

# A G E N D A

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**METRO**

## Agenda

MEETING: METRO COUNCIL REGULAR MEETING - revised 7/19/02  
DATE: July 25, 2002  
DAY: Thursday  
TIME: 2:00 PM  
PLACE: Metro Council Chamber

### CALL TO ORDER AND ROLL CALL

#### 1. INTRODUCTIONS

#### 2. CITIZEN COMMUNICATIONS

#### 3. MPAC COMMUNICATIONS

#### 4. CONSENT AGENDA

- 4.1 Consideration of Minutes for the July 18, 2002 Metro Council Regular Meeting.

#### 5. ORDINANCES - SECOND READING

- 5.1 **Ordinance No. 02-945A**, For the Purpose of Amending the 2000 Regional Transportation Plan Financial Constrained System; Amending Ordinance No. 00-869A and Resolution No. 00-2969B to Reflect Resolution 02-3186. Burkholder
- 5.2 **Ordinance No. 02-950A**, For the Purpose of Amending the Metro Code Chapter 7.01 to Increase the Credits Available Against the Solid Waste Excise Tax and Making Other Related Changes. Atherton
- 5.3 **Ordinance No. 02-951A**, For the Purpose of Amending Metro Code Chapter 5.02 to Modify the Regional System Credit Fee Program. Atherton
- 5.4 **Ordinance No. 02-952A**, For the Purpose of Amending Metro Code Chapter 5.01 to Decrease the Minimum Facility Recovery Rate Requirement. Bragdon

## 6. RESOLUTIONS

- 6.1 **Resolution No. 02-3192**, For the purpose of Amending the Greenspaces Master Plan and Updating the Regional Trails and Greenways Plan and Map. McLain
- 6.2 **Resolution No. 02-3206**, For the Purpose of Adopting the Policy Direction, Program Objectives, Procedures and Criteria for the Priorities 2003 Metropolitan Transportation Improvement Program (MTIP) and Allocation of Flexible Funds. Burkholder
- 6.3 **Resolution No. 02-3211**, For the Purpose of Authorizing the Executive Officer to Grant a Metro Solid Waste Facility License for Yard Debris Reloading to S&H Logging, Inc., dba Landscape Products & Supply. Atherton
- 6.4 **Resolution No. 02-3207**, For the Purpose of Authorizing the Executive Officer to Purchase Conservation and Trail Easements Over the Lucklow and White Properties in the Newell Creek Canyon Target Areas. McLain

## 7. COUNCILOR COMMUNICATION

### ADJOURN

#### Cable Schedule for Week of July 25, 2002 (PCA)

	Sunday (7/28)	Monday (7/29)	Tuesday (7/30)	Wednesday (7/31)	Thursday (7/25)	Friday (7/26)	Saturday (7/27)
<b>CHANNEL 11</b> (Community Access Network) (most of Portland area)		4:00 PM				2:00 PM (previous meeting)	
<b>CHANNEL 21</b> (TVTV) (Washington Co., Lake Oswego, Wilsonville)						7:00 PM 11:00 PM	3:30 PM
<b>CHANNEL 30</b> (TVTV) (NE Washington Co. - people in Wash. Co. who get Portland TCI)						7:00 PM 11:00 PM	3:30 PM
<b>CHANNEL 30</b> (CityNet 30) (most of City of Portland)	8:30 PM	8:30 PM					
<b>CHANNEL 30</b> (West Linn Cable Access) (West Linn, Rivergrove, Lake Oswego)	4:30 PM			5:30 AM	1:00 PM 5:30 PM	3:00 PM	
<b>CHANNEL 33</b> (ATT Consumer Svcs.) (Milwaukie)		10:00 AM 2:00 PM 9:00 PM					

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

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

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).

**Consideration of the July 18, 2002 Regular Metro Council Meeting minutes.**

**Metro Council Meeting  
Thursday, July 25, 2002  
Metro Council Chamber**

## **MINUTES OF THE METRO COUNCIL MEETING**

Thursday, July 18, 2002  
Metro Council Chamber

**Councilors Present:** Susan McLain (Deputy Presiding Officer), Rod Park, David Bragdon, Rod Monroe, Rex Burkholder

**Councilors Absent:** Carl Hosticka (excused), Bill Atherton (excused)

Deputy Presiding Officer McLain convened the Regular Council Meeting at 2:02 p.m.

### **1. INTRODUCTIONS**

There were none.

### **2. CITIZEN COMMUNICATIONS**

There were none.

### **3. DAMASCUS AREA COMMUNITY DESIGN PLAN**

Robert Liberty, 1000 Friends of Oregon, gave a power point presentation on the Damascus Area Community Design. He introduced Karen Pearl Fox, the Urban Design and Affordable Housing Specialist for 1000 Friends of Oregon, and Patrick Condon, holder of the James Taylor Chair in Landscape and Livable Design from the University of British Columbia. This project was sponsored by 1000 Friends of Oregon and Coalition for a Livable Future (a copy of the presentation is included in the meeting record). He spoke to the goals of both organizations. He talked about what the project was, what it was not, why do this project, why do the project now and in the Damascus Area, the Damascus Area Community Design Workshop, and possible Damascus Urbanization Timeline.

Ms. Fox continued with the presentation and spoke to the goals of the project, the process, design challenges, the team approach, presentations of the design to the public, and what happens next. Mr. Condon followed-up by talking about the six design principles which included Design Complete Communities, Build a Healthy Economy, Provide a Linked System of Streets, Parkways and Greenways, Establish Green Infrastructure System, Shift to Lighter Greener Cheaper Infrastructure, Preserve Present Homes and Introduce New Ones. He talked about how all of these principles fit together. He gave an overview of the key issues and existing conditions, developing the plan, integrating land uses into the plan, the detailed plan - the site as it is now and in 2020 as envisioned in the workshop, phasing concepts, land use summary, centers types, housing options, and jobs options. There was a re-introduction of green systems in the community. He emphasized the advantages of this design and the potential for changes in that design.

Deputy Presiding Officer McLain recognized the citizens who wished to testify on this issue.

Mike Hammons, 20320 SE Hwy 212, Clackamas, OR 97015 was a realtor in the Damascus area and a member of the design team. He talked about issues that seemed to tie the hands of the design team, which had to do with several areas that were prime farmland or timberland. The first goal in starting with 15,000 acres was protection of natural areas. What they ended up protecting



was over 30% of the property for natural areas. He talked about several prime farm land or timberland areas that they couldn't touch because it had been set aside through the political process. He asked that if we were going to look at designing the Damascus area and moving the Urban Growth Boundary that Council look more at the overall design rather than what they had already accepted as an arbitrary line. Give them the ability to take an area and redraw the line, get past the politics and get into the overall design so they could come up with the best plan for the area.

Deputy Presiding Officer McLain explained that they had probably started with state laws and the hierarchies that were now part of our political fabric. If they were to look at redrawing those lines, they would have to go back to the State. They were trying to do that through sub-regional analysis looking at some of the community needs and trying to get some of those questions answered. At the present time, it was not legal to develop that type of acreage unless you could find a way to show special need or follow Goal 14 on urbanization. She thought his comments were worth considering.

Mike Hanks, 10225 SW Redwing, Beaverton, OR 97007 said he grew up in the Damascus area. He said the principles that were being discussed made a lot of sense. He talked about the area that Mr. Hammons had talked about and connectivity issues. He encouraged looking at some of the class 3 and 4 soil areas to support expansion of services. When you look at some of the areas where you wanted to bring back some of the greenspaces in the downtown core, realistically it wasn't going to happen. If you could bring in that lower natural basin, it would allow for a pedestrian friendly environment and more opportunity to access the park and creek. He thought Mr. Hammons recommendations made a lot of sense and explained why.

Councilor Bragdon said this was a great application of principles and a wonderful canvas to paint on. He asked if they saw the existing fragmentation of property ownership in the area as being an obstacle? How did things actually get timed and occur?

Mr. Condon said members of the Council might be able to better respond to the question. It was difficult for policy makers to decide. That problem applied everywhere. The other aspects had to do with existing parcelization in this area. The way communities used to develop was very similar to the proposed Damascus development. It was a gradual urbanization. The process was well preceded. The trick was to come up with a plan that fit the parcels rather than making the parcels fit the plan. They found that applying Metro's own 600-foot interconnectivity strategy fit for the plan.

Mr. Liberty said the biggest challenge would be between the areas, which needed to be protected and the amenities. Those would not have the value the developed areas had. There were ways to address this. The overall context was that UGB expansion would cause a huge surge in value. One thing to do was to figure out a way to capture some of that. Expectation for owners who had streams versus those who did not had to be different. There were both legal and natural limitations. An implementation workshop was important. It was important to talk about equity issues between landowners. He talked about the differences in approaches to urbanization in British Columbia. He suggested Metro might want to have some of the British Columbia developers come and give a training workshop on parcel aggregation.

Councilor Park asked if they had any additional thoughts about working through this process to create a new center versus utilizing an existing center and recreating it. Mr. Liberty said it was important for the region to have an experience with large-scale development and redevelopment of the community center. He gave an example of the Pearl District. He made some suggestions

about how to proceed with Damascus. He felt the next big challenge for the region was to provide a model of redevelopment of an existing commercial area such as Hall Boulevard. He said, if Damascus expansion occurred in a large way, it was being done to serve state and regional policy mandates. Therefore, he believed the region owed something to that area which could be help in finding the resources to turn it into a community center.

Councilor Park said there were ways of doing this differently, in increments that would not allow the planning of the entire center. The question was to bring the entire area in and let a master plan occur or bring it in starting from the UGB and slowly work your way east. Development patterns would be different dependent upon which approach you took.

Mr. Liberty responded that there was something to be said for planning on a large scale. Even if the land need analysis showed you couldn't bring something in, in a big chunk, he didn't believe it had to be contiguous, you can have plans for where your expansion was going to go so you know that the large chunk would come in and begin focusing investment at the core of it. He said it sounded as if the Executive Officer was going to propose a larger area than Phase 1. The important point was that making it as the heart of the community and doing that as a regional effort to plan for growth and have new development meant some regional contribution in making that a success right out of the blocks. His organization and others in the community would be interested in helping that effort.

Councilor Park asked Mr. Liberty about the phases. If you knew you had Phase 1 but weren't sure that you had Phase 2 and 3, would you still have the same recommendation or the same type of center? Would the size of the downtown core be the same?

Mr. Liberty said, as he understood the design, the community core was for the Phase 1 area as much as it would be for the entire plan. Mr. Condon added that the pattern of development was more important than the FSRs that were going to be there right away. The population that swells during Phase 1 around Damascus Center was adequate to create a vibrant center there, which would have the capacity of only becoming even more vibrant as Phase 2 and 3 came in. The whole plan would take 20 to 30 years. It rapidly started to build up once the wheels were set in motion. It was more important how you approached the urban fabric question than the exact degree of urban use. It all contributed to the vibrancy in the area, the economic vitality of the area as well as the degree of flexibility that the area could exhibit over time. Ms. Fox said each of the phases had varying degrees of commercial center and each was a center unto itself yet the three together created a centergistic center, one built upon the other. However, each was a complete community. She talked about each phase and the differences. There was a real interconnected link between building a viable urban center and the interrelationship of the tripod of the three centers.

Councilor Park asked, in terms of infrastructure size, would each one of the centers have their own system? Mr. Condon responded that they did not get into the degree of the infrastructure systems that would serve Phase 2 and 3 but they did feel somewhat confident that the existing infrastructure was easier to imagine than Phase 2 and 3. There was an existing core of urban services in that area that could incrementally expanded.

Deputy Presiding Officer McLain thanked the group for their efforts. She acknowledged Metro's efforts to assist in these planning efforts.

Mr. Liberty said if you look at Peter Calthorpe's design for this area at the time Metro was looking at the growth concept, one thing that struck him about it was there was a lot in common and that was because the landscape dictated certain outcomes. Another was that the natural

systems were going to make it a special place. You had two people operating nine years apart coming to similar conclusions. They thought the principles and instructions would be appropriate to use in any urban growth expansion.

#### 4. EXECUTIVE OFFICER COMMUNICATIONS

There were none.

#### 5. CONSENT AGENDA

##### 5.1 Consideration of minutes of the July 11, 2002 Regular Council Meeting.

Motion	Councilor Burkholder moved to adopt the meeting minutes of the July 11, 2002, Regular Council meeting
Vote:	Councilors Bragdon, Monroe, Park, Burkholder, and Deputy Presiding Officer McLain voted aye. The vote was 5 aye, the motion passed with Councilors Hosticka and Atherton absent.

#### 6. ORDINANCES – FIRST READING

6.1 **Ordinance No. 02-960**, For the Purpose of Amending Metro Code Chapter 2.19 to Modify the Term Limitation Provisions Applicable to Metro Advisory Committee and to Enlarge the Membership of the Solid Waste Advisory Committee.

Deputy Presiding Officer McLain indicated that the Presiding Officer had assigned Ordinance No. 02-960 to the Governmental Affairs Committee.

#### 7. RESOLUTIONS

7.1 **Resolution No. 02-3208**, For the Purpose of Accepting the May 21, 2002 Primary Election Abstract of Votes for Metro.

Motion	Councilor Monroe moved to adopt Resolution No. 02-3208.
Seconded:	Councilor Burkholder seconded the motion

Councilor Monroe noted several date errors in the resolution.

Motion to Amend:	Councilor Monroe moved to amend Resolution No. 02-3208 to change the year 2005 to 2006 in numbers 3, 4 and 6.
Seconded:	Councilor Bragdon seconded the amendment.

Councilor Monroe noted that the auditor, districts 1 and 4 terms ended December 31, 2006 not 2005.

Vote to Amend:	Councilors Park, Burkholder, Bragdon, Monroe and Deputy Presiding Officer McLain voted aye. The vote was 5 aye, the amendment passed.
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Vote on the Main Motion:	Councilors Burkholder, Bragdon, Monroe, Park and Deputy Presiding Officer McLain voted aye. The vote was 5 aye, the motion passed.
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**8. COUNCILOR COMMUNICATION**

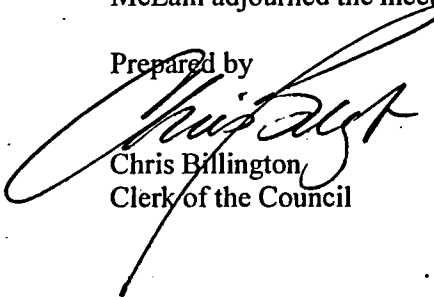
Councilor Burkholder announced a brown bag in the chamber tomorrow, August 19<sup>th</sup>. Bill Wilkinson would present "A Prescription for Active Communities: Making the Connections Between Health, Land Use and Transportation".

Councilor Monroe announced that he would be going to British Columbia for a week so would not be available for meetings next week.

**9. ADJOURN**

There being no further business to come before the Metro Council, Deputy Presiding Officer McLain adjourned the meeting at 3:44 p.m.

Prepared by



Chris Billington  
Clerk of the Council

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF JULY 18, 2002**

ITEM #	TOPIC	DOC DATE	DOCUMENT DESCRIPTION	DOC. NUMBER
5.1	MINUTES	7/11/02	METRO COUNCIL MINUTES OF JULY 11, 2002 SUBMITTED FOR APPROVAL	071802C-01
3	POWER POINT PRESENTATION	JULY 2002	POWER POINT PRESENTATION BY 1000 FRIENDS OF OREGON AND COALITION FOR A LIVABLE FUTURE TO THE METRO COUNCIL ON DAMASCUS AREA COMMUNITY DESIGN PLAN	071802C-02



Agenda Item Number 5.1

**Ordinance No. 02-945A, For the Purpose of Amending the 2000 Regional  
Transportation Plan Financial Constrained System; Amending Ordinance  
No. 00-869A and Resolution No. 00-2969B to Reflect Resolution 02-3186.**

***Second Reading***

**Metro Council Meeting  
Thursday, July 25, 2002  
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE )  
2000 REGIONAL TRANSPORTATION PLAN )  
FINANACIAL CONSTRAINED SYSTEM; )  
AMENDING ORDINANCE NO. 00-869A )  
AND RESOLUTION NO. 00-2969B TO )  
REFLECT RESOLUTION 02-3186A )

ORDINANCE NO. 02-945A

Introduced by  
Councilor Rod Monroe

WHEREAS, Metro's 2000 Regional Transportation Plan ("RTP") is the regional "metropolitan transportation plan" required by federal law as the basis for coordinating federal transportation expenditures; and

WHEREAS, the Oregon Transportation Commission, on February 13, 2002, approved bonded financing of approximately \$105 million of road, bridge and freeway expansion and preservation projects in ODOT - Region 1, pursuant to the Oregon Transportation Investment Act (OTIA) (see Exhibit "A"); and

WHEREAS, included in the bonding are funds which allows the U.S. 26/Jackson School Road interchange project to advance to project development and construction; and

WHEREAS, Washington County seeks to advance project development for widening of US 26 from Murray Boulevard to 185<sup>th</sup> Avenue, (see Exhibit "A"); and

WHEREAS, neither the interchange nor widening projects are in the 2000 RTP financially constrained system; and

WHEREAS, state and federal regulation require that no transportation project may be added to the RTP except that a Conformity Determination is prepared for such amendments showing that the newly included project shall not interfere with attainment or maintenance of air quality standards; and

WHEREAS, during Metro's preparation of an air quality Conformity Determination for the interchange and widening projects, local jurisdictions declared approved revisions they have made to the timing, scope or concept of projects currently included in the 2000 RTP financially constrained system, (see Exhibit A); and

WHEREAS, the 2000 RTP financial constrained system list was revised during performance of quantitative analysis of the interchange and widening projects to reflect the locally approved system revisions; and

WHEREAS, Resolution No. 02-3186 approves companion amendments to the 2002 Metropolitan Transportation Improvement Program (MTIP) and adopts the air quality conformity determination for those amendments and for the RTP amendments approved by this Ordinance that are summarized in Exhibit "A"; and

WHEREAS, Exhibit "B" of this ordinance contains the precise 2000 RTP amendments adopted by this Ordinance; now therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The revisions to the financial constrained system of the 2000 Regional Transportation Plan shown in Exhibit "B" are approved.

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

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

Attest:

Approved as to Form:

\_\_\_\_\_  
Christina Billington, Recording Secretary

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

**1. Projects not currently included in 2000 Regional Transportation Plan financially constrained system:**

- **Jackson School Road Interchange.** In February, 2002, pursuant to the Oregon Transportation Investment Act of 2001 (OTIA), the Oregon Transportation Commission (OTC) approved bond financing of this road project.
- **US 26 (Murray Boulevard to 185<sup>th</sup> Avenue).** In the summer 2001, Washington County indicated its intention to design a project to widen U.S. 26 to three lanes in each direction from the Murray Boulevard Interchange to the 185<sup>th</sup> Avenue Interchange. Actual allocation the 04-05 MTIP funds to the PE project was made contingent on approval of a conformity determination supporting amendment of the 2000 RTP to include the project in the financially constrained system (Resolution No. 02-3186).

**2. Locally Declared Changes of Scope, Concept or Timing of projects in the 2000 RTP financially constrained system:**

Locally Declared Amendments to Financially Constrained RTP Network:						
<p>242<sup>nd</sup> Avenue Connector project (#2001): The project was split. The portion of 242nd between Glisan and Stark is currently 4 lanes, sidewalk on one side, no bike lanes or center turn lane. Multnomah County carries a project in its Capital Improvement Program to add a center (5th) turn lane, bike lanes and sidewalks on each side by 2005. <b>The 2005 network was modified to show 242nd: Glisan/Stark as a 5 lane section. The 242 Avenue: Glisan to I-84 section was delayed to the 2020 network.</b></p>						
Network Change	RTP ID No.	Jurisdiction	Facility	Termini	Project Features	RTP Year of Operation
2005 network	2026	Portland	NE/SE 99th Avenue Phase I/NE Pacific Avenue	NE 99th from NE Weidler to Glisan Street and NE Pacific Avenue from 97th to 102nd Avenue	Reconstruct primary local main street in Gateway regional center. <b>Model south leg of Glisan/99th intersection improvement (RTP #1266) as part of RTP #2026 and advance #2026 to 2005 network year.</b>	2006-10
2010 network	4022	Portland / Port	East End Connector	Columbia/US 30 Bypass: NE 82nd Avenue to I-205	Provide free-flow connection from Columbia Boulevard/82nd Avenue to US 30 Bypass/I-205 interchange;	2000-05

					widen SB I-205 on-ramp at Columbia Boulevard	
<b>Model as 2-lanes, not 4</b>	4065	Port/Portland	South Rivergate Entry Overpass	South Rivergate	Construct overpass from Columbia/Lombard intersection to South Rivergate	2006-10
<b>2005 network</b>	7008	Clackamas Co.	147th Avenue Improvements	Sunnyside Road to 142nd Avenue	Realign 147th Avenue to 142nd Avenue	2006-10
<b>2005 network</b>	6128	Clackamas Co.	Carmen Drive Intersection Improvements	Carmen Drive/Meadows Road intersection	Add traffic signal, turn lanes, realign intersection	2006-10
<b>2005 network</b>	5204	Clackamas Co.	Stafford Road	Stafford Road/Rosemont intersection	Realign intersection, add signal and right turn lanes	2006-10
<b>2005 network</b>	5108	Clackamas Co.	Jennifer Street/135th Avenue Extension	130th Avenue to Highway 212	Two-lane extension to 135th Avenue and widen 135th Avenue	<b>Confirm current year of operation</b>
<b>2005 network</b>	3171	Cornelius/Wash Co.	Hwy 8/4th Ave Intersection	Intersection of 4th Avenue and couplet	Intersection improvement with signal	2006-10
<b>Operational in 1998</b>	2111	Multnomah Co.	207th Connector	Halsey Street to Glisan Street	Complete reconstruction of 207th Avenue	2000-05
<b>Wallula to Birdsdales</b>	2047	Gresham	Division Street Improvements	NE Wallula Street to Hogan Road	Complete boulevard design improvements	2000-05
<b>Model as 2-lane not 4.</b>	1037	Portland	Bybee Boulevard Overcrossing	Bybee Blvd/McLoughlin Blvd	Replace substandard 2-lane bridge with 4-lane bridge	2006-10
<b>Glencoe to 268th/Sewall</b>	3130	WashCo/Hillsboro	Evergreen Road Improvements	Glencoe Road to 15th Avenue	Widen to three lanes to include bikeways and sidewalks	2000-05



## **Chapter 5 2000 RTP Amendments**

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### **4022 East End Connector**

Construct an at-grade intersection connection from Columbia Boulevard at 82<sup>nd</sup> Avenue to US 30 Bypass/I-205 interchange and widen I-205 southbound on-ramp at Columbia Boulevard. This project is intended to better distribute traffic between Columbia Boulevard and Lombard Street. (2000-2005/2006-2010)

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### **4065 South Rivergate Entry Overpass**

Construct an two-lane overpass from the intersection at Columbia Boulevard and Lombard Street to South Rivergate entrance to separate rail and vehicular traffic. (2000-2005)

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### **1037 Bybee Boulevard Over-crossing**

Replace existing bridge with a 4-lane 2-lane bridge with standard clearance. (2006-2010)

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### **2001 Hogan Corridor Improvements**

Construct a new interchange at I-84 and extend new interchange connection south to GlisanStark Street. (2000-2005/2010-2020)

Page 5-52

### **2026 99th Avenue/Pacific Avenue Reconstruction - Phase 1**

Reconstruct primary local main streets in Gateway Regional Center. (2006-2010/2000-2005)

### **2047 Division Street Improvements**

Boulevard retrofit of street from Wallula Street to ~~Hogan Road~~ Birdsdale Avenue including bike lanes, wider sidewalks, curb extensions and safer street crossings. (2000-2005)

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### **5021 Highway 224 Extension**

Construct a new four-lane highway from I-205 to Highway 212/122<sup>nd</sup> Avenue. This project includes reconstruction of Highway 212/122<sup>nd</sup> Avenue interchange. (2006-2010)

### **7008 147th Avenue Improvements**

Realign 147th Avenue to 142nd Avenue at Sunnyside Road to provide additional access into town center. (2000-2005/2006-2010)

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### **5003 Sunrise Corridor**

Construct a new four-lane highway from I-205 122<sup>nd</sup> to Rock Creek/152nd Avenue as an extension of the Highway 224 project (5021). Project includes construction of interchanges at

~~122nd Avenue, 135th Avenue and the Rock Creek Junction, and modification of I-205 interchange. (2000-2005)~~2006-2010).

