to Metro thirty (30) days prior to change.
 - (1) Comprehensive General Liability policy with the Broad Form Comprehensive General Liability endorsement providing coverage against claims for bodily injury or death and property damage occurring in or upon or resulting from the facilities licensed hereunder, such insurance to offer immediate protection to the limit of not less than \$1,000,000 and such insurance shall include Blanket Contractual Liability coverage as set forth below:
 - (i) Worker's Compensation insurance providing coverage for Oregon statutory requirements;

- (ii) Employer's Liability Insurance with limits not less than \$1,000,000 each accident;
- (2) Non-Profit Directors and Officers Insurance to protect the directors, officers and board members (past, present, and future) of the organization. Coverage shall include employment practices liability coverage, which must also include employees as insureds.
- (3) Comprehensive General Liability policy required by this Agreement shall name as additional insureds Metro, its elected officials, departments, employees and agents.

5. Duties of Metro. During the term of this agreement Metro shall:

- a. Metro grants permission to Foundation to use its name, "The Oregon Zoo" in the Foundation's name and fund raising materials.
- b. Assist the Foundation in performing its duties, including assisting with membership drives, newsletters, annual reports and such other matters as the parties shall agree.
- c. Provide annual Zoo passes and Zoo gift shop discounts for Foundation members who have been issued individual, numbered and dated annual membership cards.
- d. Provide reciprocal Zoo admission for members of recognized societies formed under the auspices of a national and/or international zoos.
- e. Provide space at the Zoo for Foundation meetings, staff offices, a membership booth, and other space as agreed by the parties, provided that the Foundation pays the costs of equipment, supplies, and telephones associated with using the spaces provided.
- f. Provide access to the Zoo for a reasonable number of annual events for Foundation members. The nature and dates of these events shall be determined by the parties' mutual agreement and in coordination with the Zoo Director and staff.
- g. The Council Presiding Officer or Council President shall appoint two Metro councilors to serve as members of the Foundation Board, as provided in Section 4g.

- h. The Zoo Director shall serve as non-voting ex-officio member of the Foundation Board.
- i. Permit the Foundation to obtain insurance benefits for Foundation staff through the Metro benefits office, provided the cost of the insurance is paid by the foundation, and further provided that the practice is approved by Metro's insurance providers. The Foundation acknowledges that the Metro group health plan is a governmental plan not subject to the Employee Retirement Income Security Act (ERISA), as amended.

6. Coordination Between Metro and Foundation. Metro and Foundation will coordinate their efforts to accomplish their goals and purposes as effectively as possible. Specifically:

- a. The Foundation, in consultation with the Zoo Director, shall adopt and publish an annual operating budget before the beginning of each fiscal year. Before final adoption of its annual operating budget, the Foundation shall forward a copy to Metro so that Metro may consider the proposed budget in conjunction with Metro's budget for the Zoo. The Foundation shall review its budget at least quarterly.
- b. The Foundation, in consultation with the Zoo Director, shall adopt and publish an annual report, including a financial statement audited by an independent auditor, on or before September 30 of each year.
- c. Foundation and the Zoo Director shall meet at least once each calendar quarter to set goals, evaluate past and pending projects, and review financial matters with respect to Foundation.
- d. Solicitation of grant funds from specific sources shall be made by agreement between the Zoo Director and the Foundation.
- e. The Zoo Director shall perform the duties of Executive Director of the Foundation under the direction and control of the Foundation Board of Directors.
 - (1) The Zoo Director shall continue to be an employee of Metro, and Metro shall provide the Zoo Director with the salary and benefits of that position. The Zoo Director shall receive no additional compensation from Foundation.
 - (2) Metro shall provide the Zoo Director with Workers' Compensation insurance coverage for tasks undertaken pursuant to this Agreement.

- (3) Foundation shall defend, indemnify, and hold Metro, the Oregon Zoo, their agents, elected and appointed officials, and employees, (the Indemnitees) harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorneys' fees, arising out of or in any way connected with the Zoo Director's performance of the duties of Executive Director of the Foundation. In the event that Foundation refuses or fails to defend as required herein, the Indemnitees may, at their sole option, settle or defend any claims and Foundation shall, upon demand, pay the full costs of any settlement, judgment, or defense, including all expenses and attorneys' fees.
- f. The Foundation and the Zoo shall coordinate their efforts to build community support for the Zoo. The Zoo Director shall ensure that public information materials routinely identify the Zoo's affiliation with Metro in a manner which is consistent with Metro standards.
- g. It is the intention of the parties that the Foundation not be a Metro component unit or affiliated organization as those terms are used by the Governmental Accounting Standards Board (GASB). In the event the Foundation is determined to be an affiliated or component organization under GASB standards, the parties agree to negotiate and implement such additional accounting and fiscal control measures as may reasonably be required by Metro's independent auditors.
- h. It is understood and agreed between the parties that nothing in this agreement shall constitute or be construed to be an employment, partnership, joint venture, or joint employer relationship between Metro or the Zoo on the one part and the Foundation on the other part.
- i. **Indemnification**
- (1) Foundation shall defend, indemnify and hold harmless Metro, the Oregon Zoo and their officers, agents and employees, against all loss, damage, expenses, judgments, claims and liability, whether arising in tort, contract or by operation of any statute or common law, arising out of the Foundation's performance of, or failure to perform, this Agreement.
- (2) Metro shall defend, indemnify and hold harmless the Foundation and its officers, agents and employees, against all loss, damage, expenses, judgments, claims and liability, whether arising in tort, contract or by operation of any statute or common law, arising out of or in any way connected to Metro's performance of, or failure to perform, this Agreement, subject to the limitations and conditions of the Oregon Constitution and the Oregon Tort Claims Act, ORS Chapter 30.
- (3) The foregoing indemnification, defense, and hold harmless provisions are for the sole and exclusive benefit of the Foundation, Metro, and the Oregon Zoo and their respective officers, employees, and agents, and are not intended, nor shall they be construed, to confer any rights on or liabilities to any person or persons other than Metro, the Oregon Zoo, Foundation and their respective officers, employees and agents.

j. Each party hereby waives any and every claim during the terms of this Agreement or any extension or renewal thereof for any loss or damage covered by an insurance policy to the extent that such loss or damage is recovered under said insurance policy. Inasmuch as the waiver will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person) the parties are advised to give each insurance company written notice of terms of such waiver, and to have insurance policies properly endorsed, if necessary.

7. Allocation of Membership Fees, Donations, and Contributions. As additional consideration for Metro's obligations, the Foundation will pay the Zoo the following amounts:

- a. From the fees received for Foundation annual memberships, an amount to be agreed upon periodically between the parties to reimburse Metro for the cost of (1) annual passes and gift shop discounts for Foundation members and for the cost of complementary admissions for members of other zoos. By the end of each month the Foundation will pay the agreed amount to the Zoo for the membership fees received during the previous month. The funds shall be received by the Zoo as unrestricted revenue.
- b. The Foundation will deposit all funds it receives from any source, unless otherwise directed by the donor, to the bank account of the Oregon Zoo Foundation. The Foundation Board will determine the disposition of these funds consistent with the terms of this agreement, the annual operating budget, and fiscally sound investment principles. Except as provided in Paragraph 7.a. above, the Board may continue to hold and invest such funds until Metro requests payment for a mutually agreed purpose consistent with this agreement and any restrictions imposed by the donor.
- c. Upon request, the Foundation shall make payment within 15 days to Metro of restricted funds held by the Foundation for the Zoo in accordance with the terms agreed to between the parties, on a project by project basis. Funds released prior to the incurring of expenditure obligation will be in accordance with a project budget submitted by the Zoo and will be subject to status reporting and final reconciliation by the Zoo.
- d. The Foundation shall not accept contributions that involve restrictions pertaining to the Zoo without the advance approval of the Zoo Director. The Zoo Director may accept or reject contributions that involve restrictions.