Note, specific project development activities related to phasing, scope, land use planning and project financing of a full Sunrise Corridor project that serves anticipated growth in the Damascus and Pleasant Valley areas and provides a regional connection to US 26 are under discussion between FHWA, ODOT, Clackamas County, and Metro. Therefore, the scope, timing, and phasing of this project and the Financially Constrained System for the RTP will be amended, as necessary, to reflect the results of those discussions.

*(Note the project will be listed in the priority and preferred RTP networks.)*

**5024 Sunrise Corridor Tier 1-EIS**

Corridor analysis from I-205 to US 26 to develop phasing recommendations adequate to support future right of way acquisition. (2000-2005)

*(Note this project has been added to the Financially Constrained system and the Preferred and Priority systems. The project cost is \$2 million)*

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**5108 Jennifer Street/135th Avenue Extension**

Extend Jennifer Street to 135th Avenue and widen to three lanes. This project includes sidewalks and bike lanes. ~~(2006-2010)~~2000-2005)

*Page 5-64*

**5204 Stafford Road**

Realign the intersection and construct turn lanes at Rosemont Road. This project will include construction of a traffic signal. ~~(2006-2010)~~2000-2005)

*Page 5-69*

**6128 Carmen Drive Intersection Improvements**

Realign the intersection at Meadows Road, including a new traffic signal and turn lanes. ~~(2006-2010)~~2000-2005)

*Page 5-73*

**3009 US 26**

Widen US 26 to six lanes from Murray Boulevard to 185<sup>th</sup> Avenue. (2011-2020)

*Page 5-75*

**3101 Jackson School Road**

Construct interchange at US 26/Jackson School Road. (2000-05)

**3130 Evergreen Road Improvements**

Widen the street to three lanes from Glencoe Road to ~~15-268<sup>th</sup>~~/Sewall Avenue. This project also will include sidewalks and bike lanes to improve safety. (2000-2005)

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**3171 Highway 8/4th Avenue Improvement**  
Install a traffic signal. (~~2006-2010~~ 2000-2005)

## STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 02-945A FOR THE PURPOSE OF AMENDING THE 2000 REGIONAL TRANSPORTATION PLAN FINANCIAL CONSTRAINED SYSTEM; AMENDING ORDINANCE NO. 00-869A AND RESOLUTION NO. 00-2969B TO REFLECT RESOLUTION 02-3186A

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Date: May 7, 2002

Prepared by: Terry Whisler  
Planning Department

This Ordinance amends the Regional Transportation Plan (RTP) financially constrained system to include the U.S. 26/Jackson School Road Interchange and widening of U.S. 26 to three lanes in both directions from Murray Boulevard to 185<sup>th</sup> Avenue. The RTP is also amended to reflect revisions to the scope, timing and/or concept of system projects that have been approved by local governments since adoption of the RTP in fall of 2000.

These actions will enable amendment of the Metropolitan Transportation Improvement Program (MTIP) to approve allocation of about \$100 million of state bond funds, which derive from the 2001 Oregon Transportation Investment Act (OTIA), to 17 projects. Also, \$359,000 of reserve STP funds will be freed for design of the widening project. Resolution No. 02-3186, pending, implements this programming and is shown in Attachment 1 of this staff report. The Resolution also approves a Conformity Determination prepared by Metro, which shows that the RTP actions and the related MTIP amendments will conform with the State Implementation Plan for maintenance of the region's air quality. The Executive Summary of this finding is included in Attachment 1.

## BACKGROUND

**Jackson School Road Interchange.** The 2001 Legislature approved the OTIA bond program to address road, bridge and freeway capacity expansion and preservation needs throughout the state. ODOT - Region 1 received about \$105 million of these funds, which were assigned to specific projects by the Oregon Transportation Commission on February 13, 2002 (see Exhibit 1 of the Resolution). One of these projects is the U.S. 26/Jackson School Road interchange. The interchange is actually located outside Metro's boundary but lies within the Portland air quality maintenance area (AQMA). Under agreements between Metro, ODOT and Oregon Department of Environmental Quality (DEQ), Metro is responsible for documenting that the newly authorized interchange will not adversely effect the region's air quality.

The 2000 RTP financially constrained system was shown to be consistent with air quality plans in a Conformity Determination approved by the U.S. Department of Transportation in January 2001. However, the RTP does not authorize a full interchange at Jackson School Road. Ordinance 02-945 is amending the RTP to include the project. This Resolution is amending the MTIP to program design and construction dollars for the project. This Resolution also approves a new Conformity Determination (see Exhibit 2 of the Resolution) showing that construction of the new interchange "conforms" with the State Implementation Plan's (SIP) provisions for assuring that automotive emissions will not cause deterioration of the region's air quality.

**U.S. 26 Widening.** In the summer of 2001, Washington County stated its intention to begin design of a project to widen U.S. 26 to three lanes in each direction between the Murray Boulevard and 185<sup>th</sup> Avenue interchanges. During the Priorities 2002 Update last fall, Metro assigned \$359,000 of regional STP funds to a reserve account intended to help pay for a portion of the design work. However, as with the Jackson

School Road interchange, the widening project is not included in the conforming financially constrained system of the 2000 RTP. Design work cannot begin until the RTP is amended to include the project. This is accomplished by Ordinance 02-945. This Resolution amends the MTIP to assign the reserve dollars to preliminary engineering for the widening project and also approves the Conformity Determination that shows that both the RTP and the MTIP, as amended, will continue to conform with the SIP.

**Miscellaneous Conformity Issues.** During preparation of the Conformity Determination, Metro requested that local jurisdictions declare any modifications they may have approved to the timing, scope or concept of projects included in the 2000 RTP financially constrained system after its adoption. Approximately eight changes were declared to Metro and these are described in Ordinance 02-945. These changes were incorporated into Metro's regional model and are reflected in the quantitative portion of the Conformity Determination performed by Metro that calculates future anticipated regional automotive emissions. Two of the most obviously significant changes include:

- **East End Connector (82<sup>nd</sup> Avenue @ Columbia Boulevard):** delay of assumed operation from the 2005 to the 2010 analysis year. (This recognizes a schedule whereas the project will open after the 2005 summer ozone season. 2010 represents the next analysis year to capture project emissions.
- **I-84 to 242 Avenue Connector:** delay of assumed operation from the 2010 to the 2020 analysis year.

**Sunrise Corridor.** The status of the Sunrise Corridor arose during interagency consultation. During the 2002 MTIP Update, Metro allocated \$2.0 million of planning money for refinement of corridor land use and transportation issues. Metro staff suggested that it would be appropriate to clarify distinctions in the RTP between projects approved for construction in the corridor and policies that address future planning and project concepts appropriate to the corridor.

Seventy three million dollars is reserved in the 2000 RTP financial analysis to improve the I-205/224 interchange and to provide a new four-lane connection to Hwy 212 at 122<sup>nd</sup> Avenue for truck volumes otherwise destined for the overburdened I-205/Hwy 212 Interchange. Elements of this project were reflected in a broader \$180 million first phase concept of the Sunrise Highway (RTP #5003).

The RTP Preferred System endorses a broad set of improvements to the Sunrise Corridor, costing over \$520 million and which encompass construction of a new four-lane highway from I-205 all the way to U.S. 26 in rural Clackamas County. The cost of such improvements goes beyond the region's reasonably anticipated revenues for the next 20-years. Additionally, significant land use issues concerning urbanization of the Damascus area is anticipated and should be addressed in conjunction with an overall Sunrise Corridor project.

In light of confusion between the RTP's presentation of immediate financially constrained project authority and its treatment of longer-term, unconstrained policies concerning the Sunrise Corridor, Metro staff made two revisions to the financially constrained system. First, a distinct "Hwy. 224 Extension" project from I-205 to the Highway 212/122<sup>nd</sup> Avenue interchange was identified as project #5021 of the financially constrained system, costing \$73 million. Second, a "Sunrise Corridor EIS: I-205 to U.S. 26" project was added as RTP #5024 for approximately \$2.0 million. Project #5003 is retained in the Preferred system of the RTP.

The EIS project (#5024) includes \$1.0 million of the funds allocated by Metro in the 2002 MTIP and anticipated ODOT and/or Clackamas County contributions toward the study. ODOT requested inclusion of the project in the system list to assure that the very broad termini of the study go beyond the concept of projects specifically endorsed by the RTP. Simultaneous with the EIS, Metro, in cooperation with



Clackamas County, anticipates using the second \$1.0 million, approximately, to conduct Damascus-area land use analyses to help inform the EIS alternatives analysis. Damascus area planning would occur only if significant land were brought into the UGB as a result of Metro's periodic review of the UGB.

**TPAC Action.** Clackamas County expressed concern that these actions might preclude the County's plans to obtain financing for the extension from 122<sup>nd</sup> to a Rock Creek terminus. More immediately, they are concerned that by defining the project termini as 122<sup>nd</sup>, a further terminus to 135<sup>th</sup>, which is presently under consideration, will be rendered infeasible. Metro staff agree that insufficient basis exists at this time to stipulate either a 122<sup>nd</sup> or a 135<sup>th</sup> interchange terminus. However, the 2000 RTP modeled a 122<sup>nd</sup> Avenue terminus for conformity purposes and that is the basis for the current conformity determination quantitative analyses. If, upon conclusion of the planning and environmental work currently in process a 135<sup>th</sup> Avenue, or other terminus is endorsed, Metro staff agrees that it would be appropriate to amend the project description and model characteristics at that time.

## **ANALYSIS/INFORMATION**

1. **Known Opposition.** There is no known opposition to approval of these RTP amendments. As described above, Clackamas County has expressed concern with language regarding Sunrise Corridor.
2. **Legal Antecedents.** These actions are mandated by state and federal transportation and air quality regulations, including the Clean Air Act of 1991 and OAR Chapter 340, Division 252, Section 0010 et. seq.
3. **Anticipated Effects.** The Ordinance will amend the RTP financially constrained system to approve a full US 26/Jackson School Road Interchange and widening of U.S. 26 to three lanes in each direction between the Murray Boulevard and 185<sup>th</sup> Avenue interchanges. These amendments will clear the way for the MTIP to schedule about \$100 million of state bond funds allocated by the Oregon Transportation Commission (OTC) to 17 projects in and around the Portland urban area. The funds derive from the OTIA bond program. Also, \$359,000 of reserve STP funds for design of the widening project will be approved.
4. **Budget Impacts.** There would be no effects on Metro's budget from adoption of this Ordinance.

## **RECOMMENDED ACTION**

The Council approve Ordinance 02-945.

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BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE	)	RESOLUTION NO. 02-3186A
METROPOLITAN TRANSPORTATION	)	
IMPROVEMENT PROGRAM (MTIP) TO INCLUDE	)	Introduced by
STATE BOND FUNDS; PROGRAMMING	)	Councilor Rod Monroe
PRELIMINARY ENGINEERING FUNDS FOR US 26	)	
WIDENING, AND APPROVING A CONFORMITY	)	
DETERMINATION FOR THESE ACTIONS AND	)	
THOSE OF ORDINANCE NO. 02-945A THAT AMENDS	)	
AMENDS THE REGIONAL TRANSPORTATION PLAN.	)	

WHEREAS, the Oregon Transportation Commission approved allocation of approximately \$105 million of bond funds to road, bridge and freeway modernization and preservation projects in Oregon Department of Transportation (ODOT) – Region 1 (see Exhibit A), including design and construction of the U.S. 26/Jackson School Road interchange; and

WHEREAS, Washington County has stated its intention to design a project to widen U.S. 26 to three lanes in each direction from Murray Boulevard to 185<sup>th</sup> Avenue; and

WHEREAS, Metro allocated \$359,000 of regional surface transportation program (STP) funds to a reserve account to assist with this design project (see Exhibit A); and

WHEREAS, state and federal regulations mandate that Metro list significant transportation projects in it's jurisdiction, or within the Portland-area Air Quality Maintenance Area that extends beyond Metro's jurisdiction, in the financially constrained system of the 2000 Regional Transportation Plan (RTP); and

WHEREAS, state and federal regulations mandate that Metro show funding for significant transportation projects approved within it's jurisdiction in the 2002 Metropolitan Transportation Improvement Program (MTIP); and

WHEREAS, no significant transportation projects may be approved, including their design, unless they come from a transportation program and/or plan that has been shown to conform with State Implementation Plan (SIP) provisions that assure maintenance of regional air quality; and

WHEREAS, Ordinance 92-945 amends the 2000 RTP financially constrained system to include both the Jackson School Road and U.S. 26 widening projects; and

WHEREAS, Metro has prepared an air quality Conformity Determination supporting these RTP amendments (see Exhibit B); and

WHEREAS, local jurisdictions declared a number of approved revisions of the timing, scope or concept of projects included in the 2000 RTP financially constrained system during the course of preparing the Conformity Determination; and

WHEREAS, these locally declared RTP system revisions are incorporated into the RTP by Ordinance 02-945 and are reflected in the quantitative analysis portion of the Conformity Determination; and

WHEREAS, the Conformity Determination was the subject of interagency consultation and a proactive public involvement process; now, therefore;

BE IT RESOLVED that the Metro Council;

1. Amends the 2002 MTIP to include the schedule of funds shown in Exhibit A of this Resolution, including all Portland urban-area bond projects.
2. Allocates \$359,000 of STP reserve funds (ODOT Key #12452) shown in Exhibit A, for support of preliminary engineering of a project to widen U.S. 26 from Murray Boulevard to 185<sup>th</sup> Avenue.
3. Declares that use of STP funds for the design of the US 26: Murray to 185<sup>th</sup> widening project is contingent on the project receiving at least ½ its construction funding from Washington County sources.
4. Declares that use of STP funds for right of way acquisition or construction for the US 26: Murray to 185<sup>th</sup> project is not authorized.
5. Approves the Conformity Determination shown in Exhibit B with respect to MTIP amendments shown in Exhibit A of this Resolution and companion amendments of the 2000 RTP financially constrained system approved in Ordinance 02-945.

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

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

Approved as to Form:

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

MTIP AMENDMENTS AUTHORIZED BY METRO RESOLUTION NO. 02-3186							
ODOT KEY NUMBER	PROJECT NAME	WORK PHASE	02	03	04	05	TOTAL
EXISTING PROGRAMMING							
12452	US 26: Murray/Cornell PE Reserve	RESERVE	0.359				\$ 0.359
ODOT	Reserve of funds anticipated for use to design widening of US 26 from Murray to Cornell Blvd.	ROW					
		CON					
		TOT	\$ 0.359				\$ 0.359
NEW APPROVED PROGRAMMING							
12452	US 26: Murray/185th Ave. PE	PE	0.359				\$ 0.359
ODOT	Funds to design widening of US 26 from Murray to 185th Avenue.	ROW					
		CON					
		TOT	\$ 0.359				\$ 0.359
NEWLY INCLUDED ODOT – REGION 1 OTIA BOND PROJECTS (Urban Area)							
8838	East Columbia Blvd. - Lombard St. Connector	PE					
ODOT/ COP	Construct new wider underpass and at grade intersection further from existing 92nd Ave connection. Widen Col. Blvd approach to I-205; additional left turn lane. <b>\$12.123 million construction phase in 2007.</b>	ROW				7.642	\$ 7.642
		CON					
MOD*		TOT				\$ 7.642	\$ 7.642
12394	US 26: Hwy 217/Camelot Interchange	PE	1.255				\$ 1.255
ODOT	Build new eastbound general purpose travel lane to match west bound widening; sound walls, bike lane ramp meters	ROW	0.465				\$ 0.465
		CON		18.879			\$ 18.879
MOD		TOT	\$ 1.720	\$ 18.879			\$ 20.599
12393	U.S. 26 @ Jackson School Rd Interchange	PE	0.794				\$ 0.794
ODOT	New rural diamond interchange to replace existing, unsafe at-grade interchange	ROW			1.550		\$ 1.550
		CON				13.790	\$ 13.790
MOD		TOT	\$ 0.794		\$ 1.550	\$ 13.790	\$ 16.134
11435	I-5/Nyberg Interchange Widening Project	PE					
ODOT/ Tualatin	Add two new eastbound lanes on Nyberg Overcrossing of I-5 w/ bike and ped amenities. Construction partially funded w/ regional dollars.	ROW					
		CON			1.172		\$ 1.172
MOD		TOT			\$ 1.172		\$ 1.172
12400	Boeckman Rd. - Tooze Rd. Connection	PE	1.490				\$ 1.490
ODOT/ Wilsonville	Extend Boeckman Rd. west to Dammasch Hospital site	ROW		0.487			\$ 0.487
		CON					
MOD		TOT	\$ 1.490	\$ 0.487			\$ 1.977
12399	Sunnyside Rd. Widening (Ph. 2): 122nd/152nd	PE					
ODOT/ Clack Co.	Widen to five lanes with bike/ped amenities. PE funded with regional dollars.	ROW		8.000			\$ 8.000
		CON				0.443	\$ 0.443
MOD		TOT		\$ 8.000		\$ 0.443	\$ 8.443

## MTIP AMENDMENTS AUTHORIZED BY METRO RESOLUTION NO. 02-3186

ODOT KEY NUMBER	PROJECT NAME	WORK PHASE	02	03	04	05	TOTAL
12392	<b>Farmington Rd. Preservation: Hwy219/SW 209th</b>	PE	0.075				\$ 0.075
ODOT/ Wash Co.	Overlay and improved shoulders; add bike/ped amenities. Part of agreement for Wash Co. to assume facility ownership from ODOT.	ROW		2.241			\$ 2.241
PRES**		CON					\$ 2.241
		TOT	\$ 0.075	\$ 2.241			\$ 2.316
8850	<b>Farmington Rd. Preservation: SW 209TH/SW 198th</b>	PE	0.636				\$ 0.636
ODOT/ Wash Co.	Overlay and improved shoulders; add bike/ped amenities; new signals at 198th & 209th SPIS-ranked Intersections. Leads to Wash Co. taking facility ownership from ODOT.	ROW		0.250			\$ 0.250
PRES		CON			1.547		\$ 1.547
		TOT	\$ 0.636	\$ 0.250	\$ 1.547		\$ 2.433
12390	<b>Sandy Blvd. Boulevard Retrofit: NE 13th/NE 47th</b>	PE	0.720				\$ 0.720
ODOT/ COP	Restore pavement; reduce auto/bike/ped/tranist conflicts w/ circulation and access improvements in Hollywood Dist.; effect transfer of road to COP jurisdiction.	ROW				7.182	\$ 7.182
PRES		CON					\$ 7.182
		TOT	\$ 0.720			\$ 7.182	\$ 7.902
12388	<b>Boones Ferry Preservation: Tualatin Rv Brgd/Norwood</b>	PE	0.231				\$ 0.231
ODOT/ Wash Co.	2.6 mi of grind/overlay; two new signals, ped improvements; Norwood Crk culvert replacement.	ROW	0.255				\$ 0.255
PRES		CON		2.095			\$ 2.095
		TOT	\$ 0.486	\$ 2.095			\$ 2.581
5651	<b>McLoughlin Blvd. "Boulevard" Retrofit: Harrison St/ Kellogg Lake Bridge</b>	PE					
ODOT/ Milw.	Overlay/reconstruct 1.25 mi thru downtown Milw.; add bike/ped/transit amenities; redesign signal systems.	ROW				2.000	\$ 2.000
PRES		CON					\$ 2.000
		TOT				\$ 2.000	\$ 2.000
11136	<b>Broadway Bridge Rehabilitation (Phase 7) (Br# 06757)</b>	PE					
ODOT/ Mult Co.	Repaint entire steel structure above deck. Remove and replace conduit, wiring and controls. Combine with Ph. 4, 5 & 6 contracts to reduce closure time and cost.	ROW		7.000			\$ 7.000
BRIDGE***		CON					\$ 7.000
		TOT		\$ 7.000			\$ 7.000
12448	<b>NE 33rd Ave. O'Xing: Lombard St. &amp; UPRR (Br# 02484)</b>	PE			0.373		\$ 0.373
ODOT/ COP	Strengthen steel girders through post tensioning, place bonded deck overlay on entire structure.	ROW				0.020	\$ 0.020
BRIDGE		CON				3.113	\$ 3.113
		TOT			\$ 0.373	\$ 3.133	\$ 3.506
12445	<b>NE 33rd Ave. Over Columbia Slough Replacement (Br# 25T12)</b>	PE			0.239		\$ 0.239
ODOT/ COP	Replace bridge structure.	ROW				0.025	\$ 0.025
BRIDGE		CON				1.190	\$ 1.190
		TOT			\$ 0.239	\$ 1.215	\$ 1.454
12431	<b>SW Champlain St. Semi Viaduct Replacement(Br# 25B34)</b>	PE			0.082		\$ 0.082
ODOT/ COP	Remove bridge and replace w/ retaining wall and geo-foam fill.	ROW			0.020		\$ 0.020
BRIDGE		CON			0.181		\$ 0.181
		TOT			\$ 0.282		\$ 0.282



## MTIP AMENDMENTS AUTHORIZED BY METRO RESOLUTION NO. 02-3186

ODOT KEY NUMBER	PROJECT NAME	WORK PHASE	02	03	04	05	TOTAL
12449 ODOT/ Wash Co. BRIDGE	<b>Tualatin River Overflow Bridge (Br# 671234.)</b>  Replace bridge with wider structure.	PE					
		ROW					
		CON		0.854			\$ 0.854
		TOT		\$ 0.854			\$ 0.854
12441 ODOT/ Mult Co. BRIDGE	<b>Beaver Creek Bridge (Br# 04522)</b>  Replace bridge with longer, wider structure, including bike/ped amenities and improved in-stream characteristics. <b>\$1.308 Construction phase in 2006.</b>	PE			0.120		\$ 0.120
		ROW			0.060		\$ 0.060
		CON					
		TOT			\$ 0.180		\$ 0.180

\* MOD – "Modernization," means adding new travel lanes, adding capacity to existing roadways and/or reconstruction of highway interchanges or bridges that add automobile capacity.

\*\* PRES – "Preservation," means reconstruction of existing road features, or surface treatments to preserve existing road surfaces that do not add automobile capacity.

\*\*\* BRIDGE – means replacement, reconstruction or rehabilitation of bridge facilities without increasing automobile capacity.



## Conformity Determination

Supporting Amendments to the 2000 Regional Transportation Plan  
and 2002 Metropolitan Transportation Improvement Program  
to incorporate OTIA bond projects

### EXECUTIVE SUMMARY

#### Conformity Finding

Metro has prepared a Conformity Determination addressing amendment of the 2000 Regional Transportation Plan (RTP) and the 2002 Metropolitan Transportation Improvement Program (MTIP). The specific amendments are discussed below. Metro has determined that regional emissions generated by the proposed amendments to the region's financially constrained system of planned improvements remain within budgets established in the State Implementation Plan (SIP) for attainment and maintenance of national ambient air quality standards. Key amendments to the financially constrained system include:

- U.S. 26/Jackson School Road interchange;
- U.S. 26 widening from Murray Boulevard to 185<sup>th</sup> Avenue; and
- other minor system revisions declared to Metro by local governments,

#### Significant Actions That Triggered This Conformity Determination

In February 2002, pursuant to the Oregon Transportation Investment Act of 2001 (OTIA), the Oregon Transportation Commission (OTC) approved bond financing of 17 road, bridge and freeway capacity expansion and preservation projects in and around the Portland urban area. These are shown in Table S-1, below. The Clean Air Act states that no transportation project bearing a significant potential effect on the region's air quality may be approved or advanced unless it is shown to conform with the SIP.

- **U.S. 26/Jackson School Road Interchange.** The Jackson School Road interchange is one of the OTIA projects and is not included in the currently conforming Financially Constrained system of the 2000 Regional Transportation Plan (RTP). Before ODOT may begin work designing the interchange, Metro must amend the RTP to include it in the financially constrained system. As part of this amendment, Metro must prepare a quantitative and qualitative analysis showing that automobile emissions associated with the project won't cause deterioration of regional air quality (i.e., show that the total of regional mobile source emissions *with* the project constructed will fall within emissions budgets established in the SIP).

The Metropolitan Transportation Improvement Program (MTIP), which schedules transportation expenditures in the Portland urban area over a four-year period, must

Partial Exhibit B to Resolution No. 02-3186A  
also be amended to reflect bond funding of the project. Neither the RTP nor the MTIP can be amended until the U.S. Department of Transportation approves this required Conformity Determination.

- **U.S. 26: Murray/185<sup>th</sup> Widening.** In the summer of 2001, Washington County indicated its intention to design a project to widen U.S. 26 to three lanes in each direction from the Murray Boulevard Interchange to the 185<sup>th</sup> Avenue Interchange. In Autumn, 2001, Metro allocated \$359,000 to a reserve account to support this work. Actual allocation the MTIP funds to the PE project was made contingent on approval of a conformity determination supporting amendment of the RTP to include the project in the financially constrained system.

TABLE S-1: OTIA BOND PROJECTS IN ODOT – REGION 1			
ODOT KEY NUMBER	PROJECT NAME	PROJECT TYPE	OTIA \$\$
12392	Farmington Rd. Preservation Project (SW 198th to Hwy 219)	PRES **	\$ 2,496,000
11136	Broadway Bridge Rehabilitation (Phase 7) (Br# 06757)	BRIDGE***	\$ 7,000,000
12449	Tualatin River Overflow Bridge (Br# 671234.)	BRIDGE	\$ 853,506
12393	Jackson School Rd Interchange	MOD	\$ 16,133,900
12394	US 26 (Sunset Hwy): Hwy 217 to Camelot Interchange	MOD	\$ 20,599,000
12388	Boones Ferry Preservation Project	PRES	\$ 2,581,065
05651	McLoughlin Blvd. (Harrison Street to Kellogg Lake Bridge)	PRES	\$ 2,000,000
08850	Farmington Rd. Preservation Project (SW 198th to Hwy 219)	PRES	\$ 2,433,000
12399	Sunnyside Rd. (Phase 2) 122nd to 142nd Widening	MOD	\$ 8,443,375
11435	I-5/Nyberg Interchange Widening Project	MOD	\$ 1,172,000
12431	SW Champlain St. Semi Viaduct Replacement (Br# 25B34)	BRIDGE	\$ 282,269
12400	Boeckman Rd. - Tooze Rd. Connection	MOD	\$ 1,976,625
12390	Sandy Blvd. (NE 13th to NE 47th )	PRES	\$ 7,901,742
12445	NE 33rd Ave. Over Columbia Slough Replacement (Br# 25T12)	BRIDGE	\$ 1,453,570
12441	Beaver Creek Bridge (Br# 04522)	BRIDGE	\$ 1,488,284
12448	NE 33rd Ave. Over Lombard St. & UPRR (Br# 02484)	BRIDGE	\$ 3,505,510
08838	East Columbia Blvd. - Lombard St. Connector	MOD	\$ 19,765,250

- \* **MOD** – "Modernization," including adding new travel lanes, adding capacity to existing roadways and/or reconstruction of highway interchanges or bridges that add automobile capacity.
- \*\* **PRES** – "Preservation," reconstruction of existing road features, or surface treatments to preserve existing road surfaces that do not add automobile capacity.
- \*\*\* **BRIDGE** – replacement, reconstruction or rehabilitation of bridge facilities that do not increase automobile capacity.

- **Locally Declared Changes of Scope, Concept or Timing.** During preparation of the Conformity Determination, Metro asked agencies in the region that operate regional transportation facilities to review the 2000 RTP financially constrained system. They were asked to advise Metro of any changes they may have approved to project scope, concept and/or timing assumptions used in the RTP conformity analysis approved in January 2001. The revisions noted during this review are shown in Table S-2, below, and have been incorporated into modeling of the financially constrained system. ("**Bold**" text indicates the adopted changes.)

### **Reasonably Anticipated 20-Year Revenue**

The OTIA bond funds were not accounted for in the revenue analysis that underpins the RTP financially constrained system. The bond revenue represents new financial capacity because the projects to which the bond funds are being applied were previously assumed to absorb other types of revenue. These other revenues are therefore freed by the bond program and are potentially available to finance new project additions to the financially constrained system.

This new funding is part of the basis for including the U.S. 26 widening project at this time. Washington County has indicated that some of its MSTIP property tax funds will be dedicated to the project. However, the bulk of revenue that might enable construction of the project by 2010 comes from injection of \$105 million of bond funds into the region's transportation system financial capacity resulting from the OTIA program.

The region has not yet fully assessed implications of the bond program on the RTP financial analysis. During the next scheduled RTP Update in 2003, the complete financial analysis will be revisited. The 2003 RTP update will assess the bond program and other new sources of financing, e.g., Local Improvement Districts (LID's) and System Development Charges (SDC's) that have recently been approved by various jurisdictions in the region. Project cost estimates and other factors will also be updated and any new system financial capacity that might result will be formally allocated to new projects at that time. For now, no changes to the system, other than those noted above, have been authorized since the previous determination was approved in January 2001.

### **Planning, Transit, Modeling and TCM Assumptions**

In this analysis Metro has not changed the methodology used in the previous conformity analysis.

- There have been no changes in the population and employment projections that underlie Metro's travel demand calculations.
- There has been no change to the protocol (MOBILE 5a-h model) for calculating daily emissions of model-generated travel estimates.
- There has been no change of analysis years, budget years, or of interpolation of data between years.
- The region's transit fare structure has not changed since the last analysis (though some changes to park and ride plans and transit routes have been captured).
- No evidence has arisen to change Metro's assumed effectiveness of approved bike, pedestrian or transit-related Transportation Control Measures (TCMs).

**Table S-2:**  
**Locally Declared Amendments to RTP Financially Constrained System**

242<sup>nd</sup> Avenue Connector project (#2001): The project was split. The portion of 242nd between Glisan and Stark is currently 4 lanes, sidewalk on one side, no bike lanes or center turn lane. Multnomah County carries a project in its Capital Improvement Program to add a center (5th) turn lane, bike lanes and sidewalks on each side by 2005. The 2005 network was modified to show 242nd: Glisan/Stark as a 5 lane section. The 242 Avenue: Glisan to I-84 section was delayed to the 2020 network.

Network Change	RTP ID No.	Jurisdiction	Facility	Termini	Project Features	RTP Year of Operation
2005 network	2026	Portland	NE/SE 99th Avenue Phase I/NE Pacific Avenue	NE 99th from NE Weidler to Glisan Street and NE Pacific Avenue from 97th to 102nd Avenue	Reconstruct primary local main street in Gateway regional center. Model south leg of Glisan/99th Intersection improvement (RTP #1266) as part of RTP #2026 and advance #2026 to 2005 network year.	2006-10
2010 network	4022	Portland/Port	East End Connector	Columbia/US 30 Bypass: NE 82nd Avenue to I-205	Provide free-flow connection from Columbia Boulevard/82nd Avenue to US 30 Bypass/I-205 interchange; widen SB I-205 on-ramp at Columbia Boulevard	2000-05
Model as 2-lanes, not 4	4065	Port/Portland	South Rivergate Entry Overpass	South Rivergate	Construct overpass from Columbia/Lombard intersection to South Rivergate	2006-10
2005 network	7008	Clackamas Co.	147th Avenue Improvements	Sunnyside Road to 142nd Avenue	Realign 147th Avenue to 142nd Avenue	2006-10
2005 network	6128	Clackamas Co.	Carmen Drive Intersection Improvements	Carmen Drive/Meadows Road intersection	Add traffic signal, turn lanes, realign intersection	2006-10
2005 network	5204	Clackamas Co.	Stafford Road	Stafford Road/Rosemont intersection	Realign intersection, add signal and right turn lanes	2006-10
2005 network	5108	Clackamas Co.	Jennifer Street/135th Avenue Extension	130th Avenue to Highway 212	Two-lane extension to 135th Avenue and widen 135th Avenue	No year currently specified
2005 network	3171	Cornelius/Wash Co.	Hwy 8/4th Ave Intersection	Intersection of 4th Avenue and couplet	Intersection improvement with signal	2006-10
Operational in 1998	2111	Multnomah Co.	207th Connector	Halsey Street to Glisan Street	Complete reconstruction of 207th Avenue	2000-05
Wallula to Birdsdales	2047	Gresham	Division Street Improvements	NE Wallula Street to Hogan Road	Complete boulevard design improvements	2000-05
Model as 2-lane not 4.	1037	Portland	Bybee Boulevard Overcrossing	Bybee Blvd/McLoughlin Blvd	Replace substandard 2-lane bridge with 4-lane bridge	2006-10
Glencoe to 268th/Sewall	3130	WashCo/Hillsboro	Evergreen Road Improvements	Glencoe Road to 15th Avenue	Widen to three lanes to include bikeways and sidewalks	2000-05

Agenda Item Number 5.2

**Ordinance No. 02-950A, For the Purpose of Amending Metro Code Chapter 7.01 to Increase the Credits Available Against the Solid Waste Excise Tax and Making Other Related Changes.**

***Second Reading***

Metro Council Meeting  
Thursday, July 25, 2002  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO )  
CODE CHAPTER 7.01 TO INCREASE THE )  
CREDITS AVAILABLE AGAINST THE SOLID )  
WASTE EXCISE TAX AND MAKING OTHER )  
RELATED CHANGES )

ORDINANCE NO. 02-950A  
Introduced by Mike Burton,  
Executive Officer

WHEREAS, Chapter 7.01 of the Metro Code provides for Material Recovery Facilities that achieve certain recovery goals to pay reduced Metro excise tax; and,

WHEREAS, pursuant to Ordinance 01-919B the Metro Council established a work group of Metro staff and interested members of the Solid Waste Advisory Committee to make recommendations for improving regional recovery; and,

WHEREAS, the stakeholder work group recommended changes in the amounts of Regional System Fee credits available to Material Recovery Facilities pursuant to Metro Code Chapter 5.02.047; and,

WHEREAS, the Solid Waste Advisory Committee unanimously endorsed the recommendations of the stakeholder work group; and,

WHEREAS, the excise tax credit program of Metro Code Chapter 7.01 is implemented in a substantially similar way as the Regional System Fee credit program of Metro Code Chapter 5.02; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Subsection (g) of Metro Code Chapter 7.01.020 is amended to read:

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

Excise Tax Credit Schedule		
Facility		
Recovery Rate		
From	Up To &	Excise Tax
Above	Including	Credit of no more than
0%	<del>25</del> 29.9930%	0.00%
25%	30%	4%
30%	35%	<del>10</del> 1.92
35%	40%	<del>20</del> 2.75
40%	<del>45</del> 100%	<del>33</del> 3.51



45%                      100%                      45%

~~(2) During any Fiscal Year, the total aggregate amount of excise tax credits granted under the provisions of this subsection shall not exceed the dollar amount budgeted for such purpose.~~

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

SECTION 3. Excise Tax Credit Program Review.

(a) The Director of the Regional Environmental Management Department shall make a semi-annual report to the Metro Council on the status of the excise tax credit program for which provision is made in Metro Code Section 7.01.020(g). The report shall include the aggregate amount of all excise tax credits granted during the preceding six months and the amount granted to each facility eligible for the credits. The report shall also project if the total aggregate amount of excise tax credits for which the Metro Council has budgeted is expected to be reached.

(b) By March 31, 2004, and every two years thereafter, the Director of the Regional Environmental Management Department shall convene a committee of stakeholders to review and report on the effectiveness of the solid waste excise tax credit program and to recommend to the Metro Council any proposed changes to such programs.

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

SECTION 5. Administrative Procedures for Excise Tax Credits

The Executive Officer may establish additional administrative procedures regarding the Excise Tax Credits to set forth eligibility requirements for such credits and to provide for incremental Excise Tax Credits associated with Recovery Rates which fall between the ranges set forth in of Metro Code Chapter 7.01.020(g).

SECTION 6. ~~Effective Date, and Repeal of Ordinance.~~

~~The provisions of this Ordinance shall become effective on ~~October~~ November-December 1, 2002, and are repealed on the effective date of any Ordinance increasing the fee for disposal of solid waste set forth in Metro Code Section 5.02.025(a) to an amount equal to or greater than \$75 per ton. For the purpose of determining whether the fee for disposal of solid waste set forth in Metro Code Section 5.02.025(a) is greater than \$75 per ton, the Transaction Charge provided in Metro Code Section 5.02.025(a)(3) shall be expressed on a per ton basis by dividing such Transaction Charge by the average number of tons per transaction delivered to Metro South and Metro Central transfer stations during the previous calendar year.~~

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

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

Attest:

Approved as to Form:

\_\_\_\_\_  
Christina Billington, Recording Secretary

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

## **SOLID WASTE AND RECYCLING COMMITTEE REPORT**

CONSIDERATION OF ORDINANCE NO. 02-950A, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 7.01 TO INCREASE THE CREDITS AVAILABLE AGAINST THE SOLID WASTE EXCISE TAX AND MAKING OTHER RELATED CHANGES

CONSIDERATION OF ORDINANCE NO. 02-951A, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.02 TO MODIFY THE REGIONAL SYSTEM FEE CREDIT PROGRAM

CONSIDERATION OF ORDINANCE NO. 02-952A, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.01 TO DECREASE THE MINIMUM FACILITY RECOVERY RATE REQUIREMENT

---

Date: July 18, 2002

Presented by: Solid Waste and Recycling Committee

**Committee Recommendation:** At its July 17 meeting, the committee considered Ordinances No. 02-950, 02-951, and 02-952 and voted 3-0 to send the ordinances, as amended, to the Council for adoption. Voting in favor: Councilors McLain, Monroe, and Chair Atherton.

**Background:** Three ordinances (02-950, 02-951, and 02-952) recommend a package of code changes related to the solid waste system fee and excise tax credit programs. Ordinance No. 01-919B, adopted by the Council in October 2001, required the REM Department to establish a workgroup to review Metro Code provisions related to the regional system fee credit program and recommend changes designed to improve recovery and increase the region's recovery rate. A 12-member workgroup made up of SWAC representatives of the various sectors of the solid waste and recycling community represented on the committee examined all facets of the credit program and produced a series of recommended changes in late February 2002.

Changes related to the system fee credit program are addressed in Ordinances 02-951 and 02-952. Changes related to the excise tax credit program are addressed in Ordinance 02-950. The Council has not specifically requested an examination of the excise tax credit program. However, the REM staff believes that the proposed changes will result in greater conformity between the two credit programs.

**Committee Discussion:** At its June 19 meeting, the committee received a staff presentation on the package of ordinances, heard public testimony, and reviewed a series of amendments to the ordinances that had been prepared on behalf of Councilor Monroe.

There are six principal recommendations of the SWAC workgroup that are addressed in the package of ordinances. These are presented in great detail in the staff report accompanying the ordinances and are summarized briefly below:

### **SWAC Workgroup Recommendations:**

- 1) For the purpose of receiving the system fee or excise tax credit, Metro will count only the materials that are counted by the DEQ toward meeting the state recovery goal of 62%. To implement this recommendation, language is included in Ordinance 02-951 and Ordinance 02-952 that outlines the specific materials that the DEQ has

excluded from counting toward the recovery goal. The principal effect of this change would be to no longer count "rubble" in the credit programs.

- 2) The current program permits facility operators to count 5% of the source-separated material that they receive toward the recovery rate needed to qualify for the credit program. This provision was based on that some source-separated loads could be contaminated by up to 5%. In practice, contamination of such loads is minimal. Therefore, it is recommended that this allowance be repealed. In order to insure that this change would not negatively facility recovery efforts, Ordinance 02-952 includes a code amendment that would reduce the minimum qualifying percentage for the system fee credit by 5%. An identical change is proposed for the excise tax program in Ordinance 02-950.
- 3) The combined fiscal impact of recommendations 1 and 2 would be to reduce credit payments by \$400-450,000. Because such a reduction would likely reduce facility-based recovery efforts, the workgroup also recommended that the dollar amount paid for the various levels of recovery rates should be increased to make total future annual payments about equal to the current level. Ordinance 02-952 would modify the current system fee credit payment schedule from the current range of \$8 to \$12 to a new higher range of \$9.92 to \$14.
- 4) The workgroup requested that Metro explore options for increasing recovery from loads that are delivered directly to dry waste landfills. Staff is currently exploring such options, but these are not addressed in the proposed package of ordinances.
- 5) Several landfills and disposal facilities located outside Metro's geographic boundaries have approached the REM staff concerning their ability to access the fee and tax credit programs. While these programs do not extend to programs outside of Metro's boundaries, the REM staff has been advised by the Office of General Counsel that such an extension could be made by amending a facilities Designated Facility Agreement. Staff is currently discussing this potential change with the affected facilities. Such a change would require Council approval, but is not addressed in this package of ordinance.
- 6) The workgroup recommended that the credit programs be sunsetted when the Metro tip fee reaches \$75/ton. Language to this effect was included in Ordinance 02-950 for the excise tax credit and in Ordinance 02-951 for the system fee credit program.

**Monroe Amendments.** Councilor Monroe had requested that several amendments to the proposed ordinances be drafted. These were presented to the committee by Councilor Monroe. The amendments address the following areas:

- 1) It was originally thought that Council action on the proposed package of ordinances would be completed by the end of June. Given that final action will now likely occur in early August, it is necessary to change the effective date of each of the ordinances from October 1 to December 1, 2002.
- 2) Based on the original wording of the ordinances, the REM department would be specifically prohibited from expending more funds on the credit programs than had been budgeted. Councilor Monroe contended that the semi-annual program review

process outlined in Code, and the normal budget amendment process would give the Council more than adequate opportunity to review the need for additional funding for these system without placing restrictive language directly into the Code. His amendment would remove the Code language restricting expenditures for the programs. Additional amendments will be prepared at Councilor McLain's direction. These will require that the REM staff advise the Metro Council in advance of circumstances that might result in the credit program exceeding the amount budgeted for it.

- 3) Councilor Monroe also proposed an amendment to delete the proposed language that would automatically sunset the programs if the Metro tip fee again reached \$75/ton. He noted that some recovery facilities were built during the early and mid 1990's when the Metro tip fee was \$75 in anticipation that the fee would only go higher. The credit program was developed, in part, to address the financial stability of these facilities when the tip fee actually dropped. However, in the current environment, a variety of factors could affect the need for a continuing credit system. Examples include inflation, the market for recyclable materials and facility operating costs.
- 4) Councilor Monroe also proposed an amendment to more directly tie the types of materials that would qualify for the credit program to what was perceived to be a "list" of materials that DEQ would allow to be counted toward the state recovery goal. Further research found that the DEQ "list" was not outlined in state law or by administrative rule, but rather as an attachment to a staff memo referred to as the "What Counts" document. Legal, REM and Council staff concluded that it would be questionable to link the Metro program to such a staff document.

Therefore, Councilor Monroe introduced a different amendment at the July 17 meeting that would retain the original language in the proposed ordinances relating To excluded materials which the exception that "brick" would be removed from the list. This was based on information provided by DEQ that indicated that "brick" from remodeling, construction and demolition projects would count toward the state goal.

One point of discussion related to item #2 above, was whether the Council was guaranteeing a 12-month program, or not. Councilor McLain said that the Council does not have an unlimited purse. While the intention is to support a 12-month program, if additional program revenues or expenditures are needed, she wants the Council to be in a position to make the decision.