The Signature of the Foundation Chair below is duly authorized by the Foundation Board of Directors.

METRO

OREGON ZOO FOUNDATION

By: _____
Executive Officer

By: _____
Chair

Date: _____

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 02-3190, FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE AN AMENDED AND FULLY RESTATED AGREEMENT WITH THE OREGON ZOO FOUNDATION

Date: April 25, 2002

Prepared by: Pete Sandrock

BACKGROUND

In 1985 Metro executed an Agreement with the Friends of the Washington Park Zoo (Friends), a tax-exempt non-profit Oregon corporation established to conduct fund raising for the Zoo's capital campaign and to develop general community support for the Zoo. In 1997 the parties amended the original Agreement to provide that the Zoo Director would also serve as the Executive Director of the Friends. In that same year the Friends changed its name to The Oregon Zoo Foundation. The parties now desire to update and clarify their roles, rights, and responsibilities as set forth in Exhibit A, the Amended and Fully Restated Agreement.

ANALYSIS/INFORMATION

1. **Known Opposition.** None. The Board of Directors of the Oregon Zoo Foundation (OZF) has approved the Amended and Fully Restated Agreement.
2. **Legal Antecedents.** The proposed agreement amends and restates the original 1985 agreement as amended in 1997.
3. **Anticipated Effects.**
 - a. **Amend and restate.** The new agreement replaces the old agreement but includes significant differences.
 - b. **Term and termination.** The new agreement will remain in effect until terminated by either party on 30 days written notice.
 - c. **Foundation duties:**
 - The Foundation's first duty is to "raise significant funding" for the Zoo.
 - The Foundation's Board of Directors will include two Metro councilors, nominated by the Metro Presiding Officer/President, and the Zoo Director. The councilors and Zoo Director will serve as ex-officio non-voting board members.
 - d. **Metro duties:**
 - Metro, acting through The Oregon Zoo, will assist OZF with membership drives, newsletters, annual reports, etc.
 - Metro, acting through The Oregon Zoo, will provide passes and gift shop discounts to OZF members subject to a fee to be paid by the Foundation. The amount of the fee will be "agreed upon periodically" by the parties. The current fee is \$18.75 per membership per year (approximately thirty-three thousand members).
 - Metro, acting through The Oregon Zoo, will rent office space, equipment, telephones, and supplies to OZF.

- Metro will provide health insurance benefits for OZF provided that OZF pays Metro for the cost of the benefit.
- e. **Coordination:**
- Before adopting its annual operating budget, OZF shall forward a copy to Metro so that the Council may consider OZF's proposed budget in conjunction with Metro's budget for the Zoo.
 - OZF will publish an independently audited financial statement by September 30th of each year.
 - The Zoo Director will continue to serve without compensation as OZF's Executive Director.
 - The Zoo Director will ensure that public information materials routinely identify the Zoo's affiliation with Metro in a manner that is consistent with Metro standards (the Foundation is not required to identify the Zoo's affiliation with Metro in fund raising solicitations to targeted donors).
- f. **Fees, donations, and contributions:**
- Fees paid by OZF for passes and discounts shall be received by the Zoo as unrestricted revenue.
 - OZF will not accept donor-restricted contributions without the prior approval of the Zoo Director. OZF will hold and invest unrestricted donations until Metro requests payment for a mutually agreed purpose.

4. **Budget Impacts.** None.

RECOMMENDED ACTION

The Executive Officer recommends that the Council adopt Resolution 02-3190.

MINUTES OF THE METRO COUNCIL MEETING

Thursday, May 2, 2002
Gresham Council Chamber

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

Councilors Absent:

Presiding Officer Hosticka convened the Regular Council Meeting at 1:42 p.m.

1. INTRODUCTIONS

Councilor Park introduced Mayors Charles Becker, Roger Vonderharr, and David Fuller. He welcomed the audience.

2. CITIZEN COMMUNICATIONS

There were none.

3. MAYORAL WELCOME

Mayor Becker welcomed everyone to East County. He felt that the opportunity to have Metro Council presence was important. He recognized how well all of the cities worked together in implementing the planning for their area, they all treasured local control. He thanked the Council for their action yesterday at the Metro Natural Resources Committee approving Resolution No. 02-3187. He noted the assets for the partnership between Gresham and Metro concerning the Hogan Butte property.

Presiding Officer Hosticka said the Council tried to visit the region regularly, the Council had just been in Forest Grove last month.

4. MT. HOOD COMMUNITY COLLEGE DISTRICT BOND MEASURE

Dr. Robert Silverman, President of Mt. Hood Community College, spoke of the partnership they had just celebrated. They brought together two cities, a community college and a regional council. He noted the beauty of this area, the economic plan for the area and planning for the future. The college supported the regional efforts. He talked about the college's mission, direction and dedication to the area.

Fred Bruening, Friends for Mt Hood Community College Chair, talked about the community college and its educational advantages. He spoke to the spirit of community in East County. He talked about the college, its assets and needs. Mt. Hood Community College was asking the citizens of the area to support a bond for needed improvement of existing facilities and to provide a new university center which provided an added level of education for the area. There were eight universities that had requested participation in the center. There would also be an investment in a new allied health and biotechnology center. This public-private partnership provided many opportunities. It was a 68.4 million dollar bond. The challenge was that they must get a 50% voter

turn out in the primary for the bond measure to pass. He thanked the Council for expanding their vision to support education.

Councilor McLain thanked Dr. Silverman and Mr. Bruening for their involvement in education. She noted that for the past 35 years MHCC had hosted statewide debates.

Presiding Officer Hosticka introduced the Metro Council and the districts they represented.

Councilor Atherton acknowledged their conversations at the MHCC luncheon and thanked Mt. Hood Community College for its efforts in education and as part of the community.

Councilor Monroe said he was pleased that the Beaver Creek area was part of this area and talked about his hiking experience in the area. He stressed the importance of expanding lightrail to Mt. Hood Community College. Dr. Silverman supported the concept of lightrail to MHCC as well.

Councilor Park suggested that Mr. Bruening talk about his recent project. Mr. Bruening presented the second phase of Gresham Station, which included office space, retail, mixed-use development, and residential housing. This phase would represent the cooperation with the community. He acknowledged Metro and Phil Whitmore's efforts in supporting this vision. Councilor Park suggested that people think about the environment, the economy and education and how they tied together. They were creating a future livable community with friendly competition among the cities. Councilor McLain added her thanks. Presiding Officer Hosticka spoke to Mr. Bruening's other contributions to Gresham and to the region.

5. ECONOMIC DEVELOPMENT STRATEGY

Max Talbot, Director of Economic Development for Gresham, thanked Councilor Park for his efforts. He presented a power point presentation (a copy of this presentation is included in the meeting record) on the economic development in Gresham. He talked about the rapid growth in the area both due to in-migration and annexation. He talked about past, current and future housing growth. He reviewed the Pleasant Valley Master Plan. The area would allow for additional housing growth. He also noted the diversity of the population. He reviewed the employment issues in the area and talked about the low jobs to housing ratio. He spoke to the impacts of companies pulling out of the area such as Fujitsu. There was a need to have suitable land to address the jobs to housing issues. One of the challenges was providing suitable industrial lands. He talked about Gresham's contribution to the region and what was needed to improve the area. He also talked about Gresham's aspiration and specific needs. He acknowledged Councilor Park's contribution and leadership in the area.

Councilor Burkholder asked about tax based approaches. Mr. Talbot said the preference would be to have the jobs so they had a balance in the community.

6. OREGON SCIENCE AND TECHNOLOGY PARK

Hiroshima Morihara, President of Oregon Science and Technology Park (OSTP) talked about the economic situation of the area. They were doing something positive for the community. They needed to have the jobs to support the four-year degree graduates. He talked about the education and economic development plan. He then showed a video of OSTP. He noted that the Center for Advance Learning was part of Gresham Station. Councilor Burkholder asked what the next steps were. Mr. Morihara said the bond approval was the next step. He acknowledged the partnerships

that brought this idea together. Councilor Park acknowledged Mr. Morihara's contribution and the need for higher education in this part of the region.

7. TRANSPORTATION MANAGEMENT ASSOCIATION IN EAST COUNTY

Bill Barber, Planning Department, introduced Owen Ronchelli, Transportation Management Association in East County and Cathy Everett, Downtown Development Association. He introduced other members of the Transportation Management Association in East County. Cathy Everett and Owen Ronchelli thanked the Council for their support and participation in the TMA efforts. Mr. Ronchelli talked about the creation of the TMA in East County, Gresham Regional Center TMA and gave a power point presentation on East County TMA. He talked about the stakeholders, the challenges, and the necessary partnerships. He said that they were close to completing their first year of their grant. He went over the work plan elements, parking management, new supplies for parking, future supply, and the needed pedestrian connections. The highlight of the program was to improve transit. He spoke to the accomplishments to date and common goals.

Councilor Monroe applauded the work. He talked about the Lloyd Center TMA and its success. He explained the MTIP federal funding process that supported TMAs.

Mr. Rob Fussell, Gresham City Manager, wrapped up by saying their cup was half full. There was a blend between the old and new. He talked about the financial constraints of the area. He spoke to future work and plans for the area. He thanked Councilor Park for his efforts. He spoke to the beauty of the Beaver Creek area.

8. EXECUTIVE OFFICER COMMUNICATIONS

Mike Burton, Executive Officer, thanked Mayor Becker and Gresham Council for the opportunity to host a Metro Council meeting. He then briefed the Council about the proposed Bull Run Regional Drinking Water Agency and suggested they have further conversation about this issue next week (a copy of the documents are included in the meeting record).

9. CONSENT AGENDA

9.1 Consideration of minutes of the April 25, 2002 Regular Council Meeting.

Motion	Councilor Atherton moved to adopt the meeting minutes of the April 25, 2002, Regular Council meeting. Councilor Burkholder seconded the motion.
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Vote:	Councilors Bragdon, Atherton, Monroe, Park, Burkholder, McLain and Presiding Officer Hosticka voted aye. The vote was 7 aye, the motion passed.
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10. ORDINANCES – FIRST READING - QUASI-JUDICIAL PROCEEDING

10.1 Ordinance No. 02-944, For the Purpose of Amending the Urban Growth Boundary for the Locational Adjustment Case 01-1; Christian Life Center Church.

Presiding Officer Hosticka assigned Ordinance No. 02-944 to Council.

11. RESOLUTIONS

11.1 Resolution No. 02-3180, For the Purpose of Confirming Marilyn Matteson and Brian Williams to the Metro 401(k) Employee Salary Savings Plan Advisory Committee.

Motion	Councilor Bragdon moved to adopt Resolution No. 02-3180.
Seconded:	Councilor Burkholder seconded the motion

Councilor Bragdon explained the purpose of the 401K Employee Salary Savings Plan Advisory Committee. He said Ms. Matteson and Mr. Williams had volunteered to serve. He urged an aye vote.

Vote:	Councilors Park, Burkholder, McLain, Bragdon, Atherton, Monroe, and Presiding Officer Hosticka voted aye. The vote was 7 aye, the motion passed.
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11.2 Resolution No. 02-3182, For the Purpose of Appointing John Milliken to the Metro Committee for Citizen Involvement (MCCI).

Motion	Councilor Burkholder moved to adopt Resolution No. 02-3182.
Seconded:	Councilor McLain seconded the motion

Councilor Burkholder talked about Mr. Milliken's credentials to serve on MCCI, a 27 member committee which has representatives from all of the districts. He explained MCCI's citizen involvement role. Mr. Milliken was a District 5 representative. He urged support.

Vote:	Councilors Burkholder, McLain, Bragdon, Atherton, Monroe, Park and Presiding Officer Hosticka voted aye. The vote was 7 aye, the motion passed.
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11.3 Resolution No. 02-3183, For the Purpose of Revising Regional Transportation Management Association (TMA) Policy to Provide Additional Regional Funding Options for TMAs.

Motion	Councilor Atherton moved to adopt Resolution No. 02-3183.
Seconded:	Councilor Bragdon seconded the motion

Councilor Atherton said this resolution would revise the Transportation Management Association (TMA) policy to provide additional funding for TMAs. He noted the recent presentation on the Gresham TMA. He spoke to the goals of TMAs and the need to have broader funding strategies. He said that Bill Barber, Planning Department, could respond to the specifics. The Transportation Committee unanimously approved the resolution.

Councilor Bragdon said this was a great balanced program. It allowed a lot of creativity on the part of local communities and as well as providing measures of performance.

Councilor Monroe reviewed how federal dollars flow into the region through JPACT. A significant portion of the money that came through JPACT had to be used for air quality, CMAQs, which were projects determined to increase air quality. He explained how TMAs worked.

Councilor McLain said Gresham was a model TMA. She talked about other models in the region.

Councilor Atherton closed by saying that this measure would produce more rigorous performance measures and create a competitive environment between the TMAs for limited resources. He urged support.

Vote:	Councilors McLain, Bragdon, Atherton, Monroe, Park, Burkholder, and Presiding Officer Hosticka voted aye. The vote was 7 aye, the motion passed.
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11.4 Resolution No. 02-3187, For the Purpose of Authorizing the Executive Officer to Contribute Toward the Purchase of Properties on Hogan Butte in the East Buttes / Boring Lava Domes Target Area.

Motion	Councilor Park moved to adopt Resolution No. 02-3187.
Seconded:	Councilor Bragdon seconded the motion

Councilor Park said Mike Burton, Executive Officer, would brief the council on this resolution. Presiding Officer Hosticka reviewed the process for this resolution and noted opportunity for public testimony.

Mr. Burton thanked Councilor Park and Presiding Officer Hosticka for co-sponsoring the resolution. He talked about the significant growth in the area and the need for balancing this growth with open spaces. He said this resolution brought a unique opportunity that brought in federal money and a match level that was unprecedented. Jim Desmond, Open Spaces Program, showed the council where the Freeman parcel was on the map and the other parcels that had already been purchased. He noted Metro's 20% investment with an 80% federal match if the Trust for Public Land was successful in securing the Forest Legacy funds.

Mr. Burton talked about the investment, the remaining acquisitions and the need to preserve a significant forested area. The Trust for Public Lands has a secure option to purchase the 49-acre Freeman property. He acknowledged local support. He explained the Metro local match and the federal funds necessary for purchase. He urged Council's support for this acquisition and reviewed the timeline for purchase.

Presiding Officer Hosticka opened a public hearing on Resolution No. 02-3187.

Ed Labinowicz, Gresham Butte Neighborhood Association, 1326 SE Linden Ct., Gresham, OR 97080 spoke in favor of the resolution. He talked about the investment of this property which protecting forestland for its recreational and aesthetic livability values as well as investing in the environmental, health and economic stability of the region. He noted savings to the future storm water management costs, future health care costs and future energy costs. He talked about the contribution of tree canopy to the economy. He gave a presentation on the value of trees as storm water managers. This was a unique opportunity at a minimal investment.

Presiding Officer Hosticka noted Mr. Labinowicz testimony at the Natural Resources Committee.

Councilor McLain stated that they were trying to make the storm water issue the smallest problem they can. She acknowledged the need for these connections.