## **STAFF REPORT**

### **IN CONSIDERATION OF ORDINANCE NO. 02-950, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 7.01 TO INCREASE THE CREDITS AVAILABLE AGAINST THE SOLID WASTE EXCISE TAX AND MAKING OTHER RELATED CHANGES**

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May 23, 2002

Prepared by: Tom Chaimov

## **BACKGROUND**

### **Summary**

This staff report summarizes recommendations on revising the Regional System Fee (RSF) credit program to improve recovery. The report discusses the changes to the Metro Code that would be required in order to implement those recommendations and to implement similar changes in the Excise Tax credit program. Also included are other recommendations beyond the confines of the RSF credit program that are critical to maximizing recovery in the region.

Implementing these recommendations and related changes would require amendments to three chapters of the Metro Code: 5.01, 5.02, and 7.01. This staff report accompanies three separate ordinances, to implement recommendations, one each for Metro Code Chapters 5.01, 5.02, and 7.01.

### **Recommendations**

A 12-member work group, representing all the sectors of the Solid Waste Advisory Committee (SWAC), met almost weekly from December 2001 through February 2002 to debate the merits of a variety of options for improving post-collection recovery in the region. On February 25, 2002, the SWAC unanimously endorsed the work group's recommended changes to the Regional System Fee Credit program, as follows:

#### **Recommendation 1. Count only materials that Oregon Department of Environmental Quality (DEQ) counts**

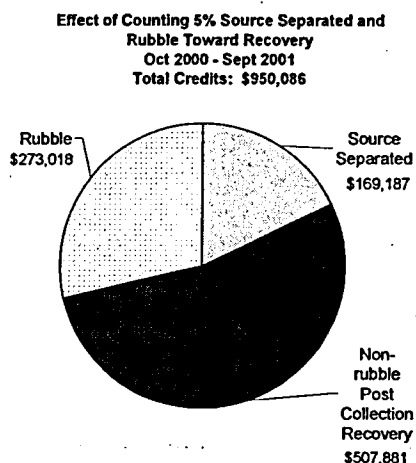
The Metro region is required by State law to achieve a recovery rate of 62% by 2005. In the State's calculation of the regional recovery rate, certain materials are excluded, such as dirt, rock, and industrial waste; however, Metro has traditionally counted some of these materials for the purposes of calculating the individual facility recovery rates used in the RSF credit program. Counting only those materials that the State counts will now focus the program on recovery activity that boosts the region's recovery rate.

In the Metro region, rubble (concrete, asphalt, etc.) is the material most affected; however, high levels of rubble recovery currently occur at facilities that are not regulated by Metro and are not eligible for recovery incentives. SWAC believes that these high recovery levels will continue even if rubble does not count for the purposes of the recovery incentives.

#### **Recommendation 2. Count only recovery from mixed loads**

Material Recovery Facilities receive loads of both mixed waste (recoverable and non-recoverable wastes, e.g., from construction sites) and source-separated materials (such as recyclables from curbside collection programs). Recognizing that even source-separated loads could contain some contamination, in 1998 Metro designed the RSF credit program to allow 5% of all source-separated materials accepted at mixed waste processing facilities to count toward the Facility Recovery Rate. Actual contamination in these

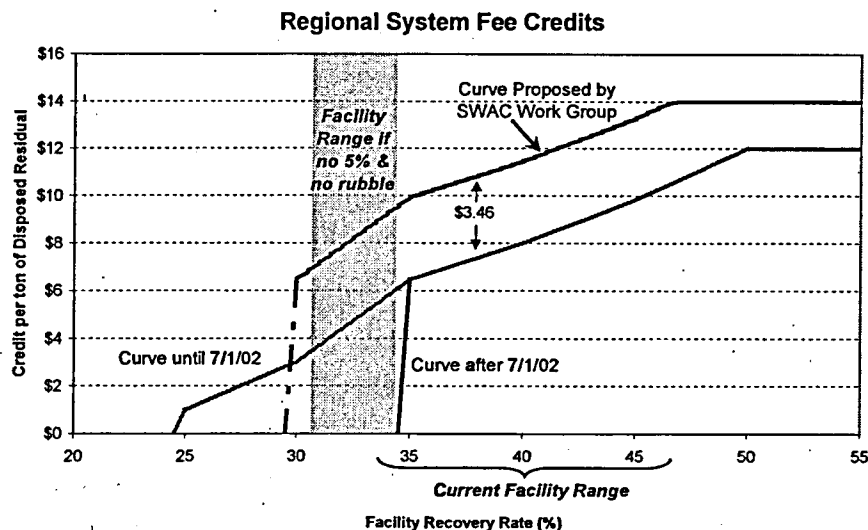
loads has typically been much less, about 0.5%. Therefore, the recommended action is to discontinue an allowance for source-separated residual. Discontinuing the allowance will help to maintain the integrity of the source-separated system and will help focus facility recovery on the mixed waste stream.



**Figure 1.** During the twelve months through September 2001, Metro granted approximately \$950,000 in Regional System Fee Credits; about \$440,000 of which rewarded facilities for recovering rubble (\$273,018), which does not count toward the regional recovery rate, and for accepting large amounts of source-separated recyclables (\$169,187).

### Recommendation 3. Boost recovery with higher incentives

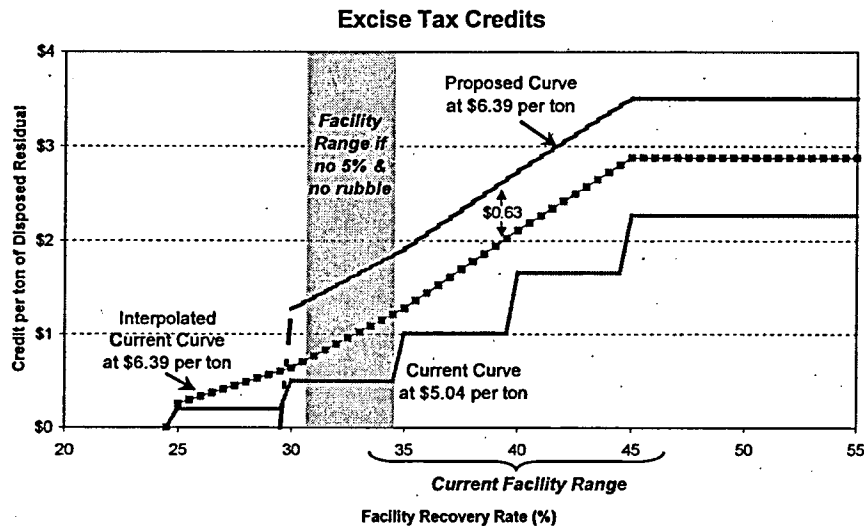
Implementing recommendations #1 and #2 above would free up about \$400,000 that could be redirected to improve post-collection recovery. Capitalizing on these savings by offering a higher incentive for materials that do count could help to increase the regional recovery rate. Maintaining the current program policy of reducing the RSF on disposal, based on each facility's recovery rate, would reward each facility according to its individual recovery effort: the higher the facility recovery rate, the larger the facility benefit. By redeploying the above savings as higher credits such that facilities as a whole continue to pay about the same effective RSF, the following credit curve results:



**Figure 2.** Regional System Fee credits available currently, until July 1, 2002; after July 1, 2002, pursuant to Ordinance 01-919B; and proposed. The higher proposed curve, recommended by SWAC because Facility Recovery Rates would be calculated differently, would ensure that facilities continue to pay about the same effective RSF as they are now.

#### *Excise Tax Credits*

Because a change in the way Metro calculates the Facility Recovery Rates would also affect Excise Tax credits, an analogous increase in the Excise Tax credit schedule is proposed as follows:



**Figure 3.** Excise Tax credits available currently and as proposed. The higher proposed curve, recommended by SWAC because Facility Recovery Rates would be calculated differently, would ensure that facilities continue to pay about the same effective Excise Tax as they are now. An oversight in the drafting of Ordinance 00-857, which established Excise Tax credits, prevented the agency from implementing a "smoothed" curve as shown. Ordinance 02-950 proposes to remedy that oversight.

#### *Minimum Facility Recovery Rate*

Currently, Metro-regulated facilities are required to maintain a minimum recovery rate of 25%, increasing to 30% July 1, 2002. The 5% increase was adopted by the Metro Council under the current formula for computing facility recovery rates. Counting neither rubble nor residual from source-separated recyclables for the purposes of calculating recovery rates would mean changing the formula that Metro uses to calculate Facility Recovery Rates.

The current formula, counting rubble and 5% of source-separated loads, results in a median Facility Recovery Rate of about 40% (see "Current Facility Range" in Figures 2 and 3). Changing the calculation as proposed (no rubble, no 5%) would result in a median Facility Recovery Rate of about 30%, with no change in recovered tonnage or in the regional recovery rate. For this reason, SWAC recommends that the minimum Facility Recovery Rate requirement remain at the current 25%, with eligibility for RSF and Excise Tax credits beginning at 30%. While this adjustment may give the impression that Metro is relaxing its recovery requirement, the opposite is true: a 25% minimum recovery rate under the proposed formula is actually more difficult to achieve than a 30% minimum under the current formula.

## Additional Recommendations

In addition to specific changes to the RSF credit program, SWAC made the following recommendations to maximize recovery in the Metro region:

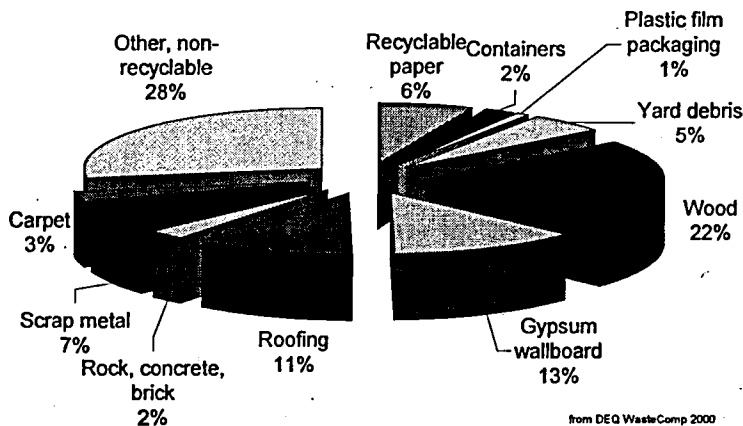
### Recommendation 4. Increase recovery from currently landfilled loads

While some increase in the regional recovery rate may be achieved through the above adjustments to the RSF and Excise Tax credit programs, the greatest potential for boosting the regional recovery rate lies in waste that now is delivered directly to landfills.

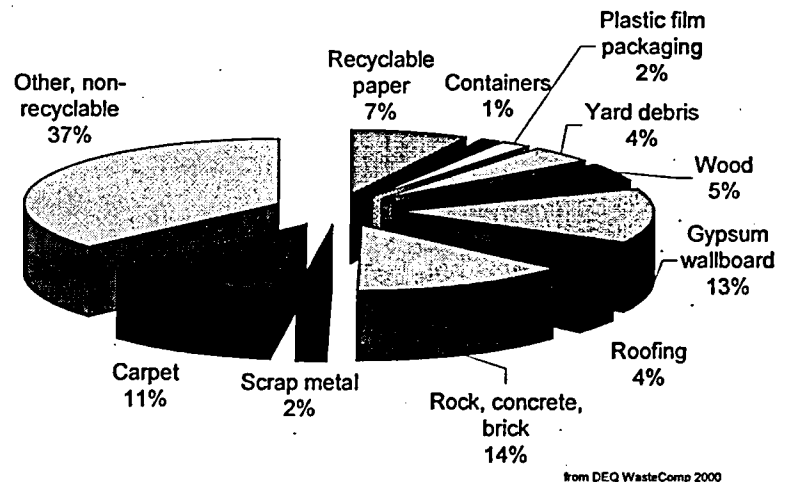
Last year almost as many tons of mixed dry waste were delivered to the two out-of-district Washington County landfills as were delivered to in-Metro Material Recovery Facilities. Processing these landfilled loads at current recovery rates could almost double post-collection recovery and could add up to two full points to the regional recovery rate. Figures 4a and 4b compare the materials available for recovery in landfilled loads with materials in the dry residual typically disposed of by MRFs (data from Oregon Department of Environmental Quality.)

SWAC is asking Metro to investigate a range of potential means to process loads now delivered directly to landfills.

Waste Delivered to Washington Co. Landfills



MRF Residual



**Figure 4.** Dry waste loads delivered to Lakeside and Hillsboro landfills in Washington County are rich in recoverable materials. (a) 2000 DEQ waste characterization of loads delivered to Washington County landfills; (b) For comparison, the 2000 DEQ waste characterization of loads delivered to in-Metro Material Recovery Facilities. Note the apparent recovery potential, particularly of wood, at the landfills.

### Recommendation 5. Provide credit access to out-of-district facilities

Currently, there are five Metro-regulated facilities that participate in the RSF credit program: East County Recycling, Pride Recycling, Recycle America, Wastech, and Willamette Resources, Inc. SWAC recommends that facilities outside Metro's jurisdiction, but whose recovery helps the region meet its recovery goals, should have access to RSF credits, provided that they satisfy the same eligibility requirements as in-Metro facilities, and provided that they grant Metro auditing and inspection authority comparable to its authority at in-Metro facilities. Metro's Office of the General Counsel has found that no change to Metro Code is required to enable Metro to grant credits to Designated Facilities. Regional



System Fee and Excise Tax credits may be granted via a Designated Facility Agreement. Accordingly, no change to the current Metro Code has been proposed in this regard.

#### **Recommendation 6. Monitor program effectiveness**

Semi-annual updates and a comprehensive program review in 2004 provide the Metro Council with periodic opportunities to evaluate the effectiveness of the RSF credit program and to make timely adjustments accordingly. Concurrent review requirements have been proposed for the Excise Tax credit program. In addition, a proposed program sunset for both RSF and Excise Tax credits if the Metro tip fee reaches historic pre-RSFC highs of \$75.00 per ton provides a signal to facilities that it is not Metro's intention to provide this economic incentive indefinitely.

### **ANALYSIS/INFORMATION**

#### **1. Known Opposition**

None. The Solid Waste Advisory Committee voted unanimously to support the recommendations implemented by these ordinances.

#### **2. Legal Antecedents**

Ordinance 01-919B, "For the Purpose of Amending Metro Code Chapter 5.02 to Improve the Effectiveness of the Regional System Fee Credit Program and to Remove the Program Sunset Date", adopted by the Metro Council in October 2001, established a work group to make recommendations implementing the new focus of the Regional System Fee Credit program, namely to improve recovery and boost the region's recovery rate.

##### *Regional System Fee Credits*

Metro Code Chapter 5.02 provides Material Recovery Facilities with an opportunity to pay a reduced Regional System Fee for the disposal of dry waste processing residual (i.e., the waste left over after recyclables have been recovered from loads of mixed dry waste.) This program is referred to as the Regional System Fee (RSF) credit program.

##### *Excise Tax Credits*

Metro Code Chapter 7.01 provides Material Recovery Facilities with an opportunity to pay a reduced solid waste Excise Tax for the disposal of dry waste processing residual.

##### *Minimum Recovery Rate*

Metro Code Chapter 5.01 requires that Metro-regulated facilities recover a minimum of 25% of non-putrescible waste until July 1, 2002 and 30% thereafter.

#### **3. Anticipated Effects**

The anticipated effect is that recovery of targeted waste materials will increase.

#### **4. Budget Impact**

##### *Solid Waste Fund*

The Fiscal Year 2002-03 proposed budget appropriation for Regional System Fee credits is \$900,000, and pursuant to Ordinance 01-919B, effective July 1, 2002, the credit program will be capped at that amount.

With current recovery, about \$870,000 would be paid out in Regional System Fee Credits during FY 2002-03 if the proposed changes were in effect for the entire fiscal year.

*General Fund*

With a \$6.39 per-ton solid waste Excise Tax and assuming current waste generation and recovery, the total Excise Tax credits granted for Fiscal Year 2002-03 would be about \$210,000. The proposed changes to the Recovery Rate definition and to the Excise Tax credit schedule would lower that expectation to about \$170,000. Ordinance 02-950 proposes to limit the total Excise Tax credits granted in any fiscal year to the dollar amount budgeted for that year, currently \$170,000.

*Other*

Authorizing broader participation in the Regional System Fee and Excise Tax Credit programs itself causes no budget impact; however, there may be negative impacts to both the solid waste and general funds in the future, especially if the exemption from collecting Metro fees and excise tax currently granted to Material Recovery Facilities is extended to additional facilities.

**RECOMMENDED ACTION**

The Executive Officer recommends approval of Ordinance No. 02-950.

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Agenda Item Number 5.3

**Ordinance No. 02-951A, For the Purpose of Amending Metro Code Chapter 5.02 to Modify the Regional System  
Credit Fee Program.**

***Second Reading***

**Metro Council Meeting  
Thursday, July 25, 2002  
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO ) ORDINANCE NO. 02-951A  
CODE CHAPTER 5.02 TO MODIFY THE )  
REGIONAL SYSTEM FEE CREDIT PROGRAM ) Introduced by Mike Burton,  
 ) Executive Officer

WHEREAS, in 2001, the Metro Council adopted Ordinance 01-919B to amend Chapter 5.02 of the Metro Code by providing that the primary goal of the Regional System Fee credit program shall be to improve material recovery in the Metro region and to boost the region's recovery rate; and,

WHEREAS, the Metro Council in adopting Ordinance 01-919B found that an operating subsidy could be a more effective recovery incentive if it were targeted at certain materials; and,

WHEREAS, pursuant to Ordinance 01-919B, the Metro Council established a work group of Metro staff and interested members of the Solid Waste Advisory Committee to make recommendations for implementing its findings; and,

WHEREAS, the Solid Waste Advisory Committee unanimously endorsed certain recommendations of the stakeholder work group; and,

WHEREAS, the Director of the Regional Environmental Management Department conveyed those recommendations to the Solid Waste and Recycling Committee of the Metro Council, together with certain refinements to such recommendations; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Subsection (w) of Metro Code Section 5.02.015 is amended to read:

(w) "Facility Recovery Rate" means the percentage expressed by dividing the sum-amount of tonnage recovered at a solid waste facility, excluding Source-Separate-Recyclable Materials, by the sum of the tonnage recovered at such facility, excluding Source-Separate-Recyclable Materials, plus the Processing Residual at-from such facility. As used in this subsection "tonnage recovered at solid waste facilities" excludes Source Separate Recyclable Materials; Waste from industrial processes; and ash, inert rock, concrete, brick, concrete block, foundry brick, asphalt, dirt, and sand, and any similar inert materials.

SECTION 2. Metro Code Chapter 5.02.047, as amended by Section 4 of Metro Ordinance 01-919B, is further amended to read:

5.02.047 Regional System Fee Credits

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

### System Fee Credit Schedule

<u>Facility Recovery Rate</u>		<u>System Fee Credit of no more than</u>
<u>From Above</u>	<u>Up To &amp; Including</u>	
0%	<del>35%</del> <u>30%</u>	0.00
<u>30%</u>	<u>35%</u>	<u>9.92</u>
35%	40%	<del>8.00</del> <u>11.46</u>
40%	45%	<del>9.82</del> <u>13.28</u>
45%	100%	<del>12.00</del> <u>14.00</u>

(b) The Executive Officer

- (1) shall establish ~~by July 1, 2002~~ administrative procedures to implement ~~Section 2(b) and Section 2(e) of this Ordinance~~ subsections (b) and (c) of Metro Code Section 5.02.046; and
- (2) may establish additional administrative procedures regarding the Regional System Fee Credits, including, but not limited to establishing eligibility requirements for such credits and establishing incremental System Fee Credits associated with Recovery Rates which fall between the ranges set forth in paragraph (a) of this section.

(c) The following users of Metro solid waste system facilities shall be allowed a credit in the amount of \$9 per ton against the Regional System Fee otherwise due under Section 5.02.045(a):

- (1) Users of Metro Central and Metro South Transfer Stations;
- (2) Any Person delivering authorized waste:

(A) to any landfill or other solid waste facility that is authorized to receive such waste through a Metro license, certificate, franchise or Designated Facility Agreement; or

(B) under the authority of a Metro Non-System License.

(d) Any person delivering Cleanup Material Contaminated By Hazardous Substances that is derived from an environmental cleanup of a nonrecurring event, and delivered to any Solid Waste System Facility authorized to accept such substances shall be allowed a credit in the amount of \$12.50 against the Regional System Fee otherwise due under Section 5.02.045(a) of this Chapter

~~(e) During any Fiscal Year, the total aggregate amount of credits granted under the Regional System Fee credit program shall not exceed the dollar amount appropriated budgeted for such purpose.~~

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

~~(g) The provisions of this Metro Code Section 5.02.047 are repealed on the effective date of any Ordinance increasing the fee for disposal of solid waste set forth in Metro Code Section 5.02.025(a) to an amount equal to or greater than \$75 per ton. For the purpose of determining whether the fee for disposal of solid waste set forth in Metro Code Section 5.02.025(a) is greater than \$75 per ton, the Transaction Charge provided in Metro Code Section 5.02.025(a)(3) shall be expressed on a per-ton basis by dividing such Transaction Charge by the average number of tons per transaction delivered to Metro South and Metro Central transfer stations during the previous calendar year."~~

**SECTION 3. Effective Date**

The provisions of this Ordinance shall become effective on ~~October~~ November ~~December~~ 1, 2002.

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

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

Attest:

Approved as to Form:

\_\_\_\_\_  
Christina Billington, Recording Secretary

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

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## **SOLID WASTE AND RECYCLING COMMITTEE REPORT**

CONSIDERATION OF ORDINANCE NO. 02-950A, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 7.01 TO INCREASE THE CREDITS AVAILABLE AGAINST THE SOLID WASTE EXCISE TAX AND MAKING OTHER RELATED CHANGES

CONSIDERATION OF ORDINANCE NO. 02-951A, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.02 TO MODIFY THE REGIONAL SYSTEM FEE CREDIT PROGRAM

CONSIDERATION OF ORDINANCE NO. 02-952A, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.01 TO DECREASE THE MINIMUM FACILITY RECOVERY RATE REQUIREMENT

---

Date: July 18, 2002

Presented by: Solid Waste and Recycling Committee

**Committee Recommendation:** At its July 17 meeting, the committee considered Ordinances No. 02-950, 02-951, and 02-952 and voted 3-0 to send the ordinances, as amended, to the Council for adoption. Voting in favor: Councilors McLain, Monroe, and Chair Atherton.

**Background:** Three ordinances (02-950, 02-951, and 02-952) recommend a package of code changes related to the solid waste system fee and excise tax credit programs. Ordinance No. 01-919B, adopted by the Council in October 2001, required the REM Department to establish a workgroup to review Metro Code provisions related to the regional system fee credit program and recommend changes designed to improve recovery and increase the region's recovery rate. A 12-member workgroup made up of SWAC representatives of the various sectors of the solid waste and recycling community represented on the committee examined all facets of the credit program and produced a series of recommended changes in late February 2002.