Alice Nielsen, 3885 SE Augusta Place, Gresham, OR 97080, thanked council for their support. She talked about her involvement in property management and encouraged Council to seize this opportunity to use this property as an open space.

Stephanie Nystrom, President of the Gresham Butte Neighborhood Association, 1103 SE 21st Ct. Gresham, OR 97080 said they had benefited greatly from Metro's efforts to preserve the East Buttes area. They supported Metro's efforts in acquiring and preserving open spaces. Hogan Butte purchase was an incredible opportunity to preserve 50 acres. She acknowledged the Council contribution to this effort as well as local and federal contributions. She urged passage of this resolution today. The Council was keeping the dream alive.

Councilor McLain thanked Ms. Nystrom as one of the 1000 volunteers and stewards. They were the real heroes. Councilor Park appreciated Ms. Nystrom's doggedness and creativity. He applauded her efforts. Councilor Atherton asked Ms. Nystrom what the property was zoned for. Ms. Nystrom responded low density residential.

Presiding Officer Hosticka closed the public hearing.

Councilor Bragdon said Mr. Burton had said that, in this instance there wasn't a local match, but the citizens had put in hours and hours of volunteerism. He felt that commitment counted for an awful lot. He acknowledged the City of Gresham's partnership as well as the leadership in putting this deal together.

Councilor Burkholder said the Metro Council had passed a resolution that supported equitability in the region. He supported the purchase and explained why.

Councilor Monroe said he had explored this area with his brothers both by bike and by foot. He noted the partnerships and the need to preserve the area.

Councilor Park closed by thanking Mr. Burton, staff, the Presiding Officer, the neighborhoods and the city of Gresham for helping keep this idea alive. He acknowledged Mr. Desmond's and Mr. Ciecko's efforts as well as other Metro staff. This was a good example of what happened when elected officials worked with citizens, it was a win-win situation.

Vote:	Councilors Bragdon, Atherton, Monroe, Park, Burkholder, McLain and Presiding Officer Hosticka voted aye. The vote was 7 aye, the motion passed.
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12. COUNCILOR COMMUNICATION

Councilor Park thanked everyone for spending time in the east Metro part of the region. He hoped to be back next year to look at future projects.

Presiding Officer Hosticka said the Council would be continuing their activities with a tour of some of the neighboring areas.

13. ADJOURN

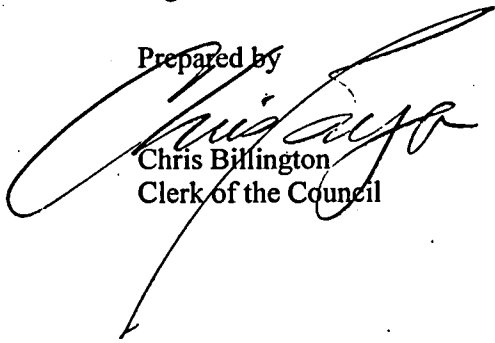
There being no further business to come before the Metro Council, Presiding Officer Hosticka adjourned the meeting at 3:58 p.m.

Metro Council Meeting

05/02/02

Page 7

Prepared by

A large, stylized handwritten signature in black ink, which appears to read "Chris Billington". The signature is written over the printed name and title.

Chris Billington

Clerk of the Council

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF MAY 2, 2002

ITEM #	TOPIC	DOC DATE	DOCUMENT DESCRIPTION	DOC. NUMBER
9.1	MINUTES	4/25/02	METRO COUNCIL MINUTES OF APRIL 25, 2002 SUBMITTED FOR APPROVAL	050202c-01
11.2	COMMITTEE REPORT	4/29/02	GOVERNMENTAL AFFAIRS COMMITTEE REPORT ON RESOLUTION NO. 02-3182 PRESENTED TO METRO COUNCIL BY JOHN HOUSER, COUNCIL ANALYST	050202c-02
11.1	COMMITTEE REPORT	4/29/02	GOVERNMENTAL AFFAIRS COMMITTEE REPORT ON RESOLUTION NO. 02-3180 PRESENTED TO METRO COUNCIL BY JOHN HOUSER, COUNCIL ANALYST	050202c-03
11.4	HOGAN BUTTE MATERIALS	5/2/02	PERSIMMON NEIGHBORHOOD LAST CHANCE TO SAVE HOGAN BUTTE MATERIALS PRESENTED TO METRO COUNCIL CONCERNING RESOLUTION No. 02-3187	050202c-04
11.4	LETTER RE: HOGAN BUTTE	5/2/02	LETTER AND 2 PICTURES FROM JEANINE HILL SUPPORTING RESOLUTION No. 02-3187	050202c-05
11.4	EMAIL RE: HOGAN BUTTE	4/30/03	EMAIL FROM JOHN HARROLD TO METRO COUNCIL SUPPORTING RESOLUTION No. 02-3187	050202c-06
5	POWER POINT PRESENT. AND MATERIALS	5/2/02	CITY OF GRESHAM POWER POINT PRESENTATION AND PACKET OF INFO ON KEY INDICATORS REGIONAL CONTRIBUTIONS ASPIRATIONS AND NEEDS TO METRO COUNCIL	050202c-07
8	BULL RUN REGIONAL DRINKING WATER AGENCY PROPOSAL	5/2/02	MIKE BURTON PRESENTATION MATERIALS ON PROPOSED BULL RUN REGIONAL DRINKING WATER AGENCY PROPOSAL SCHEDULE, WORKING GROUP MEMBERSHIP, CHARGES AND CRITERIA	050202c-08

NORTHWEST ENVIRONMENT WATCH

SPRAWL AND SMART GROWTH IN METROPOLITAN PORTLAND:

Comparing Portland, Oregon, with Vancouver, Washington during the 1990s

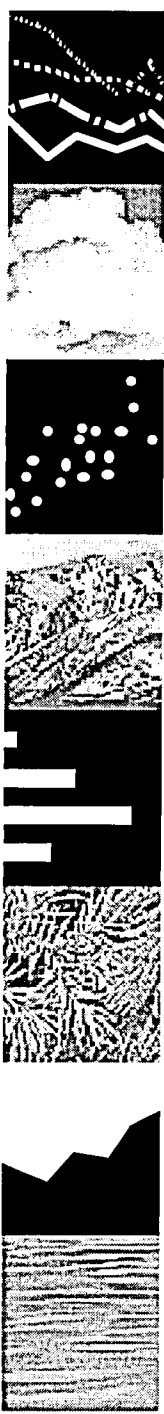
By Northwest Environment Watch
May 9, 2002

I. EXECUTIVE SUMMARY

Greater Portland sits astride the border between two states, each with its own approach to growth management. During the 1990s, the Oregon side of the metropolitan area safeguarded rural lands and "grew smart," by encouraging compact, efficient communities. But neighboring Vancouver, Washington, and its Clark County environs, sprawled outward in car-dependent tracts. As this analysis of US Census data and satellite imagery details, few places in North America illustrate more clearly the consequences of different planning regimes.

During the 1990s:

- The population of greater Portland—which includes Multnomah, Washington, and Clackamas Counties, Oregon, and Clark County, Washington—grew faster than the population of many Third World megacities, adding 376,000 new residents during the decade for a total of just under 1.8 million. This growth overran roughly 8 acres of farmland and open space each day. It also clogged the region's roads with worsening traffic congestion. But the paths of the Oregon and Washington parts of the metropolis diverged.
- In the Oregon counties, total population increased by 270,000, and the number of people living in compact neighborhoods (defined as 12 or more people per acre) increased by 141,000. These compact neighborhoods foster public transit and encourage shorter car trips by keeping destinations closer together. Compact neighborhoods also consume less open space per resident.
- In Washington's Clark County, population grew by 106,000, and the number of residents in low-density, sprawling areas increased by 78,000. Per capita, Clark County converted about 40 percent more land from rural to suburban population densities than did the Oregon counties. And by the end of the period, Clark County's residential areas had partially or fully paved over 23 percent more land per resident than the Oregon counties.
- If the Oregon counties had grown in the pattern of Clark County, suburban development would have overtaken an extra 14 square miles of farmland and open space—an area roughly twice that of Forest Park.
- The major difference between Clark County's sprawl and Oregon's smart growth was Portland's growth management policies, which protect open space and foster compact communities.