Changes related to the system fee credit program are addressed in Ordinances 02-951 and 02-952. Changes related to the excise tax credit program are addressed in Ordinance 02-950. The Council has not specifically requested an examination of the excise tax credit program. However, the REM staff believes that the proposed changes will result in greater conformity between the two credit programs.

**Committee Discussion:** At its June 19 meeting, the committee received a staff presentation on the package of ordinances, heard public testimony, and reviewed a series of amendments to the ordinances that had been prepared on behalf of Councilor Monroe.

There are six principal recommendations of the SWAC workgroup that are addressed in the package of ordinances. These are presented in great detail in the staff report accompanying the ordinances and are summarized briefly below:

### **SWAC Workgroup Recommendations:**

- 1) For the purpose of receiving the system fee or excise tax credit, Metro will count only the materials that are counted by the DEQ toward meeting the state recovery goal of 62%. To implement this recommendation, language is included in Ordinance 02-951 and Ordinance 02-952 that outlines the specific materials that the DEQ has

excluded from counting toward the recovery goal. The principal effect of this change would be to no longer count "rubble" in the credit programs.

- 2) The current program permits facility operators to count 5% of the source-separated material that they receive toward the recovery rate needed to qualify for the credit program. This provision was based on that some source-separated loads could be contaminated by up to 5%. In practice, contamination of such loads is minimal. Therefore, it is recommended that this allowance be repealed. In order to insure that this change would not negatively facility recovery efforts, Ordinance 02-952 includes a code amendment that would reduce the minimum qualifying percentage for the system fee credit by 5%. An identical change is proposed for the excise tax program in Ordinance 02-950.
- 3) The combined fiscal impact of recommendations 1 and 2 would be to reduce credit payments by \$400-450,000. Because such a reduction would likely reduce facility-based recovery efforts, the workgroup also recommended that the dollar amount paid for the various levels of recovery rates should be increased to make total future annual payments about equal to the current level. Ordinance 02-952 would modify the current system fee credit payment schedule from the current range of \$8 to \$12 to a new higher range of \$9.92 to \$14.
- 4) The workgroup requested that Metro explore options for increasing recovery from loads that are delivered directly to dry waste landfills. Staff is currently exploring such options, but these are not addressed in the proposed package of ordinances.
- 5) Several landfills and disposal facilities located outside Metro's geographic boundaries have approached the REM staff concerning their ability to access the fee and tax credit programs. While these programs do not extend to programs outside of Metro's boundaries, the REM staff has been advised by the Office of General Counsel that such an extension could be made by amending a facilities Designated Facility Agreement. Staff is currently discussing this potential change with the affected facilities. Such a change would require Council approval, but is not addressed in this package of ordinance.
- 6) The workgroup recommended that the credit programs be sunsetted when the Metro tip fee reaches \$75/ton. Language to this effect was included in Ordinance 02-950 for the excise tax credit and in Ordinance 02-951 for the system fee credit program.

**Monroe Amendments.** Councilor Monroe had requested that several amendments to the proposed ordinances be drafted. These were presented to the committee by Councilor Monroe. The amendments address the following areas:

- 1) It was originally thought that Council action on the proposed package of ordinances would be completed by the end of June. Given that final action will now likely occur in early August, it is necessary to change the effective date of each of the ordinances from October 1 to December 1, 2002.
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One point of discussion related to item #2 above, was whether the Council was guaranteeing a 12-month program, or not. Councilor McLain said that the Council does not have an unlimited purse. While the intention is to support a 12-month program, if additional program revenues or expenditures are needed, she wants the Council to be in a position to make the decision.

## **STAFF REPORT**

### **IN CONSIDERATION OF ORDINANCE NO. 02-951, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.02 TO MODIFY THE REGIONAL SYSTEM FEE CREDIT PROGRAM**

---

May 23, 2002

Prepared by: Tom Chaimov

## **BACKGROUND**

### **Summary**

This staff report summarizes recommendations on revising the Regional System Fee (RSF) credit program to improve recovery. The report discusses the changes to the Metro Code that would be required in order to implement those recommendations and to implement similar changes in the Excise Tax credit program. Also included are other recommendations beyond the confines of the RSF credit program that are critical to maximizing recovery in the region.

Implementing these recommendations and related changes would require amendments to three chapters of the Metro Code: 5.01, 5.02, and 7.01. This staff report accompanies three separate ordinances, to implement recommendations, one each for Metro Code Chapters 5.01, 5.02, and 7.01.

### **Recommendations**

A 12-member work group, representing all the sectors of the Solid Waste Advisory Committee (SWAC), met almost weekly from December 2001 through February 2002 to debate the merits of a variety of options for improving post-collection recovery in the region. On February 25, 2002, the SWAC unanimously endorsed the work group's recommended changes to the Regional System Fee Credit program, as follows:

#### **Recommendation 1. Count only materials that Oregon Department of Environmental Quality (DEQ) counts**

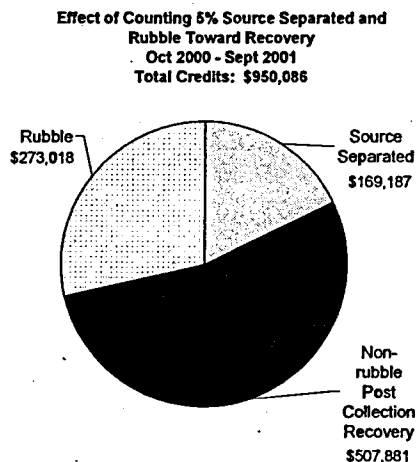
The Metro region is required by State law to achieve a recovery rate of 62% by 2005. In the State's calculation of the regional recovery rate, certain materials are excluded, such as dirt, rock, and industrial waste; however, Metro has traditionally counted some of these materials for the purposes of calculating the individual facility recovery rates used in the RSF credit program. Counting only those materials that the State counts will now focus the program on recovery activity that boosts the region's recovery rate.

In the Metro region, rubble (concrete, asphalt, etc.) is the material most affected; however, high levels of rubble recovery currently occur at facilities that are not regulated by Metro and are not eligible for recovery incentives. SWAC believes that these high recovery levels will continue even if rubble does not count for the purposes of the recovery incentives.

#### **Recommendation 2. Count only recovery from mixed loads**

Material Recovery Facilities receive loads of both mixed waste (recoverable and non-recoverable wastes, e.g., from construction sites) and source-separated materials (such as recyclables from curbside collection programs). Recognizing that even source-separated loads could contain some contamination, in 1998 Metro designed the RSF credit program to allow 5% of all source-separated materials accepted at mixed waste processing facilities to count toward the Facility Recovery Rate. Actual contamination in these loads has typically been much less, about 0.5%. Therefore, the recommended action is to discontinue an

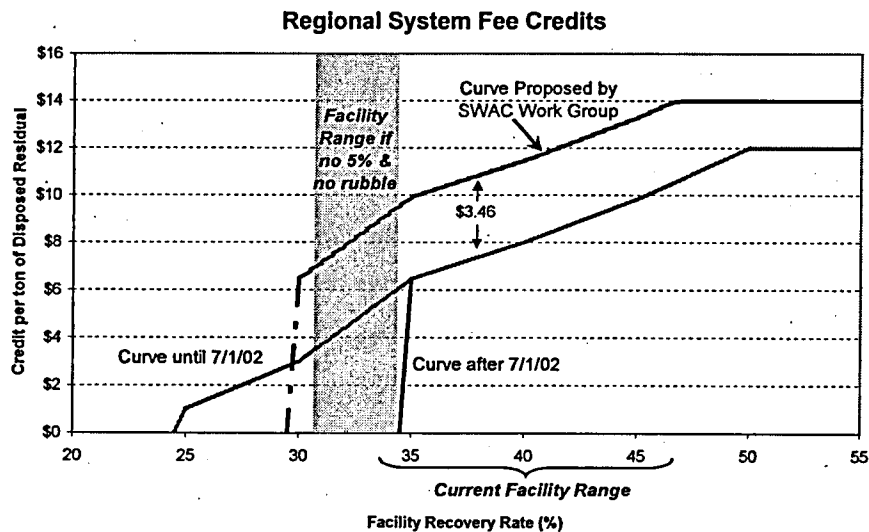
allowance for source-separated residual. Discontinuing the allowance will help to maintain the integrity of the source-separated system and will help focus facility recovery on the mixed waste stream.



**Figure 1.** During the twelve months through September 2001, Metro granted approximately \$950,000 in Regional System Fee Credits; about \$440,000 of which rewarded facilities for recovering rubble (\$273,018), which does not count toward the regional recovery rate, and for accepting large amounts of source-separated recyclables (\$169,187).

### Recommendation 3. Boost recovery with higher incentives

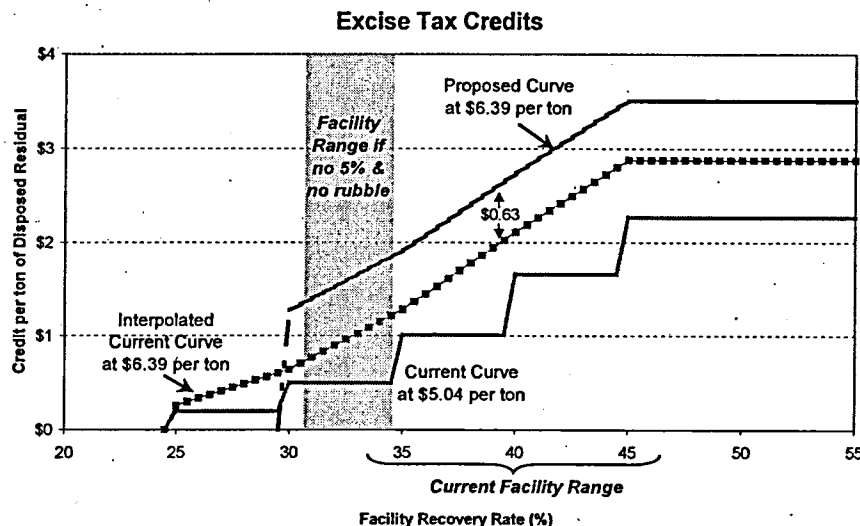
Implementing recommendations #1 and #2 above would free up about \$400,000 that could be redirected to improve post-collection recovery. Capitalizing on these savings by offering a higher incentive for materials that do count could help to increase the regional recovery rate. Maintaining the current program policy of reducing the RSF on disposal, based on each facility's recovery rate, would reward each facility according to its individual recovery effort: the higher the facility recovery rate, the larger the facility benefit. By redeploying the above savings as higher credits such that facilities as a whole continue to pay about the same effective RSF, the following credit curve results:



**Figure 2.** Regional System Fee credits available currently, until July 1, 2002; after July 1, 2002, pursuant to Ordinance 01-919B; and proposed. The higher proposed curve, recommended by SWAC because Facility Recovery Rates would be calculated differently, would ensure that facilities continue to pay about the same effective RSF as they are now.

#### *Excise Tax Credits*

Because a change in the way Metro calculates the Facility Recovery Rates would also affect Excise Tax credits, an analogous increase in the Excise Tax credit schedule is proposed as follows:



**Figure 3.** Excise Tax credits available currently and as proposed. The higher proposed curve, recommended by SWAC because Facility Recovery Rates would be calculated differently, would ensure that facilities continue to pay about the same effective Excise Tax as they are now. An oversight in the drafting of Ordinance 00-857, which established Excise Tax credits, prevented the agency from implementing a "smoothed" curve as shown. Ordinance 02-950 proposes to remedy that oversight.

#### *Minimum Facility Recovery Rate*

Currently, Metro-regulated facilities are required to maintain a minimum recovery rate of 25%, increasing to 30% July 1, 2002. The 5% increase was adopted by the Metro Council under the current formula for computing facility recovery rates. Counting neither rubble nor residual from source-separated recyclables for the purposes of calculating recovery rates would mean changing the formula that Metro uses to calculate Facility Recovery Rates.

The current formula, counting rubble and 5% of source-separated loads, results in a median Facility Recovery Rate of about 40% (see "Current Facility Range" in Figures 2 and 3). Changing the calculation as proposed (no rubble, no 5%) would result in a median Facility Recovery Rate of about 30%, with no change in recovered tonnage or in the regional recovery rate. For this reason, SWAC recommends that the minimum Facility Recovery Rate requirement remain at the current 25%, with eligibility for RSF and Excise Tax credits beginning at 30%. While this adjustment may give the impression that Metro is relaxing its recovery requirement, the opposite is true: a 25% minimum recovery rate under the proposed formula is actually more difficult to achieve than a 30% minimum under the current formula.

## Additional Recommendations

In addition to specific changes to the RSF credit program, SWAC made the following recommendations to maximize recovery in the Metro region:

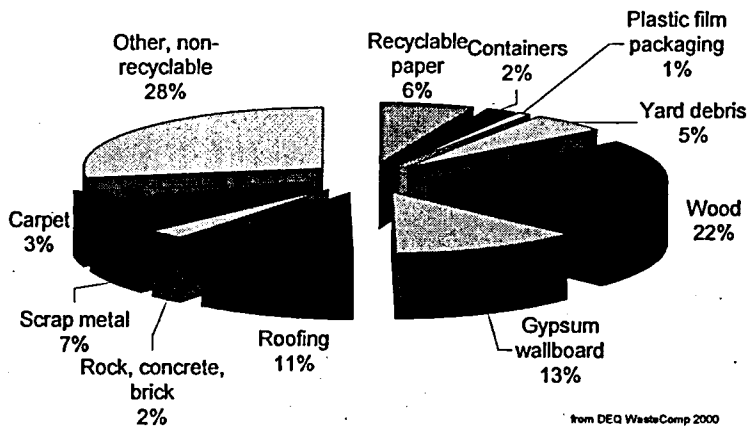
### Recommendation 4. Increase recovery from currently landfilled loads

While some increase in the regional recovery rate may be achieved through the above adjustments to the RSF and Excise Tax credit programs, the greatest potential for boosting the regional recovery rate lies in waste that now is delivered directly to landfills.

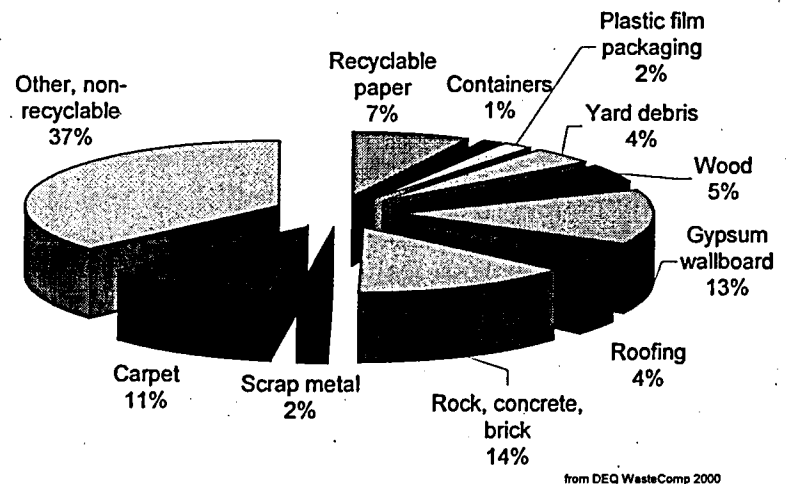
Last year almost as many tons of mixed dry waste were delivered to the two out-of-district Washington County landfills as were delivered to in-Metro Material Recovery Facilities. Processing these landfilled loads at current recovery rates could almost double post-collection recovery and could add up to two full points to the regional recovery rate. Figures 4a and 4b compare the materials available for recovery in landfilled loads with materials in the dry residual typically disposed of by MRFs (data from Oregon Department of Environmental Quality.)

SWAC is asking Metro to investigate a range of potential means to process loads now delivered directly to landfills.

**Waste Delivered to Washington Co. Landfills**



**MRF Residual**



**Figure 4.** Dry waste loads delivered to Lakeside and Hillsboro landfills in Washington County are rich in recoverable materials. (a) 2000 DEQ waste characterization of loads delivered to Washington County landfills; (b) For comparison, the 2000 DEQ waste characterization of loads delivered to in-Metro Material Recovery Facilities. Note the apparent recovery potential, particularly of wood, at the landfills.

### Recommendation 5. Provide credit access to out-of-district facilities

Currently, there are five Metro-regulated facilities that participate in the RSF credit program: East County Recycling, Pride Recycling, Recycle America, Wastech, and Willamette Resources, Inc. SWAC recommends that facilities outside Metro's jurisdiction, but whose recovery helps the region meet its recovery goals, should have access to RSF credits, provided that they satisfy the same eligibility requirements as in-Metro facilities, and provided that they grant Metro auditing and inspection authority comparable to its authority at in-Metro facilities. Metro's Office of the General Counsel has found that no change to Metro Code is required to enable Metro to grant credits to Designated Facilities. Regional

System Fee and Excise Tax credits may be granted via a Designated Facility Agreement. Accordingly, no change to the current Metro Code has been proposed in this regard.

#### **Recommendation 6. Monitor program effectiveness**

Semi-annual updates and a comprehensive program review in 2004 provide the Metro Council with periodic opportunities to evaluate the effectiveness of the RSF credit program and to make timely adjustments accordingly. Concurrent review requirements have been proposed for the Excise Tax credit program. In addition, a proposed program sunset for both RSF and Excise Tax credits if the Metro tip fee reaches historic pre-RSFC highs of \$75.00 per ton provides a signal to facilities that it is not Metro's intention to provide this economic incentive indefinitely.

### **ANALYSIS/INFORMATION**

#### **1. Known Opposition**

None. The Solid Waste Advisory Committee voted unanimously to support the recommendations implemented by these ordinances.

#### **2. Legal Antecedents**

Ordinance 01-919B, "For the Purpose of Amending Metro Code Chapter 5.02 to Improve the Effectiveness of the Regional System Fee Credit Program and to Remove the Program Sunset Date", adopted by the Metro Council in October 2001, established a work group to make recommendations implementing the new focus of the Regional System Fee Credit program, namely to improve recovery and boost the region's recovery rate.

##### *Regional System Fee Credits*

Metro Code Chapter 5.02 provides Material Recovery Facilities with an opportunity to pay a reduced Regional System Fee for the disposal of dry waste processing residual (i.e., the waste left over after recyclables have been recovered from loads of mixed dry waste.) This program is referred to as the Regional System Fee (RSF) credit program.

##### *Excise Tax Credits*

Metro Code Chapter 7.01 provides Material Recovery Facilities with an opportunity to pay a reduced solid waste Excise Tax for the disposal of dry waste processing residual.

##### *Minimum Recovery Rate*

Metro Code Chapter 5.01 requires that Metro-regulated facilities recover a minimum of 25% of non-putrescible waste until July 1, 2002 and 30% thereafter.

#### **3. Anticipated Effects**

The anticipated effect is that recovery of targeted waste materials will increase.

#### **4. Budget Impact**

##### *Solid Waste Fund*

The Fiscal Year 2002-03 proposed budget appropriation for Regional System Fee credits is \$900,000, and pursuant to Ordinance 01-919B, effective July 1, 2002, the credit program will be capped at that amount.

With current recovery, about \$870,000 would be paid out in Regional System Fee Credits during FY 2002-03 if the proposed changes were in effect for the entire fiscal year.

*General Fund*

With a \$6.39 per-ton solid waste Excise Tax and assuming current waste generation and recovery, the total Excise Tax credits granted for Fiscal Year 2002-03 would be about \$210,000. The proposed changes to the Recovery Rate definition and to the Excise Tax credit schedule would lower that expectation to about \$170,000. Ordinance 02-950 proposes to limit the total Excise Tax credits granted in any fiscal year to the dollar amount budgeted for that year, currently \$170,000.

*Other*

Authorizing broader participation in the Regional System Fee and Excise Tax Credit programs itself causes no budget impact; however, there may be negative impacts to both the solid waste and general funds in the future, especially if the exemption from collecting Metro fees and excise tax currently granted to Material Recovery Facilities is extended to additional facilities.

**RECOMMENDED ACTION**

The Executive Officer recommends approval of Ordinance No. 02-950.

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Agenda Item Number 5.4

**Ordinance No. 02-952A, For the purpose of Amending Metro Code Chapter 5.01 to Decrease the Minimum Facility Recovery Rate Requirement.**

***Second Reading***

Metro Council Meeting  
Thursday, July 25, 2002  
Metro Council Chamber



BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO	)	ORDINANCE NO. 02-952A
CODE CHAPTER 5.01 TO DECREASE THE	)	
MINIMUM FACILITY RECOVERY RATE	)	Introduced by Mike Burton,
REQUIREMENT	)	Executive Officer

WHEREAS, Chapter 5.01 of the Metro Code specifies for certain solid waste recovery facilities a minimum recovery rate of 25 percent until July 1, 2002, and thereafter specifies a minimum recovery rate of 30 percent; and,

WHEREAS, pursuant to Metro Ordinance 01-919B the Metro Council established a work group of Metro staff and interested members of the Solid Waste Advisory Committee to make recommendations for improving regional recovery; and,

WHEREAS, the work group and the Solid Waste Advisory Committee recommended that Metro change the way it calculates Facility Recovery Rates by excluding from the calculation certain materials that do not count toward the regional recovery rate calculated by the Oregon Department of Environmental Quality and also by excluding an allowance for source-separated residual from the calculation; and,

WHEREAS, the recommended changes to the calculation of Facility Recovery Rates would effect a reduction in the average Facility Recovery Rate without any reduction in the amount of waste recovery; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code Chapter 5.01.125 is amended to read:

(a) A holder of a Certificate, License or Franchise for a Material Recovery facility, Reload or Local Transfer Station, or a holder of a Franchise issued after July 1, 2000 for a Regional Transfer Station shall perform Material Recovery from Non-Putrescible Waste accepted at the facility, or shall deliver Non-Putrescible Waste to a Solid Waste facility whose primary purpose is to recover useful materials from Solid Waste.

(b) A holder of a Certificate, License or Franchise for a Material Recovery facility or Local Transfer Station, or a holder of a Franchise issued after July 1, 2000 for a Regional Transfer Station, shall recover at least 25% by weight of Non-Putrescible waste accepted at the facility and waste delivered by public customers. ~~and by July 1, 2002, shall recover at least 30% by weight of Non-Putrescible waste accepted at the facility and waste delivered by public customers.~~ For the purposes of calculating the amount of recovery required by this subsection, recovered waste shall exclude both waste from industrial processes and ash, inert rock, concrete, brick, concrete block, foundry brick, asphalt, dirt, and sand; and any similar inert materials. Failure to maintain the minimum recovery rate specified in this section shall constitute a violation enforceable under Metro Code section 5.01.180 and 5.01.200.

(c) In addition to the requirements of (a) and (b) in this section, holders of a License or Franchise for a Local Transfer Station: .