II. METHODS AND ANALYSIS

To examine the consequences of differing growth-management regimes, Northwest Environment Watch (NEW) examined population and land-use trends in greater Portland between 1990 and 2000. Researchers at NEW and CommEn Space, with whom NEW contracted for GIS and remote-sensing research, analyzed data from the 1990 and 2000 US Censuses and from satellite images from NASA's Landsat. In this analysis, we define "greater Portland" as Multnomah, Washington, and Clackamas Counties in Oregon, and Clark County, in Washington. All 24 cities that make up Portland Metro—the regional planning body under Oregon law—are included in this region, as are the urban and suburban areas surrounding the Washington State cities of Vancouver, and Camas.

NEW and CommEn Space analyzed data for each census block—typically corresponding to a single city or suburban block—in the four-county region, except for small portions of Clackamas County located in US national forests. We calculated local population densities for each location by determining the population density of the smallest circle containing at least 500 residents—a proxy for a neighborhood.

NEW and CommEn Space also analyzed Landsat satellite images from 1989 and 1999 to determine the extent to which impervious surface covered the Portland-area landscape. We relied on a texture analysis of the Earth's surface from Landsat images to measure impervious surface at two thresholds: partially impervious, where roughly 15 percent or more of the landscape is covered by roads, buildings, and other hard, built surfaces; and fully impervious, where at least 80 percent of the landscape is covered by such surfaces. We spot-checked our conclusions against aerial photographs available at www.mapquest.com and confirmed that our analysis of Landsat images was reliable.

These two data sets—population and built surfaces—provided a variety of ways of measuring growth in greater Portland.

III. RAPID POPULATION GROWTH

During the 1990s, greater Portland's four counties added people at a very rapid rate: about 4 new residents every hour, or more than 100 new residents a day. Overall, the Portland region added 376,000 new residents during the decade, as the region's population swelled from 1.4 to nearly 1.8 million.

This growth translates to an annual growth rate of 2.4 percent during the 1990s—about double the US rate and faster than that of many of Third World megacities. Portland grew faster than Cairo, Egypt; Jakarta, Indonesia; and Rio de Janeiro, Brazil.¹

Table 1. Portland's annual population growth rate rivaled rates of many Third world megacities

	Annual population growth rate
New Delhi, India	3.0%
Karachi, Pakistan	2.6%
Portland, Oregon	2.4%
Jakarta, Indonesia	2.3%
Cairo, Egypt	2.3%
Tehran, Iran	2.3%
Rio de Janeiro, Brazil	1.9%
Bombay, India	1.9%
Beijing, China	1.8%

Sources: Portland population, US Census; international cities, see endnote 1.

The three counties in Oregon—Clackamas, Multnomah, and Washington—accounted for about 70 percent of the Portland area’s population growth over the decade. Clark County, Washington accounted for the remainder.

Table 2. The four counties that make up greater Portland grew by 27 percent during the 1990s

	People added 1990 to 2000	1990s growth rate
Clackamas, Ore.	59,440	21%
Multnomah, Ore.	76,394	13%
Washington, Ore.	133,888	43%
Clark, Wash.	106,484	45%
Total, greater Portland	376,206	27%

IV. COMPACT COMMUNITIES

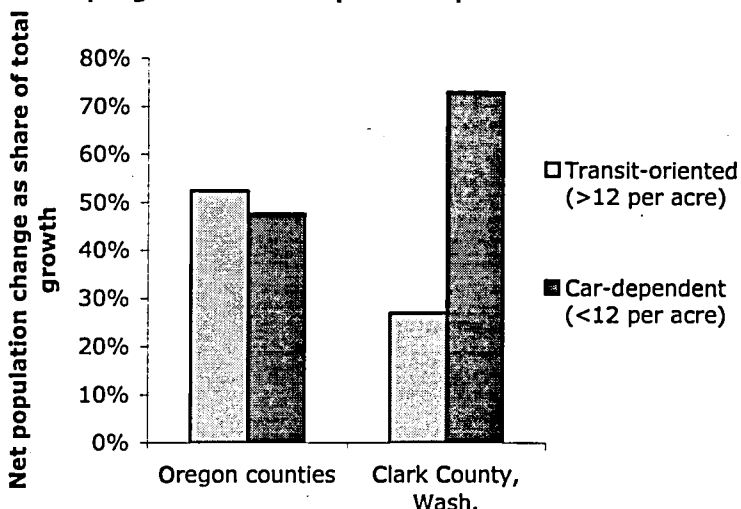
Studies of cities around the world suggest that, compared with less-dense areas, urban zones with population concentrations above 12 people per acre have dramatically higher transit ridership (which in turn makes public transit more cost-effective), lower private vehicle ownership, shorter car trips, and lower gasoline consumption. We refer to these neighborhoods as “compact,” “smart growth,” or “transit-oriented.” In contrast, in neighborhoods with fewer than 12 people per acre a car is needed for virtually every trip. Residents of such neighborhoods must drive to work, stores, and basic services, and those without access to cars are often stranded. We refer to these neighborhoods as “sprawling” or “car-dependent.”²

Compact neighborhoods also reduce the amount of land affected by impervious surfaces such as roads, rooftops, and parking lots. Impervious surface increases flooding, erosion, and sedimentation in nearby streams. It slows the recharge of underground aquifers, lowers water tables, and raises stream temperatures. These changes diminish water supply, harm water quality, and undermine aquatic ecosystems.³

Compact neighborhoods use land more intensively but pave over less of the landscape. Person for person, greater Portland's sprawling neighborhoods contained nearly three times as much land fully or partially covered by impervious surfaces as did compact neighborhoods.⁴

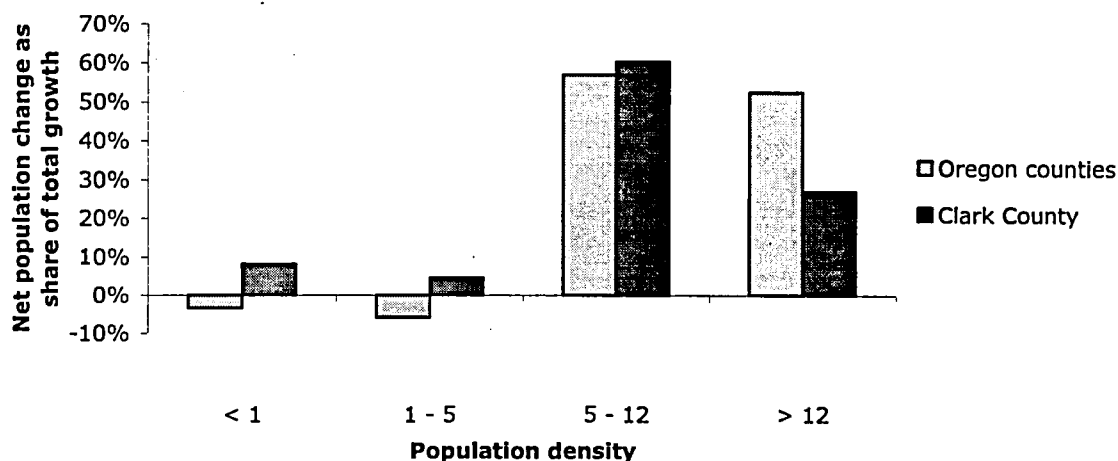
In the three Oregon counties that make up Portland Metro, total population grew by 270,000 in the 1990s, and the number of people living in compact neighborhoods increased by 141,000 (see Figure 1). About half of this growth in transit-oriented neighborhoods occurred as new residents moved in. The remainder was due to threshold effects: the addition of new residents pushed some neighborhoods above the transit-oriented density threshold. By the end of the decade, 28 percent of residents in the three-county region lived in compact neighborhoods, up from 23 percent in 1990.

Figure 1. In the 1990s, Clark County experienced rapid growth in car-dependent sprawl.



Even within the Oregon counties' car-dependent neighborhoods, population concentrations inched upward toward the threshold of 12 people per acre. The number of these counties' residents living at the low end of the density range (1 to 5 people per acre)—densities that are particularly sprawling and car-dependent—declined not only in relative but in absolute terms over the decade. So did the number of people living in exurban sprawl, where population density is below 1 per acre (see Figure 2).

Figure 2. More of the Oregon counties' growth took place in mid- to high-density neighborhoods.



Clark County showed a much different growth pattern. In the 1990s, the number of Clark County residents increased by 106,000, and the number of residents of low-density, sprawling areas increased by 77,000 (see Figure 1). Few Clark County areas rose above the 12-people-per-acre threshold as this growth took place. By 2000, about 13 percent of all Clark County residents lived in compact neighborhoods, compared with 27 percent in the rest of greater Portland. In further contrast to greater Portland's Oregon counties, in Clark

County, low-density developments boomed, adding nearly 5,000 new residents at the low end of the density range (from 1 to 5 people per acre) and 8,700 new residents at exurban densities of less than 1 per acre (see Figure 2). This sprawling growth took a toll on the landscape. Person for person, by 1999, Clark County's residential development fully or partially covered 23 percent more land with impervious surfaces than the Oregon counties' residential neighborhoods.

As seen in the maps that accompany this report, the differences in growth patterns are striking. The Portland metropolitan area south of the Columbia River contains substantial areas at transit-oriented densities (see Figure 3, map). Very few new residents were added in Oregon's rural land (see Figure 4, map). In contrast, a much smaller share of Clark County's population lives at transit-oriented densities, and the county experienced considerable growth in rural areas and sprawling suburbs (see Figure 5, map).

V. LOSS OF RURAL LAND AND OPEN SPACE

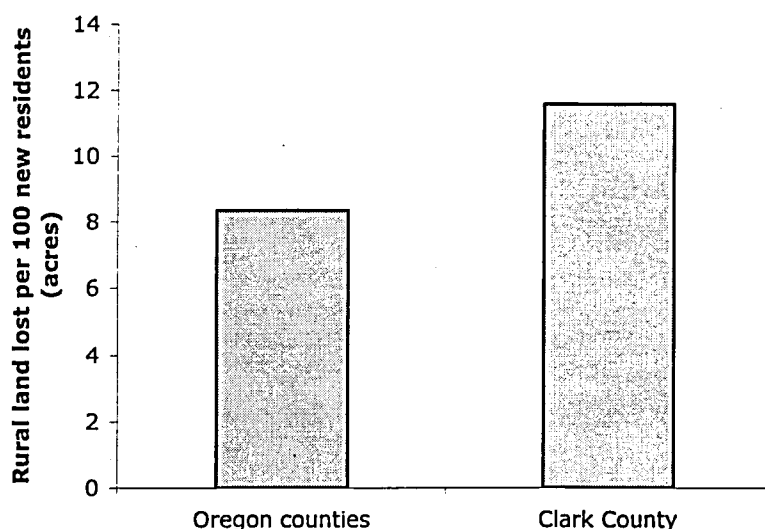
Greater Portland's rapid population growth came at a cost. Over the decade, roughly 35,000 acres of Portland-area farmland, open space, and other rural environs were converted to urban or suburban residential development (see Table 3).⁵

Table 3. Greater Portland lost nearly 35,000 acres of rural land to suburban development.

	Rural land lost (acres)
Three Oregon counties	22,519
Clark County, Wash.	12,342
Total	34,861

But on average, the Oregon counties lost less farmland and open space to development—roughly 40 percent less per capita—than did Clark County. For every 100 new residents in Clark County over the 1990s, 11.6 acres of land changed from rural population densities to suburban or higher population densities (at least one person per acre). In the three Oregon counties, however, only 8.3 acres of rural land were converted to densities above one person per acre for every 100 new residents (see Figure 6).

Figure 6. Clark County lost 40 percent more rural land per new resident than the three Oregon counties.



If the three Oregon counties had experienced the same rate of suburban sprawl as Clark County, an additional 8,700 acres of Oregon rural land—roughly 14 square miles—would have been developed over the decade. Conversely, if Clark County’s growth had mimicked that of the three Oregon counties, approximately 3,500 additional acres of land within the county, or 5 square miles, would have remained as open space.

IV. CONCLUSION

Greater Portland’s residents lived through sweeping changes in their cities, towns, and farmlands during the 1990s. Many Portlanders have found the city’s rapid changes unsettling, and some have even blamed Portland’s growth management laws, including the urban growth boundary, for the changes.

But our analysis suggests that in the three Oregon counties, growth management softened the impact of rapid population increase in the metropolis. Portland Metro’s urban growth boundary restrained suburban sprawl, slowed the loss of rural land and open space, and provided better transportation alternatives by channeling development into compact neighborhoods that use land and urban infrastructure more efficiently. And an examination of vehicle travel in urban areas suggests that compactness does not correlate with traffic delays: indeed, more compact development may help slow the growth of congestion (see Appendix).

In contrast, Vancouver, Washington, and the surrounding towns and unincorporated areas of Clark County, grew more like greater Seattle, Washington: in scattered, low-density development that did not form cohesive communities, with larger resulting losses of farmland and open space.⁶

The principal reason for the slower pace of sprawl in Portland was that growth management laws in Oregon jurisdictions encourage compact neighborhoods, and greater Portland has been effective in implementing these policies. Unlike the Oregon counties, Clark County did not have strong or comprehensive growth management policies during the 1990s. Its growth management policies did not begin until well into the decade and remained more localized, fragmented, and weaker throughout the period.

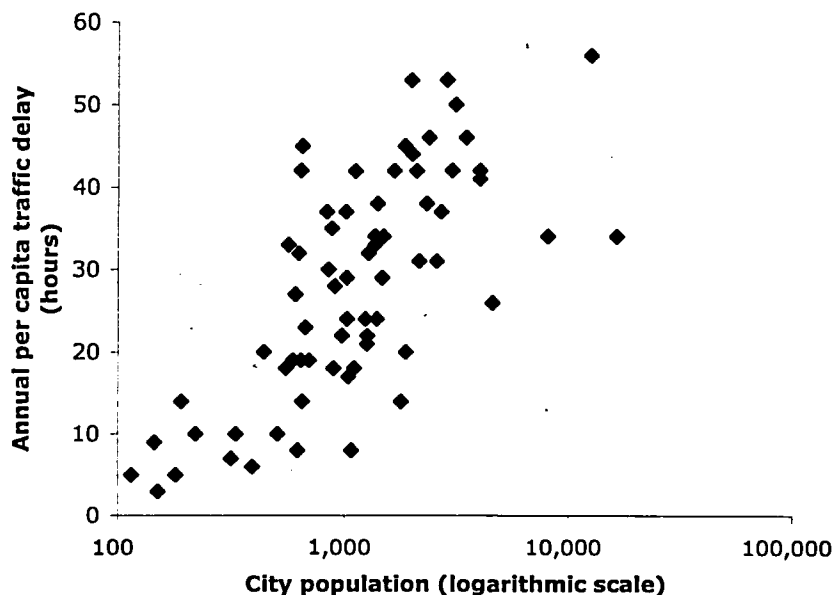
APPENDIX: POPULATION, DENSITY, AND TRAFFIC DELAYS

For some, traffic congestion and growth are virtually synonymous: burgeoning traffic is the clearest and most visible sign of an increasing population. Over time, traffic congestion has taken a larger and larger bite out of Portland area residents' time. In 1999 the average Portland area resident spent a total of 34 hours stuck in traffic—nearly a full work week—up from 10 hours in 1987.⁷

Critics of growth management have claimed that compact development has been the driving force behind the region's traffic increases. But a comparison of data from 68 US cities suggests that traffic delays are closely tied to total metropolitan population but only weakly correlated with average metropolitan population density. Residents of cities with larger populations tend to spend more time in traffic regardless of the average residential density of the city.