(1) Shall accept Putrescible Waste originating within the Metro boundary only from persons who are franchised or permitted by a local government unit to collect and haul Putrescible Waste.

(2) Shall not accept hazardous waste.

(3) Shall be limited in accepting Putrescible Waste during any fiscal year to an amount of Putrescible Waste equal to the demand for disposal of Putrescible Waste generated within a Service Area as specified in accordance with this chapter.

(4) Shall accept Solid Waste from any Waste Hauler who operates to serve a substantial portion of the demand for disposal of Solid Waste within the Service Area of the Local Transfer Station.

(d) In addition to the requirements of (a) and (b) in this section, holders of a Franchise for a Regional Transfer Station issued after July 1, 2000:

(1) Shall accept authorized Solid Waste originating within the Metro boundary from any person who delivers authorized waste to the facility, on the days and at the times established by Metro in approving the Franchise application.

(2) Shall provide an area for collecting Household Hazardous Waste from residential generators at the Franchised Solid Waste Facility, or at another location more convenient to the population being served by the franchised Solid Waste Facility, on the days and at the times established by Metro in approving the Franchise application.

(3) Shall provide an area for collecting source-separated recyclable materials without charge at the Franchised Solid Waste Facility, or at another location more convenient to the population being served by the franchised Solid Waste Facility, on the days and at the times established by Metro in approving the Franchise application.

## SECTION 2. Effective Date

The provisions of this Ordinance shall become effective on ~~October~~ ~~November~~ December 1, 2002.

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

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

Attest:

Approved as to Form:

\_\_\_\_\_  
Christina Billington, Recording Secretary

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

## **SOLID WASTE AND RECYCLING COMMITTEE REPORT**

CONSIDERATION OF ORDINANCE NO. 02-950A, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 7.01 TO INCREASE THE CREDITS AVAILABLE AGAINST THE SOLID WASTE EXCISE TAX AND MAKING OTHER RELATED CHANGES

CONSIDERATION OF ORDINANCE NO. 02-951A, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.02 TO MODIFY THE REGIONAL SYSTEM FEE CREDIT PROGRAM

CONSIDERATION OF ORDINANCE NO. 02-952A, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.01 TO DECREASE THE MINIMUM FACILITY RECOVERY RATE REQUIREMENT

---

Date: July 18, 2002

Presented by: Solid Waste and Recycling Committee

**Committee Recommendation:** At its July 17 meeting, the committee considered Ordinances No. 02-950, 02-951, and 02-952 and voted 3-0 to send the ordinances, as amended, to the Council for adoption. Voting in favor: Councilors McLain, Monroe, and Chair Atherton.

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## **STAFF REPORT**

### **IN CONSIDERATION OF ORDINANCE NO. 02-952, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.01 TO DECREASE THE MINIMUM FACILITY RECOVERY RATE REQUIREMENT**

---

May 23, 2002

Prepared by: Tom Chaimov

## **BACKGROUND**

### **Summary**

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A 12-member work group, representing all the sectors of the Solid Waste Advisory Committee (SWAC), met almost weekly from December 2001 through February 2002 to debate the merits of a variety of options for improving post-collection recovery in the region. On February 25, 2002, the SWAC unanimously endorsed the work group's recommended changes to the Regional System Fee Credit program, as follows:

#### **Recommendation 1. Count only materials that Oregon Department of Environmental Quality (DEQ) counts**

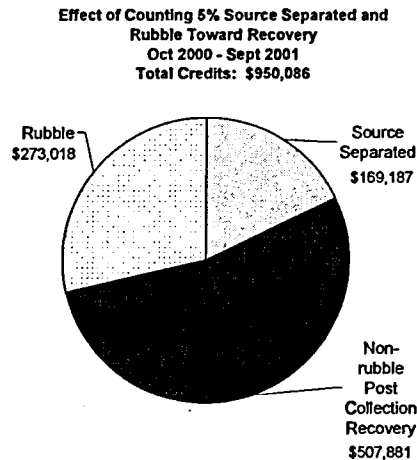
The Metro region is required by State law to achieve a recovery rate of 62% by 2005. In the State's calculation of the regional recovery rate, certain materials are excluded, such as dirt, rock, and industrial waste; however, Metro has traditionally counted some of these materials for the purposes of calculating the individual facility recovery rates used in the RSF credit program. Counting only those materials that the State counts will now focus the program on recovery activity that boosts the region's recovery rate.

In the Metro region, rubble (concrete, asphalt, etc.) is the material most affected; however, high levels of rubble recovery currently occur at facilities that are not regulated by Metro and are not eligible for recovery incentives. SWAC believes that these high recovery levels will continue even if rubble does not count for the purposes of the recovery incentives.

#### **Recommendation 2. Count only recovery from mixed loads**

Material Recovery Facilities receive loads of both mixed waste (recoverable and non-recoverable wastes, e.g., from construction sites) and source-separated materials (such as recyclables from curbside collection programs). Recognizing that even source-separated loads could contain some contamination, in 1998 Metro designed the RSF credit program to allow 5% of all source-separated materials accepted at mixed waste processing facilities to count toward the Facility Recovery Rate. Actual contamination in these loads has typically been much less, about 0.5%. Therefore, the recommended action is to discontinue an

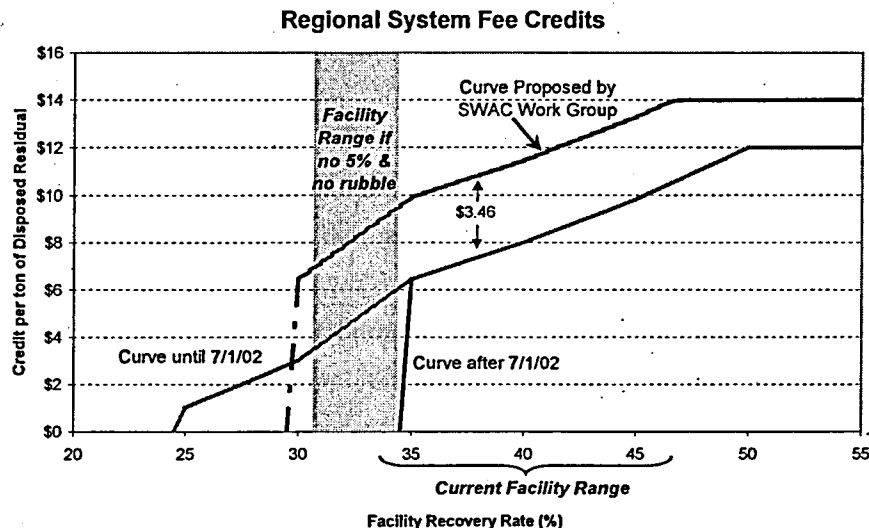
allowance for source-separated residual. Discontinuing the allowance will help to maintain the integrity of the source-separated system and will help focus facility recovery on the mixed waste stream.



**Figure 1.** During the twelve months through September 2001, Metro granted approximately \$950,000 in Regional System Fee Credits; about \$440,000 of which rewarded facilities for recovering rubble (\$273,018), which does not count toward the regional recovery rate, and for accepting large amounts of source-separated recyclables (\$169,187).

### Recommendation 3. Boost recovery with higher incentives

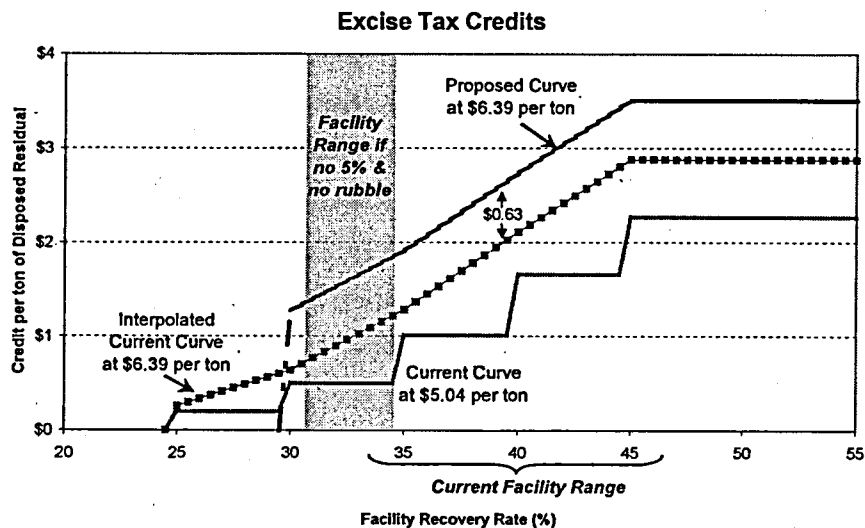
Implementing recommendations #1 and #2 above would free up about \$400,000 that could be redirected to improve post-collection recovery. Capitalizing on these savings by offering a higher incentive for materials that do count could help to increase the regional recovery rate. Maintaining the current program policy of reducing the RSF on disposal, based on each facility's recovery rate, would reward each facility according to its individual recovery effort: the higher the facility recovery rate, the larger the facility benefit. By redeploying the above savings as higher credits such that facilities as a whole continue to pay about the same effective RSF, the following credit curve results:



**Figure 2.** Regional System Fee credits available currently, until July 1, 2002; after July 1, 2002, pursuant to Ordinance 01-919B; and proposed. The higher proposed curve, recommended by SWAC because Facility Recovery Rates would be calculated differently, would ensure that facilities continue to pay about the same effective RSF as they are now.

#### *Excise Tax Credits*

Because a change in the way Metro calculates the Facility Recovery Rates would also affect Excise Tax credits, an analogous increase in the Excise Tax credit schedule is proposed as follows:



**Figure 3.** Excise Tax credits available currently and as proposed. The higher proposed curve, recommended by SWAC because Facility Recovery Rates would be calculated differently, would ensure that facilities continue to pay about the same effective Excise Tax as they are now. An oversight in the drafting of Ordinance 00-857, which established Excise Tax credits, prevented the agency from implementing a "smoothed" curve as shown. Ordinance 02-950 proposes to remedy that oversight.

#### *Minimum Facility Recovery Rate*

Currently, Metro-regulated facilities are required to maintain a minimum recovery rate of 25%, increasing to 30% July 1, 2002. The 5% increase was adopted by the Metro Council under the current formula for computing facility recovery rates. Counting neither rubble nor residual from source-separated recyclables for the purposes of calculating recovery rates would mean changing the formula that Metro uses to calculate Facility Recovery Rates.

The current formula, counting rubble and 5% of source-separated loads, results in a median Facility Recovery Rate of about 40% (see "Current Facility Range" in Figures 2 and 3). Changing the calculation as proposed (no rubble, no 5%) would result in a median Facility Recovery Rate of about 30%, with no change in recovered tonnage or in the regional recovery rate. For this reason, SWAC recommends that the minimum Facility Recovery Rate requirement remain at the current 25%, with eligibility for RSF and Excise Tax credits beginning at 30%. While this adjustment may give the impression that Metro is relaxing its recovery requirement, the opposite is true: a 25% minimum recovery rate under the proposed formula is actually more difficult to achieve than a 30% minimum under the current formula.



## Additional Recommendations

In addition to specific changes to the RSF credit program, SWAC made the following recommendations to maximize recovery in the Metro region:

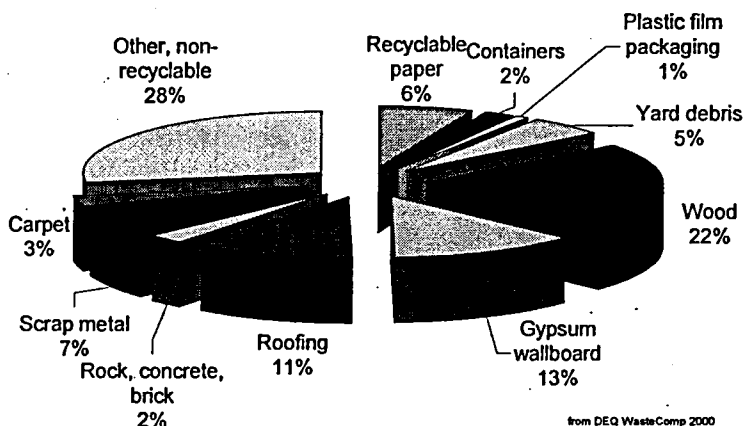
### Recommendation 4. Increase recovery from currently landfilled loads

While some increase in the regional recovery rate may be achieved through the above adjustments to the RSF and Excise Tax credit programs, the greatest potential for boosting the regional recovery rate lies in waste that now is delivered directly to landfills.

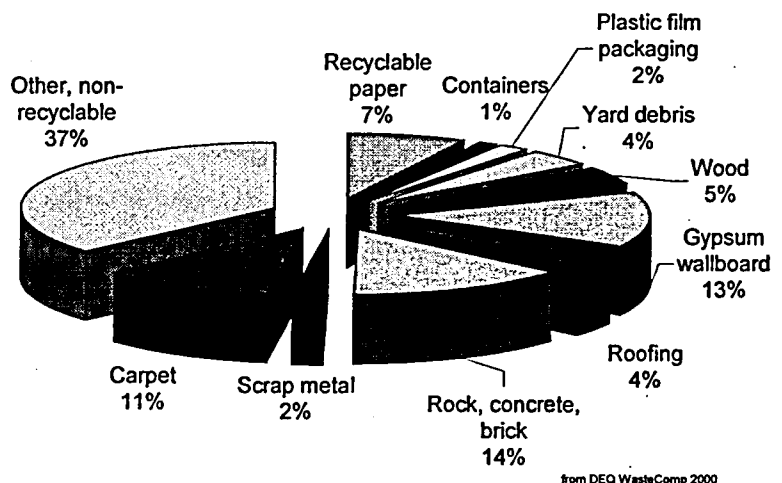
Last year almost as many tons of mixed dry waste were delivered to the two out-of-district Washington County landfills as were delivered to in-Metro Material Recovery Facilities. Processing these landfilled loads at current recovery rates could almost double post-collection recovery and could add up to two full points to the regional recovery rate. Figures 4a and 4b compare the materials available for recovery in landfilled loads with materials in the dry residual typically disposed of by MRFs (data from Oregon Department of Environmental Quality.)

SWAC is asking Metro to investigate a range of potential means to process loads now delivered directly to landfills.

**Waste Delivered to Washington Co. Landfills**



**MRF Residual**



**Figure 4.** Dry waste loads delivered to Lakeside and Hillsboro landfills in Washington County are rich in recoverable materials. (a) 2000 DEQ waste characterization of loads delivered to Washington County landfills; (b) For comparison, the 2000 DEQ waste characterization of loads delivered to in-Metro Material Recovery Facilities. Note the apparent recovery potential, particularly of wood, at the landfills.

### Recommendation 5. Provide credit access to out-of-district facilities

Currently, there are five Metro-regulated facilities that participate in the RSF credit program: East County Recycling, Pride Recycling, Recycle America, Wastech, and Willamette Resources, Inc. SWAC recommends that facilities outside Metro's jurisdiction, but whose recovery helps the region meet its recovery goals, should have access to RSF credits, provided that they satisfy the same eligibility requirements as in-Metro facilities, and provided that they grant Metro auditing and inspection authority comparable to its authority at in-Metro facilities. Metro's Office of the General Counsel has found that no change to Metro Code is required to enable Metro to grant credits to Designated Facilities. Regional

System Fee and Excise Tax credits may be granted via a Designated Facility Agreement. Accordingly, no change to the current Metro Code has been proposed in this regard.

#### **Recommendation 6. Monitor program effectiveness**

Semi-annual updates and a comprehensive program review in 2004 provide the Metro Council with periodic opportunities to evaluate the effectiveness of the RSF credit program and to make timely adjustments accordingly. Concurrent review requirements have been proposed for the Excise Tax credit program. In addition, a proposed program sunset for both RSF and Excise Tax credits if the Metro tip fee reaches historic pre-RSFC highs of \$75.00 per ton provides a signal to facilities that it is not Metro's intention to provide this economic incentive indefinitely.

### **ANALYSIS/INFORMATION**

#### **1. Known Opposition**

None. The Solid Waste Advisory Committee voted unanimously to support the recommendations implemented by these ordinances.

#### **2. Legal Antecedents**

Ordinance 01-919B, "For the Purpose of Amending Metro Code Chapter 5.02 to Improve the Effectiveness of the Regional System Fee Credit Program and to Remove the Program Sunset Date", adopted by the Metro Council in October 2001, established a work group to make recommendations implementing the new focus of the Regional System Fee Credit program, namely to improve recovery and boost the region's recovery rate.

##### *Regional System Fee Credits*

Metro Code Chapter 5.02 provides Material Recovery Facilities with an opportunity to pay a reduced Regional System Fee for the disposal of dry waste processing residual (i.e., the waste left over after recyclables have been recovered from loads of mixed dry waste.) This program is referred to as the Regional System Fee (RSF) credit program.

##### *Excise Tax Credits*

Metro Code Chapter 7.01 provides Material Recovery Facilities with an opportunity to pay a reduced solid waste Excise Tax for the disposal of dry waste processing residual.

##### *Minimum Recovery Rate*

Metro Code Chapter 5.01 requires that Metro-regulated facilities recover a minimum of 25% of non-putrescible waste until July 1, 2002 and 30% thereafter.

#### **3. Anticipated Effects**

The anticipated effect is that recovery of targeted waste materials will increase.

#### **4. Budget Impact**

##### *Solid Waste Fund*

The Fiscal Year 2002-03 proposed budget appropriation for Regional System Fee credits is \$900,000, and pursuant to Ordinance 01-919B, effective July 1, 2002, the credit program will be capped at that amount.

With current recovery, about \$870,000 would be paid out in Regional System Fee Credits during FY 2002-03 if the proposed changes were in effect for the entire fiscal year.

*General Fund*

With a \$6.39 per-ton solid waste Excise Tax and assuming current waste generation and recovery, the total Excise Tax credits granted for Fiscal Year 2002-03 would be about \$210,000. The proposed changes to the Recovery Rate definition and to the Excise Tax credit schedule would lower that expectation to about \$170,000. Ordinance 02-950 proposes to limit the total Excise Tax credits granted in any fiscal year to the dollar amount budgeted for that year, currently \$170,000.

*Other*

Authorizing broader participation in the Regional System Fee and Excise Tax Credit programs itself causes no budget impact; however, there may be negative impacts to both the solid waste and general funds in the future, especially if the exemption from collecting Metro fees and excise tax currently granted to Material Recovery Facilities is extended to additional facilities.

**RECOMMENDED ACTION**

The Executive Officer recommends approval of Ordinance No. 02-952.

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**Agenda Item Number 6.1**

**Resolution No. 02-3192, For the purpose of Amending the Greenspaces Master Plan and Updating the Regional Trails and Greenways Plan and Map.**

**Metro Council Meeting  
Thursday, July 25, 2002  
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE ) RESOLUTION NO. 02-3192  
GREENSPACES MASTER PLAN AND )  
UPDATING THE REGIONAL TRAILS AND )  
GREENWAYS PLAN AND MAP ) Introduced by Mike Burton, Executive Officer

WHEREAS, on February 9, 1989, by Resolution No. 89-1043, the Metro Council established five specific tasks for regional natural areas planning, one of them being to coordinate and assist in the planning, acquisition and development of regional trails, greenways and wildlife corridors; and

WHEREAS, On July 23, 1992, by Resolution No. 92-1637, the Metro Council adopted the Greenspaces Master Plan, which outlines and maps natural areas, trails and greenways of regional significance; and

WHEREAS, The Greenspaces Master Plan proposes the establishment of a regional trails system which interconnects natural areas; open spaces and parks; and that provide means of access including bicycle and pedestrian commuting to commerce and jobs, recreation and natural areas; and

WHEREAS, in 1997, the Metro Council adopted the Regional Framework Plan by Ordinance No. 97-715B, which directs Metro to identify, protect and manage a regional system of parks, natural areas, open spaces, trails and greenways; and

WHEREAS, the Regional Framework Plan Section 3.4 states that Metro shall identify the Regional Trail System, coordinate planning, and work to identify and secure funding for development and operation of these trails. The framework plan also states that the Regional Trail System should be integrated with local trail systems; and

WHEREAS, On May 31, 2001, by Resolution No. 01-3068 the Metro Council adopted a set of criteria for additions or changes to the Regional Trails Plan; and

WHEREAS, the Greenspaces Technical Advisory Committee (GTAC) has completed a yearlong process to coordinate, review and recommend a set of additions and changes to the Regional Trails Plan, now entitled the Regional Trails and Greenways Plan; and

WHEREAS, all trail alignments shown on the Regional Trails and Greenways Plan Map are conceptual only; now therefore

BE IT RESOLVED

That the Metro Council approves the amendments to the Regional Trails and Greenways Plan and Map as described in Exhibit "A" and mapped in Exhibit "B".

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

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

Approved as to form:

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

Resolution No. 02-3192, page 2

Resolution No. 02-3192 Exhibit "A"

**PROPOSED REGIONAL TRAILS AND GREENWAYS PLAN AND MAP AMENDMENTS**

<b>"Numbered" trails are proposed by GTAC as additions to the Greenspaces Master Plan and the Regional Trails and Greenways Plan and Map. All alignments are conceptual.</b>	
<b>1.</b>	<b>Council Creek Trail: Westside MAX to Banks</b> <i>Description:</i> End of MAX line in Hillsboro west to Banks via Cornelius, Forest Grove and unincorporated Washington County, with an additional short trail extension south to the Tualatin River. <i>Sponsor:</i> City of Cornelius – Richard Meyer <i>Affected Jurisdictions:</i> Cornelius, Hillsboro, Forest Grove, Washington County
<b>2.</b>	<b>Surf to Turf Trail: Rail with Trail (2A and 2B)</b> <i>Description:</i> From downtown Lake Oswego through Clackamas and Washington counties to the Oregon coast. Connections to the coast could be made via Banks-Vernonia Trail and/or other future route as shown on original 1992 Regional Trails Plan. This conceptual alignment runs parallel to Burlington Northern Railroad and Portland and Western Railroad lines, and incorporates portions of the Fanno Creek Greenway Trail. <i>Sponsor:</i> Metro Councilor Bill Atherton <i>Affected Jurisdictions within metro area:</i> Lake Oswego, Hillsboro, Cornelius, Forest Grove, Washington County
<b>3.</b>	<b>Washington Square Regional Center Loop Trail</b> <i>Description:</i> Eastside of Hwy 217 at Washington Square with connection to Fanno Creek Greenway Trail. This trail creates a loop around Washington Square, a designated regional center. <i>Sponsor:</i> City of Tigard – Duane Roberts <i>Affected Jurisdictions:</i> Tigard, Washington County, Beaverton
<b>4.</b>	<b>North Willamette River Greenway Trail</b> <i>Description:</i> Parallel to the Willamette River from the Steel Bridge north to the St. Johns Bridge along the east bank of the river. <i>Sponsor:</i> Portland Parks – Jim Sjulín <i>Affected Jurisdictions:</i> Portland, Port of Portland
<b>5.</b>	<b>Hillsdale to Lake Oswego Trail</b> <i>Description:</i> Proposed pedestrian trail from Hillsdale Town Center in southwest Portland south to downtown Lake Oswego with a connection to the Willamette River Greenway Trail. <i>Sponsor:</i> Portland Parks and SWTrails Group – Jim Sjulín and Don Baack <i>Affected Jurisdictions:</i> Portland, Lake Oswego, Oregon State Parks

6.	<p><b>Willamette Shoreline Trolley: Rail with Trail</b></p> <p><i>Description:</i> Starting at Willamette Park south of downtown Portland south to downtown Lake Oswego between Highway 43 and the Willamette River. Currently there is a publicly owned right-of-way in this area owned by the Willamette Shoreline Consortium (made up of Metro, Tri-Met, Lake Oswego, City of Portland, Multnomah County and Clackamas County). The planned use for this right-of-way is a future rail transit project. Where there is room for both, the trail is proposed as a "Rail with Trail" project. Where there is not adequate room in the transit corridor, other alignments for the trail will be studied.</p> <p><i>Sponsors:</i> Portland Parks and Metro – Jim Sjulín and Heather Nelson Kent</p> <p><i>Affected Jurisdictions:</i> Portland, Multnomah County, Lake Oswego, Clackamas County, Tri-Met and Metro</p>
7.	<p><b>River to River Trail (Willamette River to Tualatin River)</b></p> <p><i>Description:</i> Land based trail connecting the Willamette and Tualatin rivers via Wilson Creek and/or Pecan Creek. Trail starts in Lake Oswego and ends in Tualatin.</p> <p><i>Sponsor:</i> Three Rivers Land Conservancy - Jayne Cronlund</p> <p><i>Affected Jurisdictions:</i> Lake Oswego, Clackamas County</p>
8.	<p><b>Stafford Trail</b></p> <p><i>Description:</i> Land based trail through the Stafford Basin from the Tualatin River (near Stafford Road) south to the Willamette River.</p> <p><i>Sponsor:</i> Clackamas County Parks – Mary Cook Swanson</p> <p><i>Affected Jurisdictions:</i> Clackamas County</p>
9.	<p><b>Willamette Narrows Greenway Trail</b></p> <p><i>Description:</i> Westside of the Willamette River from mouth of the Tualatin River south of Willamette Park to land purchased by Metro near the Canby Ferry.</p> <p><i>Sponsor:</i> Metro Regional Parks and Greenspaces - Jim Morgan</p> <p><i>Affected Jurisdictions:</i> Clackamas County, Oregon State Parks and Recreation Department</p>
10.	<p><b>Oregon City Loop Trail</b></p> <p><i>Description:</i> Circular connection between the Willamette River east to Canemah Bluffs; east and north to Newell Creek Canyon; north via Beaver Lake Trail connecting to the existing Bike/Ped bridge over the Clackamas River and I-205 Bike/Ped Trail.</p> <p><i>Sponsor:</i> City of Oregon City - Dee Craig</p> <p><i>Affected Jurisdictions:</i> Oregon City, Clackamas County</p>
11.	<p><b>Phillips Creek Trail</b></p> <p><i>Description:</i> Trail loop around Clackamas Town Center, a designated regional center, connecting the I-205 Bike/Ped Trail and North Clackamas Greenway, following Phillips Creek.</p> <p><i>Sponsor:</i> Clackamas County Land Use and Transportation – Karen Buehrig</p> <p><i>Affected Jurisdictions:</i> Clackamas County, North Clackamas Parks &amp; Recreation District</p>



12.	<p><b>East Buttes Power Line Corridor Trail</b></p> <p><i>Description:</i> Continues the north to south connection through the Gresham area that begins with the Gresham Fairview Trail. Begins on south side of the Springwater Corridor extending south to the Clackamas River Greenway following a power line right of way.</p> <p><i>Sponsor:</i> Pleasant Valley Planning Group (Metro, Portland, Gresham) – Kim White (Metro)</p> <p><i>Affected Jurisdictions:</i> Portland, Gresham, Happy Valley, Clackamas County, Multnomah County</p>
13.	<p><b>Scouter Mountain Trail Extension (to East Buttes Trail)</b></p> <p><i>Description:</i> A northern spur of the Scouter Mountain Trail connecting Scouter Mountain Trail to the East Buttes Loop Trail.</p> <p><i>Sponsor:</i> Clackamas County Parks - Mary Cook Swanson</p> <p><i>Affected Jurisdictions:</i> Clackamas County, Happy Valley</p>
14.	<p><b>East Buttes Loop Trail</b></p> <p><i>Description:</i> Located in the area south of the Springwater Corridor starting from Powell Butte looping east through a number of Metro and Gresham open spaces back to the Springwater Corridor.</p> <p><i>Sponsor:</i> Metro Regional Parks and Greenspaces and Metro Planning Department and Pleasant Valley Steering Committee</p> <p><i>Affected Jurisdictions:</i> Portland, Gresham, Happy Valley, Clackamas County, Multnomah County</p>
15.	<p><b>Lewis and Clark Discovery Greenway Trail -Columbia River Trail Extension</b></p> <p><i>Description:</i> North of Blue Lake Regional Park on the levee eastbound to mouth of the Sandy River and into downtown Troutdale connecting to the Beaver Creek Canyon Trail. Part of the 40-Mile Loop Trail.</p> <p><i>Sponsor:</i> City of Troutdale Parks - Valerie Lantz</p> <p><i>Impacted Jurisdictions:</i> Troutdale, Fairview, Multnomah County Drainage District #1</p>
16.	<p><b>Cross Levee Trail</b></p> <p><i>Description:</i> North-south trail segment of the 40-Mile Loop Trail connecting the Lewis and Clark Discovery Greenway Trail to the Columbia Slough Trail near NE 143<sup>rd</sup> Ave.</p> <p><i>Sponsor:</i> Portland Parks – Jim Sjulín</p> <p><i>Affected Jurisdiction:</i> Portland</p>
17.	<p><b>Sullivan's Gulch/I-84 Trail</b></p> <p><i>Description:</i> Starting at the Willamette River's Eastbank Esplanade (at the junction of I-84 and I-5) east to the I-205 Bike/Ped Trail. The trail corridor would be located on the north side of I-84, adjacent to the Max Line and Union Pacific RR tracks. This trail runs along I-84 ending just east of Maywood Park and connecting to Mt. Scott. This trail has already been added to Metro's 2000 Regional Transportation Plan (RTP).</p> <p><i>Sponsor:</i> Portland Parks – Jim Sjulín</p> <p><i>Affected Jurisdictions:</i> Portland</p>

18.	<p><b>Peninsula Canal Trail</b></p> <p><i>Description:</i> North-south trail segment of the 40-Mile Loop Trail connecting the Lewis and Clark Discovery Greenway Trail to the Columbia Slough Trail on the east side of the canal at approximately NE 18<sup>th</sup> Ave.</p> <p><i>Sponsor:</i> Portland Parks – Jim Sjulín</p> <p><i>Affected Jurisdiction:</i> Portland</p>
19.	<p><b>Lower Columbia River Water Trail</b></p> <p><i>Description:</i> The Lower Columbia River Water Trail encompasses the free flowing lower 146 river miles of the Columbia River from Bonneville Dam to the Pacific Ocean. Within the metropolitan Portland area, the Water Trail connects important points of interest, including boat ramps and river access points. The Lower Columbia River Water Trail is a bi-state effort. Trail amenities are (and will be located) on both the Oregon and Washington sides of the river. The entire length of the Lower Columbia River Water Trail is encompassed in the National Park Service's Lewis and Clark National Historic Trail. With the upcoming 2003-2006 Bicentennial, the Lewis and Clark NHT is expected to receive a great deal of attention and visitor activity. Establishment of the Lower Columbia River Water Trail will significantly help visitors experience the Lewis and Clark Trail by providing important local information about trail amenities as well as safety and environmental issues.</p> <p><i>Sponsor:</i> 40-Mile Loop Land Trust – Barbara Walker, Lower Columbia River Estuary Partnership – Deborah Marriot</p> <p><i>Affected Jurisdictions within the Metro area:</i> Multnomah County, Cities of Portland, Troutdale, Fairview, Gresham.</p> <p><i>Additional Affected Jurisdictions:</i> Oregon Counties: Columbia, Clatsop  Oregon Cities: Scappoose, St. Helens, Rainier, Clatskanie, Astoria, Warrenton  Washington Counties: Skamania, Clark, Cowlitz, Wahkiakum, Pacific  Washington Cities: Washougal, Camas, Vancouver, Ridgefield, Kalama, Kelso, Longview, Cathlamet, Ilwaco</p>

**“Lettered” recommendations are technical changes to regional trails and greenways that were included in the 1992 Greenspaces Master Plan. In general, these changes are in designations from “greenway” (which indicates a trail *may* be included) to “trail” which indicates a future plan for a land-based trail to be added in these areas. Alignments are conceptual.**

<b>A.</b>	<p><b>Rock Creek Greenway Trail</b></p> <p><i>Description:</i> Change designation from greenway to land based trail.</p> <p>Show new alignment as described in the City of Hillsboro’s Parks Master Plan. This change in alignment includes deleting a portion of the Oregon Electric Railway Trail and replacing it with the Rock Creek Trail. A portion of this trail is already completed.</p> <p><i>Sponsor:</i> Hillsboro Parks – Scott Talbot</p> <p><i>Affected Jurisdiction:</i> Hillsboro</p>
<b>B.</b>	<p><b>Fanno Creek Greenway Trail</b></p> <p><i>Description:</i> Change designation from greenway to land based trail.</p> <p>15-mile trail from Willamette Park in John’s Landing west through Portland then south to Beaverton, Tigard, Durham and into Tualatin where Fanno Creek flows into the Tualatin River.</p> <p>Note: a future trail bridge for pedestrians and bicyclists, over the Tualatin River, is now included in the proposed trail alignment.</p> <p><i>Sponsor:</i> Fanno Creek Greenway Trail working group – Bob Bothman, chair</p> <p><i>ed Jurisdictions:</i> Portland, Beaverton, Tualatin Hills Park and Recreation District, Washington County, Tigard, Durham and Tualatin</p>
<b>C.</b>	<p><b>Lower Tualatin River Greenway Trail</b></p> <p><i>Description:</i> Change designation from greenway to land based trail along the Tualatin river from the confluence of the Tualatin and Willamette rivers in West Linn, west to the U.S. Fish and Wildlife Refuge in Sherwood.</p> <p><i>Sponsor:</i> Three Rivers Land Conservancy - Jayne Cronlund</p> <p><i>Affected Jurisdictions:</i> West Linn, Rivergrove, Tualatin, Durham, Tigard, and Washington County</p>
<b>D.</b>	<p><b>Willamette River Greenway Trail</b></p> <p><i>Description:</i> Change designation from greenway to land based trail on the west side of the river from Lake Oswego south through the city of West Linn to the mouth of the Tualatin River.</p> <p><i>Sponsor:</i> Three Rivers Land Conservancy – Jayne Cronlund</p> <p><i>Affected Jurisdictions:</i> Lake Oswego, West Linn</p>
<b>E.</b>	<p><b>Beaver Creek Canyon Trail</b></p> <p><i>Description:</i> Change designation from greenway to land based trail within Troutdale city limits. Outside Troutdale city limits the greenway designation remains.</p> <p><i>Sponsor:</i> City of Troutdale Parks – Valerie Lantz</p> <p><i>Affected Jurisdictions:</i> Troutdale</p>

## **STAFF REPORT**

### **IN CONSIDERATION OF RESOLUTION NO. 02-3192 FOR THE PURPOSE OF OF AMENDING THE GREENSPACES MASTER PLAN AND UPDATING THE REGIONAL TRAILS AND GREENWAYS PLAN AND MAP**

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Date: May 2002

Prepared by: Heather Nelson Kent  
and Mel Huie

## **BACKGROUND**

This resolution would amend the Greenspaces Master Plan and the Regional Trails Plan to include additions to the regional trail network and changes to a number of the previously approved trail corridors:

Starting in 2000, the Greenspaces Technical Advisory Committee (GTAC) and other parties interested in regional trails began discussions about updating the Regional Trails Plan. Since the adoption of the Regional Trails Plan in 1992 there have been many changes and there is better information about potential trail corridors and projects throughout the region. In addition, a number of additional projects were being considered by citizens and local jurisdictions as priorities that should be included in the Regional Trails Plan.

GTAC's first step was to identify a set of criteria for determining what constituted a "regional" versus a "local" trail project. These criteria were developed in a collaborative process and presented to the Metro Council for their consideration and approval. The Metro Council approved the criteria via Resolution No. 01-3068 on May 31, 2001.

Local citizens, non-profit organizations, cities and other government agencies were invited to nominate changes or additions to the Regional Trails Plan and to show how their nomination met the criteria approved by the Metro Council. GTAC, and other interested citizens and stakeholders, reviewed 26 nominations for new trails or proposed amendments to the Regional Trails Plan. After this review, GTAC unanimously approved a package of 23 new trails or proposed changes to the Regional Trails Plan for Metro Council's consideration. These are listed in Exhibit "A" and shown on Exhibit "B".

Local governments, special districts, non-profit groups or other individuals responsible for nominating a new trail to the map were requested by GTAC to provide letters of support from any and all affected jurisdictions (that is jurisdictions through which the proposed trail corridor may pass). These letters of support have been collected for nearly all the trail changes included in this resolution before Council.

## **ANALYSIS/INFORMATION**

1. **Known Opposition** None
2. **Legal Antecedents** Resolution 93-1872 which amended the Greenspaces Master Plan to include the Peninsula Crossing Trail in North Portland.

3. **Anticipated Effects** As approved by the Metro Council in 1992 and amended in 1993, the Regional Trails Plan currently includes an estimated 400 miles of conceptual trails and greenways. These changes would add an estimated 164 miles of new conceptual trails to the regional trail system.
4. **Budget Impacts** Adoption of the updated Regional Trails and Greenways Plan and Map in and of itself has no budget impact.

#### **RECOMMENDED ACTION**

The Metro Executive Officer recommends approval of the Resolution No. 02-3192.

**Resolution No. 02-3206, For the Purpose of Adopting the Policy Direction, Program Objectives, Procedures and Criteria for the Priorities 2003 Metropolitan Transportation Improvement Program (MTIP) and Allocation of Flexible Funds.**

**Metro Council Meeting  
Thursday, July 25, 2002  
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING THE POLICY )  
DIRECTION, PROGRAM OBJECTIVES, )  
PROCEDURES AND CRITERIA FOR THE )  
PRIORITIES 2003 METROPOLITAN )  
TRANSPORTATION IMPROVEMENT PROGRAM )  
(MTIP) AND ALLOCATION OF REGIONAL )  
FLEXIBLE FUNDS. )

RESOLUTION NO. 02-3206

Introduced by  
Councilor Rod Monroe  
JPACT Chair

WHEREAS, JPACT and the Metro Council are identified in federal regulations as the Portland Area Metropolitan Planning Organization responsible for the allocation of federal highway and transit funding; and

WHEREAS, federal regulations identify preparation of a metropolitan transportation improvement program (MTIP) as the means for making the allocation of such funds; and

WHEREAS, federal regulations require that the MTIP be included without change in the State TIP by incorporation or by reference; and

WHEREAS, JPACT and the Metro Council have directed Metro staff to perform an assessment of whether the allocation process and criteria support transportation and land use goals and objectives of the Region 2040 Growth Concept; and

WHEREAS, transportation funding and public opinion research was performed, and elected officials, agency staff, public interest groups and other stakeholders were interviewed and invited to respond to a questionnaire concerning MTIP issues; and

WHEREAS, new MTIP policy direction, program development and evaluation criteria have been developed as described in Exhibit A to address the issues identified through the outreach process; and

WHEREAS, the Regional Transportation Plan was adopted in August 2000 and represents the transportation implementation component to the Region 2040 Growth Concept; and

WHEREAS, new funding for transportation projects is limited to about \$52 million, split between federal fiscal years 2006 and 2007; and

WHEREAS, approximately half of these funds cannot be used to design or construct general purpose automobile travel lanes; and

WHEREAS, JPACT and the Metro Council Transportation Planning Committee propose the Priorities 2002 MTIP Update policy direction, program development and evaluation criteria as defined in Exhibit A; and

WHEREAS, all projects selected for funding in the MTIP must also either be included in, or amended into, a Financially Constrained Network of the Regional Transportation Plan which is shown to conform with the State (Air Quality) Implementation Plan; and

WHEREAS, Metro staff will coordinate with staff at ODOT Region 1 and Tri-Met regarding prioritization of projects and allocation of funds primarily subject to their discretion, that must however, also be reflected in the MTIP and the financially constrained RTP system; and

WHEREAS, further opportunity for agency and public input to the project evaluation and selection process will be provided in spring 2003, before final approval of an FY 2003-04 MTIP; now, therefore,

**BE IT RESOLVED,**

1. The Priorities 2003 MTIP Update policy direction, program development and evaluation criteria stated in Exhibit A are approved; and
2. The list of proposed projects shall be submitted based on a review by the governing body of the jurisdiction at a meeting that is open to the public. Submitting the list of projects by adopted resolution will meet this intent.

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

---

Carl Hosticka, Presiding Officer

APPROVED AS TO FORM:

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Daniel B. Cooper, General Counsel



**Exhibit A**  
**To Metro Resolution 02-3206**

# **Metropolitan Transportation Improvement Program Refinement and Policy Report**

**TPAC Recommendation to JPACT**  
**June 28, 2002**

## **I. Introduction and Charge**

Metro Council and the Joint Policy Advisory Committee on Transportation (JPACT) have directed Metro staff to review and refine the Metropolitan Transportation Improvement Program (MTIP) prior to the next round of allocation of regional flexible funds (Metro Resolution 01-3025B). The next allocation is currently scheduled to begin in August.

The review and refinement process is to examine the objectives of the program in the context of other transportation spending in the region and the process by which projects are solicited, prioritized and selected for funding.

## **II. Related Policies**

To assess whether the MTIP process supports transportation and land use goals and objectives of the Region 2040 Growth Concept and the Regional Transportation Plan (RTP), policies related to the concept and plan are listed below.

The transportation funding policies of the RTP are relevant to all transportation funding in the region, not just the allocation of regional flexible funds. An evaluation of how all of the other transportation spending in the region addresses the RTP policies, however, will provide valuable information to where funding deficiencies exist in addressing regional policies and where it may be advantageous to allocate regional flexible funds to address those deficiencies.

### RTP Section 1.3.7; Policy 20.0 - Transportation Funding

Ensure that the allocation of fiscal resources is driven by both land use and transportation benefits.

- a. Objective: Maintain and preserve the existing transportation infrastructure.
- b. Objective: Improve the efficiency of the existing transportation system.
- c. Objective: Consider a full range of costs and benefits in the allocation of transportation funds.
- d. Objective: Use funding flexibility to the degree necessary to implement the adopted Regional Transportation Plan.
- e. Objective: Establish a set of criteria for project selection based on the full range of policies in this plan and fund projects in accordance with those selection criteria.
- f. Objective: Develop a transportation system necessary to implement planned land uses, consistent with the regional performance measures.

The following 2040 Fundamentals were adopted by MPAC and the Metro Council as the fundamental elements of the 2040 Growth Concept. The MTIP program and allocation of regional flexible transportation funds should analyze projects based on their ability to implement or address these fundamentals.

### 2040 Fundamentals

- Focus development in mixed-use centers and corridors
- Protect and restore the natural environment
- Provide a multi-modal transportation system
- Enable community identity and physical sense of place
- Maintain separation from neighboring communities
- Ensure diverse housing options in every jurisdiction
- Create vibrant places to live and work
- Encourage a strong local economy

### **III. Tools to Evaluate Public and Stakeholder Opinion**

#### Davis - Hibbitts survey summary

#### Metro Growth Conference results summary

#### MTIP Questionnaire

##### *Elected Officials*

All of the elected officials and agency director members of JPACT and the Metro Council members were provided a questionnaire and were interviewed by Metro staff regarding their concerns and issues with the MTIP process.

##### *Other Stakeholders*

All members of the following Metro committees were given presentations by Metro staff and asked to complete a questionnaire:

- TPAC
- MTAC
- GTAC
- WRPAC
- MPAC

Metro staff also met with the Washington Square regional center funding implementation work team to receive their verbal comments and distribute the questionnaire.

##### *Community Interest Groups*

A series of meetings were held to solicit input from specific community interest groups; business and freight, neighborhood activists, development, architect and real estate professionals, and the Coalition for a Livable Future transportation subcommittee.

Many of the stakeholders supplemented the questionnaire with a cover letter outlining their overall concerns and issues.

#### IV. MTIP and Regional Flexible Fund Allocation Policy Direction

The primary policy objective for the MTIP program and the allocation of region flexible transportation funds is to:

- Leverage economic development in priority 2040 land-use areas through investment to support
  - centers,
  - industrial areas and
  - UGB expansion areas with completed concept plans

Other policy objectives include:

- Emphasize modes that do not have other sources of revenue
- Complete gaps in modal systems
- Develop a multi-modal transportation system

#### V. Allocation Process and Program Development Options

Several methods of allocating the regional flexible funds and developing the emphasis of the program were suggested during stakeholder interviews and in response to the questionnaire. The suggestions are summarized by the five options outlined below.

##### 1. Existing Program

- a. Coordinating committees submit applications within 200% target cost ceiling.
- b. Projects divided into project categories for technical ranking.
- c. Staff, TPAC recommend, JPACT/Metro Council adopts 150% cut list. (consider technical ranking, administrative criteria and balance modes).
- d. Staff, TPAC recommend, JPACT/Metro Council adopts final project list.

##### 2. Local Allocation Approach

- a. Sub-allocation to regional categories (Planning, TDM, TOD, LRT match).
- b. Sub-allocation of cost targets by geography.
- c. Coordinating committees decide projects to submit at 110% of total cost target and submit findings on how projects meet regional program objectives.
- d. Staff, TPAC recommend, JPACT/Metro Council adopt final project list, balancing allocations through reduction of 10% extra cost from each committee.

##### 3. 2040 Rating

- a. Coordinating committees submit applications within 200% target cost ceiling.
- b. Projects divided into project categories for technical ranking (no 2040 criteria/measure).
- c. All projects ranked relative to one another based on measures of implementing 2040 land use objectives.
- d. Staff, TPAC recommend, JPACT/Metro Council adopts 150% cut list (consider technical ranking within categories, 2040 ranking, and administrative criteria).
- e. Staff, TPAC recommend, JPACT/Metro Council adopts final project list.