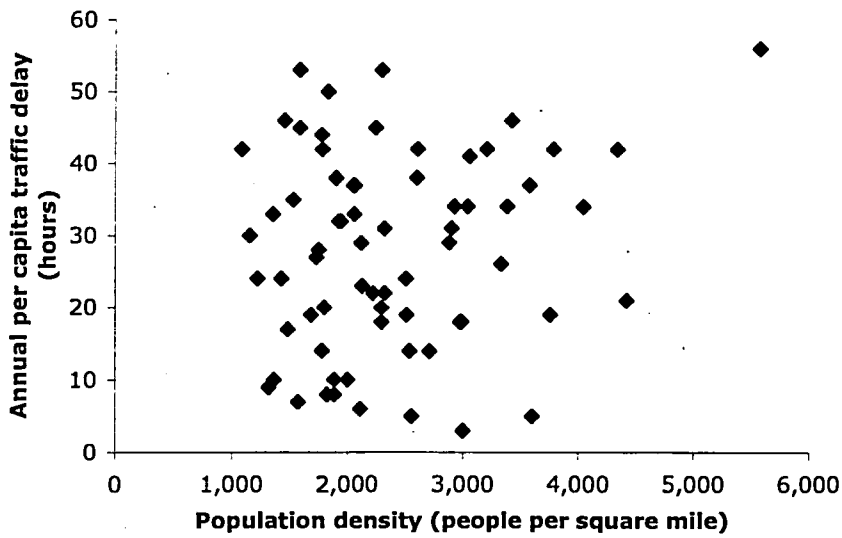
Statistically, total metropolitan population explains about 50 percent of the variation in annual per capita traffic delays (see Figure A1). Other factors, including geography and the amount and configuration of roads and intersections, explain the remaining half.

Figure A1. Population size explains about 50 percent of the variation in total traffic delay among 68 US cities.



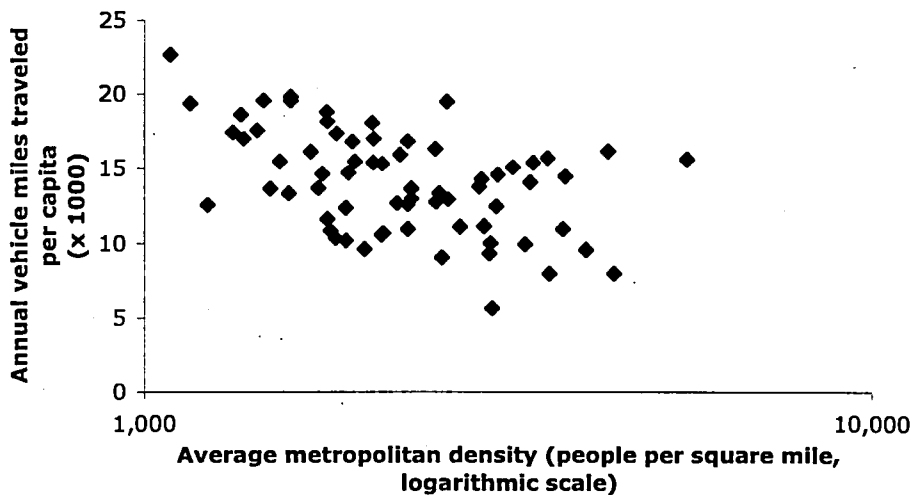
Surprisingly, traffic delays correlate weakly with average metropolitan population density (see Figure A2). In fact, more compact urban designs may slightly *decrease* per capita traffic delays, once the effects of total population are taken into consideration. Local geography and other features of metropolitan transportation infrastructure appear to have a much greater effect on travel delays than does density.

Figure A2. Virtually no correlation exists between average metropolitan density and per capita traffic delay.



One reason that density does not correlate with traffic delays is that compact communities tend to require less driving. Increased average metropolitan density correlates with reduced vehicle miles traveled per capita, though this correlation is not as strong as the relation between total metropolitan population and driving delays (see Figure A3).

Figure A3. Higher metropolitan densities reduce per capita vehicle travel.



ABOUT NORTHWEST ENVIRONMENT WATCH

Northwest Environment Watch (NEW) is a Seattle-based, nonprofit research and communication center that monitors progress toward an environmentally sound economy and way of life in the Pacific Northwest, a region that includes British Columbia, Washington, Oregon, Idaho, and adjoining parts of Alaska, Montana, and California. NEW has published 13 books since 1993; this analysis was an expansion of research completed for NEW's most recent publication, *This Place on Earth 2002: Measuring What Matters*, the first product of the group's multi-year project to develop an index of true progress for the Northwest.

Authors of the report include the four members of NEW's research team: Alan Durning, executive director; Clark Williams-Derry, research director; Eric de Place, research associate; and Dan Bertolet, research intern. Tim Schaub, CommEn Space, conducted GIS research and analysis. For more information about NEW and NEW publication, please see www.northwestwatch.org.

SOURCES

1. World city population growth rates derived from *The World Gazetteer*, "Cities and Metropolitan Areas," by country, www.world-gazetteer.com/home.htm, April 30, 2002.
2. Density thresholds from Peter W. G. Newman and Jeffrey R. Kenworthy, *Cities and Automobile Dependence* (Brookfield, VT: Gower Technical Press, 1989). These thresholds apply to urban cores and may not hold in smaller towns or isolated dense neighborhoods.
3. Impacts from 1000 Friends of Washington, "Land Use and Water Quality," www.friends.org/waterq.htm, viewed Nov. 15, 2001; and US Environmental Protection Agency, Office of Water, "Urbanization and Streams: Studies of Hydrologic Impacts," March 1998, at www.epa.gov/OWOW/NPS/urbanize/report.html.
4. The precise acreage of impervious surface in 1990 and 2000 was impossible to determine using available Landsat satellite data. Some residential areas also contained impervious surface related to industrial and commercial development, so not all impervious surface in low-density residential areas can be attributed to residential development.
5. For this report, "rural areas" are defined as those that have local population densities of less than one person per acre. "Urban and suburban" areas have local population densities of greater than one person per acre. To the extent possible, areas identified through satellite image analysis as commercial or industrial were excluded from estimates of rural land. See "Methods and Analysis."
6. See Northwest Environment Watch, *This Place on Earth 2002: Measuring What Matters* (Seattle: NEW, 2002).
7. All traffic congestion and delay data from Texas Transportation Institute, Texas A & M University, 2001 Urban Mobility Study, at <http://mobility.tamu.edu/ums/>.

**Figure 3.
Population Density,
2000**

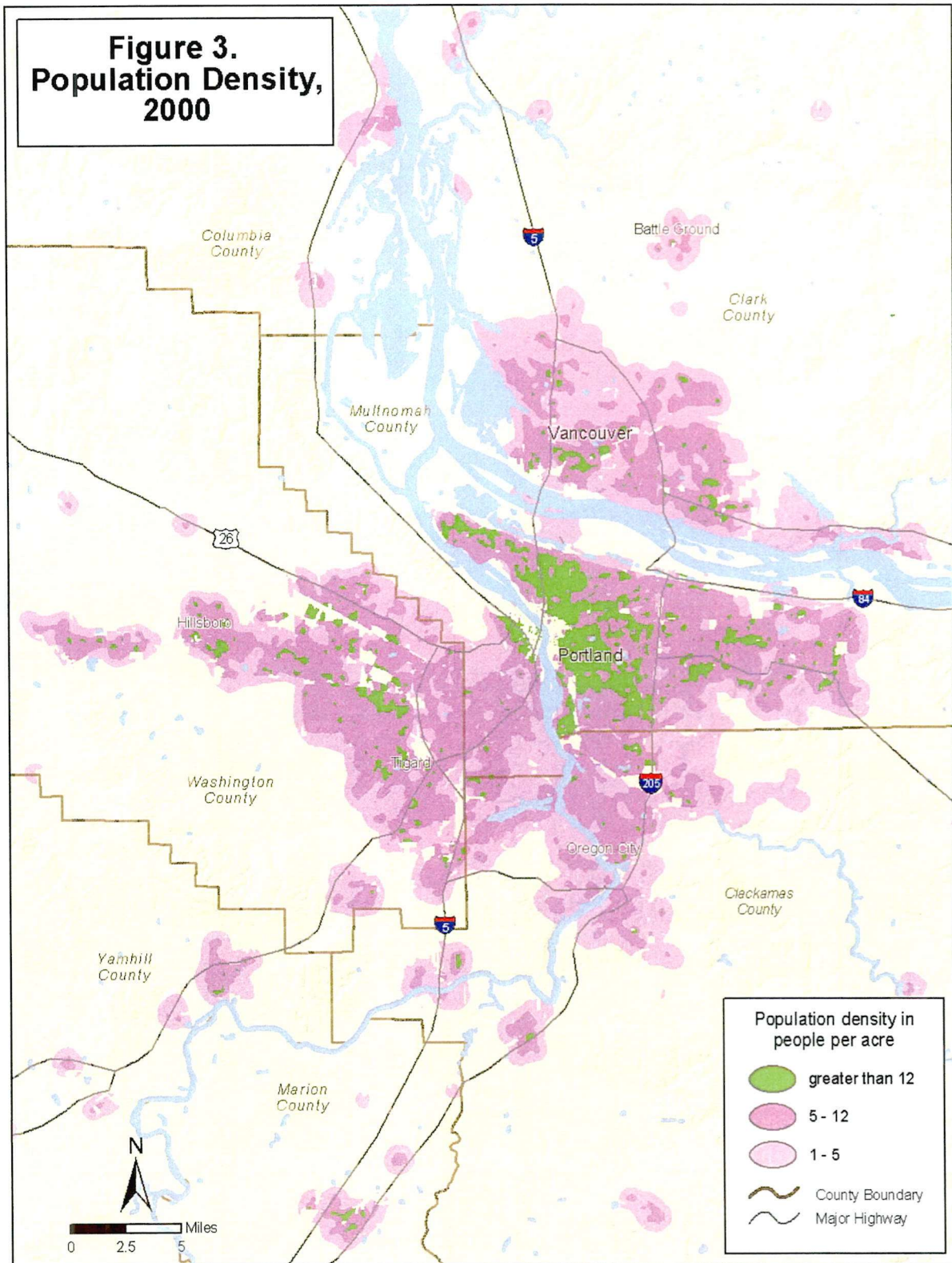


Figure 4. Population Growth on Rural Land, 1990 - 2000

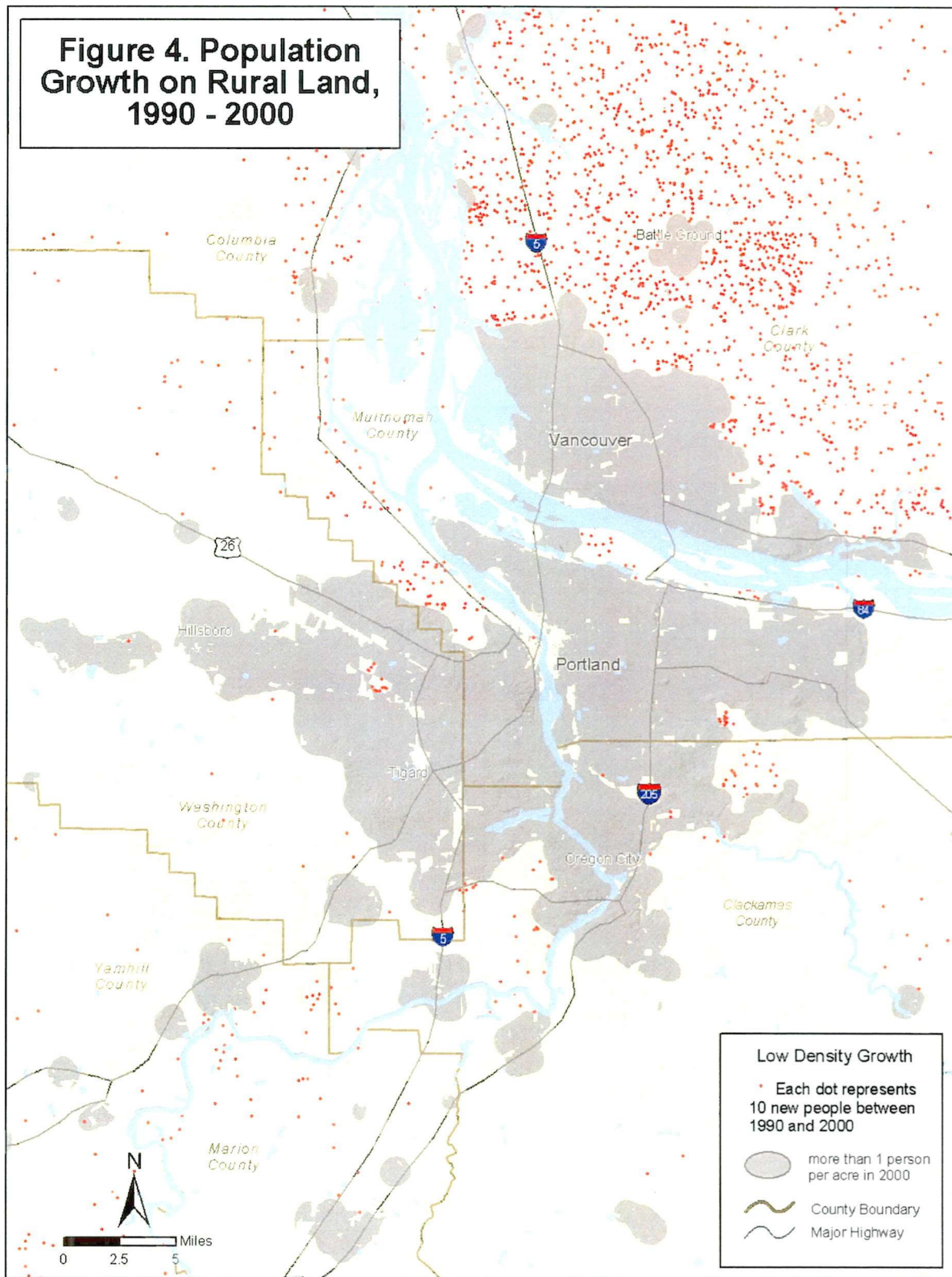


Figure 5. Vancouver, WA
Population Density,
2000