4. Mode Emphasis

- a. Limit project applications to a set of project categories that best meet a set of policy directions and program objectives.
- b. Follow any of the other allocation process steps identified.

5. 2040 Match Advantage

- a. Coordinating committees submit applications within 200% target cost ceiling.
- b. Projects divided into project categories for technical ranking.
- c. Priority emphasis (places or modes) eligible for an 89.73% regional match of funding. Non-priority emphasis (places or modes) eligible for a 70% match of funding.
- d. Staff, TPAC recommend, JPACT/Metro Council adopts 150% cut list (consider technical ranking and administrative criteria).
- e. Staff, TPAC recommend, JPACT/Metro Council adopts final project list.

## VI. Description of Existing Transportation Funding and Policy Implementation

There are several different sources of transportation funding in the region, many of which are dedicated to specific purposes or modes.

Recent data demonstrates that approximately \$430 million is spent in this region on operation and maintenance of the existing transportation system. While there are unmet needs within operations and maintenance, the relatively small potential impact that regional flexible funds would have on these needs and because there are other potential means to address these needs, TPAC is recommending against using regional flexible funds for these purposes. Exceptions are recommended for Transportation Demand Management (TDM) programs as they have demonstrated a high cost-effectiveness at reducing the need for capital projects, because they lack other sources of public funding to leverage private funding and because they directly benefit priority 2040 land-use areas. A second exception is recommended for expenditures on transit capital that allow expansion of transit service. This exception is recommended to be limited to situations where the transit provider can demonstrate the ability to fund the increased transit service in the subsequent MTIP funding cycle.

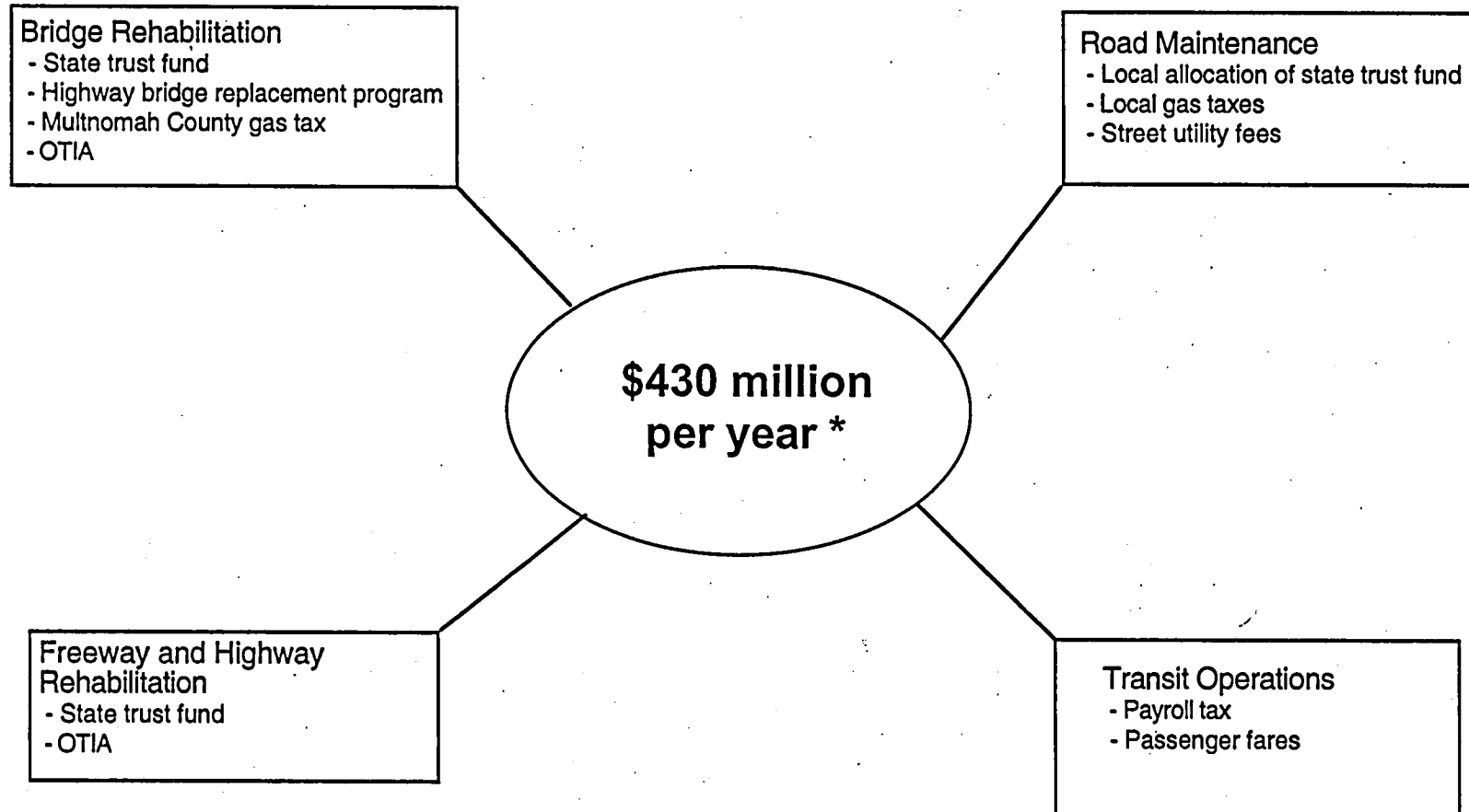
Capital spending in the region for new capital transportation projects outside of regional flexible funding is approximately \$180 million per year. This includes funding for state highways, new transit capital projects, port landside facilities and local spending.

Approximately \$26 million of regional flexible funds are spent each year in the Metro region. Given the relative size of the regional flexible funds relative to the other capital spending in the region, Metro staff recommends that it is appropriate to focus these monies on transportation projects and programs that leverage development of the 2040 growth concept.

The cost categories and the sources of their funding are summarized on Figures 1 through 3.

Figure 1

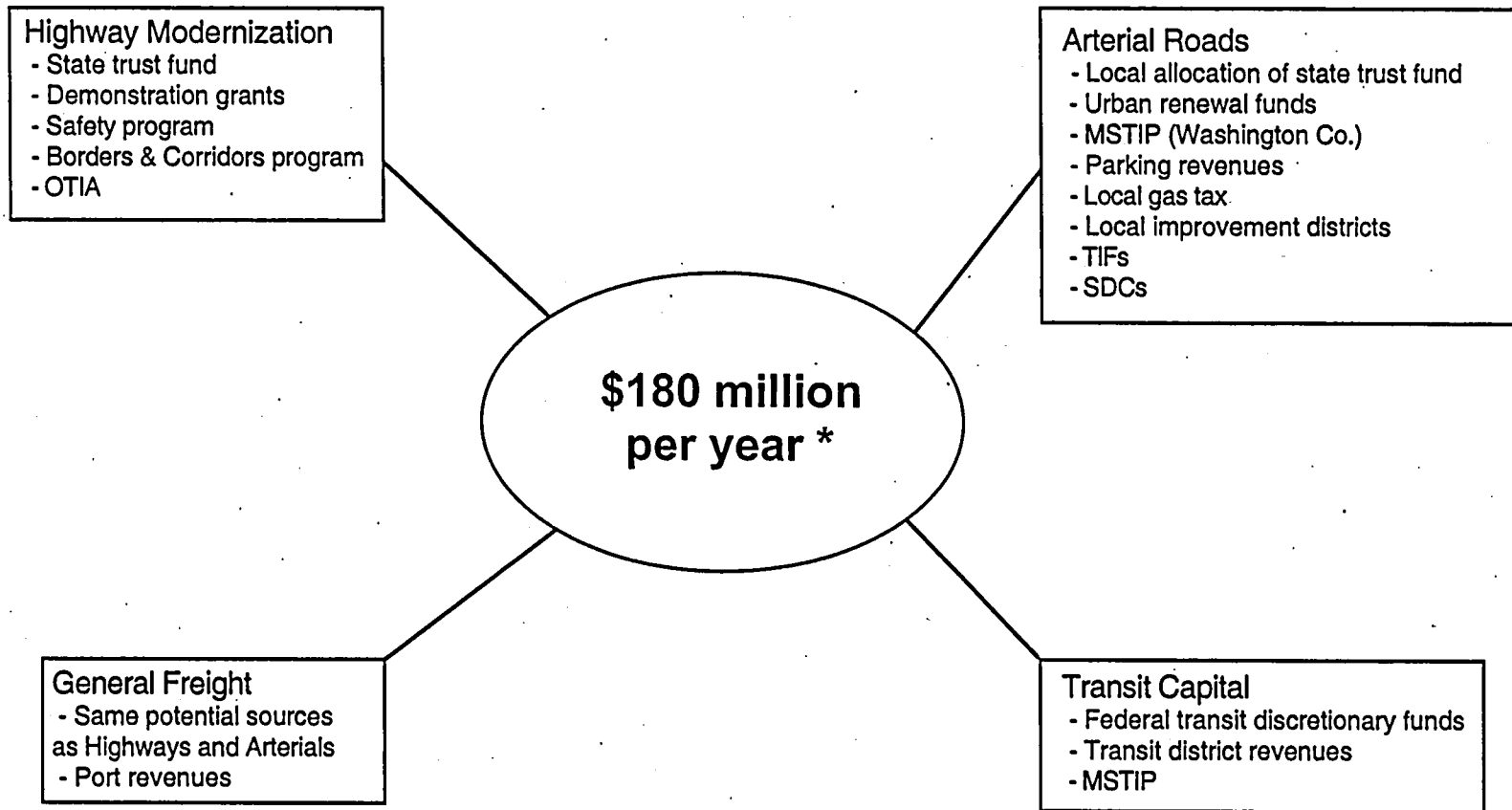
## Operations and Maintenance Spending Metro Region (All Roads and Transit)



Source: Metro (1998) and 1/20 of portion of OTIA 20 year bond program used for O&M purposes.

Figure 2

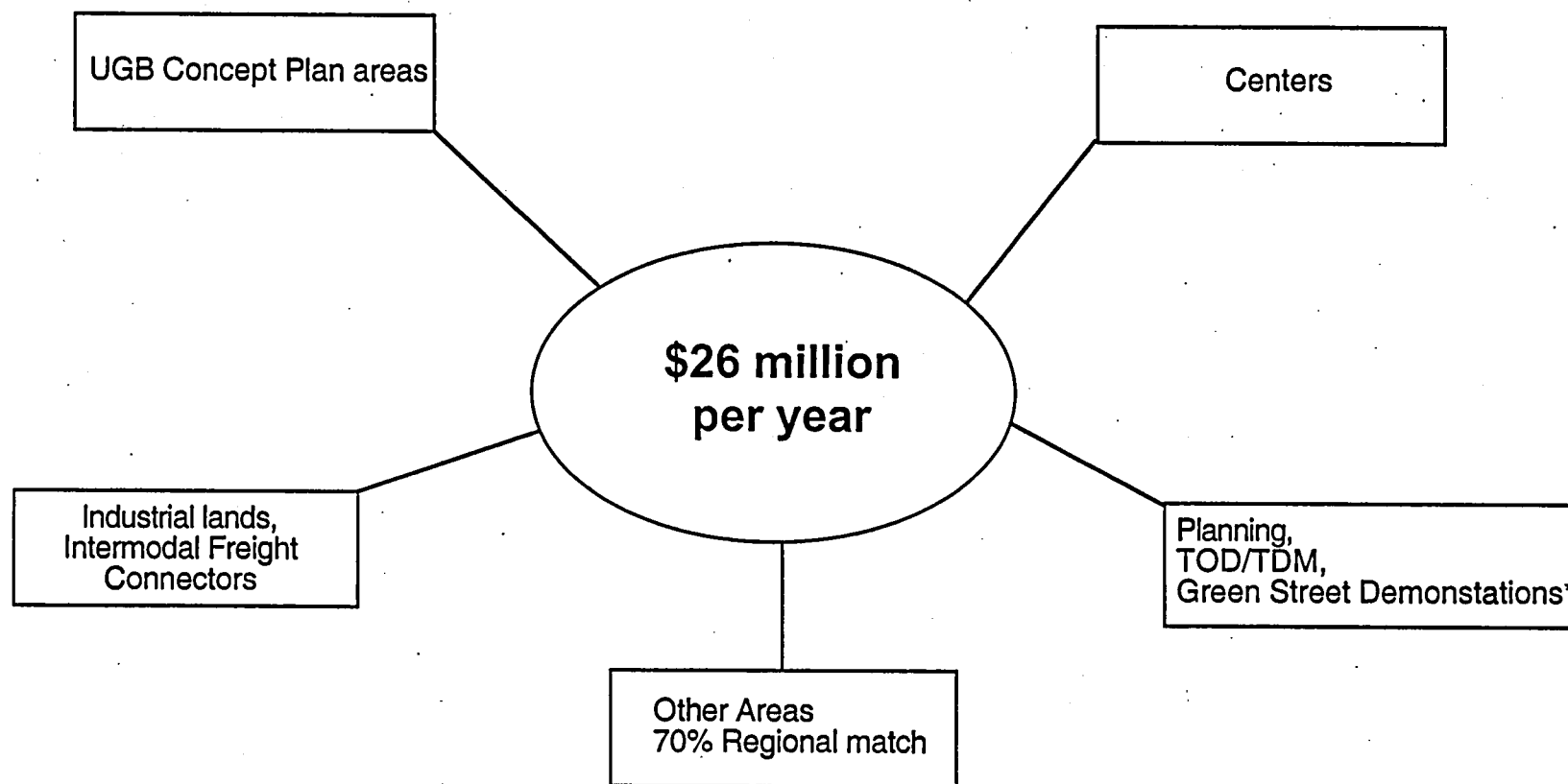
## Other Capital Spending Metro Region (All Roads and Transit)



\* Source: Metro (1998) and 1/20 of OTIA 20 year bond program used for capital projects.  
Arterial road modernization projects typically replace or provide new bicycle and pedestrian facilities.  
One percent of state trust fund money must be spent on bicycle or pedestrian projects or maintenance.

Figure 3

## Regional Flexible Funds Metro Region (STP and CMAQ)



\* May include culvert repair to enhance passage of endangered fish species.



## VII. Recommended Allocation Process and Program Development

TPAC is recommending an allocation process and program that is a specific version of option 5 outlined in Section V. This option best implements the policy objectives listed in Section IV by not only retaining a technical rating of 2040 land use criteria but also by creating a monetary incentive to applying agencies to nominate projects that best leverage development of 2040 priority land-use areas. While further advancing this program objective, this option retains flexibility to fund projects that do not directly benefit a regional priority land-use area but that are deemed to be important and effective transportation projects due to other considerations.

The recommended option is summarized below.

### Modified Regional 2040 Match Advantage

- a. Projects that highly benefit:
  - i. Industrial areas and inter-modal freight connectors
  - ii. Centers, main streets, and station communities
  - iii. UGB concept plan areas
 are eligible for up to 89.73% match of regional funds.
- b. Planning, TOD, TDM and Green Street Demonstration projects are also eligible for up to an 89.73% match of regional funds.
- b. Projects determined to not provide a direct, significant benefit to a priority land-use area would be eligible for up to a 70% match of regional funds.
- c. No funding for operations or maintenance, except for TDM programs and start-up transit operations that demonstrate capacity for future operation funds to replace regional flexible funds by the next MTIP funding cycle.
- d. The technical measures of the 2040 land use criteria will be modified and the method for determining which projects qualify for a regional match of up to 89.73% will be developed using lessons learned from current centers and industrial lands research and the Pleasant Valley concept plan and implementation study. Technical measures will attempt to rate the direct benefit (or negative effect) of a project to the priority land-use area, not simply assess whether a project is located in or near the priority area.

In conjunction with this approach, TPAC is recommending consideration of a smaller cost target to limit the number of applications that may be submitted to Metro through the Coordinating Committee process. The current cost target is 200% of a potential share of funds based on rough geographic equity of fund distribution. TPAC would like consideration of a 150% cost target of the potential share of funds. Such a limit may allow elimination of a step in the allocation process that screens the project list down to a 150% cut list.

## VIII. Screening and Evaluation Criteria

### Screening Criteria for all projects

- Highway, road and boulevard projects must be consistent with regional street design guidelines (no change)
- Project designs must be consistent with the Functional Classification System of the 2000 RTP (no change)
- Project on RTP Financially Constrained list (no change)
- Project has received support of governing body at a public meeting as a local priority for regional flexible funding. Adoption of a resolution at a public meeting would

qualify as receiving support of the governing body. Documentation of such support would need to be provided prior to release of a technical evaluation of any project. (clarification, no change)

- Statement that project is deliverable within funding time frame and brief summary of anticipated project development schedule (new)

### Evaluation Criteria

General support was expressed in the questionnaire and during interviews for keeping the technical measures of the criteria by existing modal category. Several issues were identified by program stakeholders, however, regarding the evaluation and measuring of criteria.

#### 1. 2040 Criteria

There were several comments about the lack of clarity of how the 2040 criteria were measured and how effectively it was being applied to projects.

**Recommendation:** Review the work of the current centers research and industrial lands studies to clarify how transportation funding can most effectively leverage successful development of these priority land-use areas. This includes developing methods to distinguish between the readiness of different mixed-use areas and industrial areas to develop and methods to evaluate and measure the positive and negative impacts of a project or program on leveraging development of a priority land use area other than simply the location of the facility. Applicants will be asked to elaborate on how the project contributes to the most critical objectives a center plan or industrial area needs to achieve to become a successful area in terms of 2040 development objectives and describe what actions the local jurisdiction is taking to address its most critical needs.

#### 2. Multi-modal Road Projects

A request for a finer consideration of the multi-modal benefits of road projects has been requested by some Washington County jurisdictions.

**Recommendation:** The provision of pedestrian and bicycle improvements within priority 2040 priority land-use areas as a part of a road modernization or reconstruction project qualify a project for additional technical points over a multi-modal road project outside of these priority areas. The creation of new pedestrian and bicycle improvements qualify a road project for additional technical points over a road project that is simply moving or replacing pedestrian and/or bicycle facilities.

Similarly, the TIP Subcommittee will be asked to review potential methods for awarding additional technical points to road projects that provide a significant freight or transit benefit, particularly benefits supporting priority land-use areas over road projects that do not provide this multi-modal benefit.

#### 3. Administrative Criteria

While a few stakeholders objected to the use of administrative criteria, there was general support for their use to adjust the raw technical ranking of projects. However, many people expressed interest in a tight limit on the degree to which administrative criteria could be used to elevate a low technically ranked project above better technically ranked projects to receive funding.

**Recommendation:** Use the following administrative criteria and limitation on their ability to elevate a project to receive funding over other higher technically ranked projects within their

project categories. No administrative consideration will be listed if there is already technical scoring consideration for the project.

#### Administrative criteria

- Minimum logical project phase
- Linked to another high priority project
- Over-match
- Past regional commitment\*
- Includes significant multi-modal benefits
- Affordable housing connection
- Assists the recovery of endangered fish species
- Other factors not reflected by technical criteria

Any project may receive a recommendation from TPAC for funding based on these administrative criteria only if it is technically ranked no more than 10 technical points lower than the highest technically ranked project not to receive funding in the same project category (e.g. a project with a technical score of 75 could receive funding based on administrative criteria if the highest technically ranked project in the same project category that did not receive funding had a technical score of 85 or lower).

\* Previous funding of Preliminary Engineering (PE) does constitute a past regional commitment to a project and should be listed as a consideration for funding. Projects are typically allocated funding for PE because they are promising projects for future funding. However, Metro does not guarantee a future financial commitment for construction of these projects.

#### 4. Green Streets Design Elements

Many stakeholders interviewed expressed strong support of developing Green Street infrastructure improvements and using the MTIP program to implement those improvements. Several jurisdictional technical staff, however, expressed caution that implementation of these design elements needed to move slowly and may only be appropriate in site-specific conditions.

To further develop understanding of these design elements, pilot project funding is recommended to be available with regional flexible funds. A pilot project approach will allow interested jurisdictions to test local application of these design concepts.

TPAC has also recommended reviewing how “proven” Green street design concepts, such as providing adequate space for and planting large, broad canopied, long-lived tree species, could be incorporated into the technical scoring of project categories. This issue will be brought to the TIP Subcommittee.

#### 5. Measurement of Safety Criteria

Several stakeholders commented that measuring project safety solely by measurement of accident data does not provide a comprehensive consideration of safety issues.

Recommendation: An “expert analysis” approach using general guidelines of safety considerations, including but not limited to Safety Priority Indexing System (SPIS) data, will be developed for all relevant project categories as a means of providing a comprehensive method for considering safety issues. This approach will utilize a panel of project professionals to review each project relative to a list of quantitative and qualitative safety considerations and score each project accordingly.

#### 6. Multi-Use Paths

Many stakeholders expressed interest in providing full possible match allocations (89.73%) to multi-use paths as these projects generally address the stated program objectives of not having other dedicated sources of funding and completing gaps in modal systems. TPAC recommends that equal to other modes, these projects should receive full potential match of 89.73% only when they provide a direct benefit to a priority 2040 land-use area.

#### 7. Other Specific Measures

There were several requests to modify the specific measures used to score each criteria. Local transportation staff will be consulted through the TIP Subcommittee in refinement of measures for the criteria adopted within the program policy process.

#### 8. Multi-modal and Geographic Equity Analysis

In previous allocation processes, a summary of the distribution of funding between modes and between geographic regions of the draft recommended project list has been completed. There is no policy direction for equity of allocations between modes or geographic areas; the summary is prepared for informational purposes only. No change is recommended in providing this information.

### IX. Solicitation, Allocation and Follow-up Process Issues

There were many requests for modification of the process used to solicit and allocate regional flexible funds. Metro staff is also interested in performing new follow-up activities to the allocation process.

#### Recommendations:

1. Additional Time for Application Process; A third month will be added to the project solicitation phase of the process. This will allow more time to for coordination among jurisdictional staff and for completing the applications with more complete information.
2. Public Kick-off Notice; To address concerns about the ability for community interest groups and jurisdictional staff from outside of transportation agencies to influence project applications, Metro will provide public announcements of the kick-off of the application process and provide stakeholders with a list of local agency contacts
3. Regional Objectives; In order to provide better information about regional objectives, successful project examples and assistance on completing project applications, Metro staff will provide presentations to jurisdictional staff early in the solicitation period.
4. STIP Coordination; Metro and ODOT will identify areas for coordination related to STIP projects that could be supplemented for 2040 implementation and coordination of public outreach opportunities.
5. Other Funding; Other significant transportation funding will be identified for potential of coordination with regional flexible funds.

6. **MTIP Subcommittee;** The MTIP Subcommittee of TPAC will be used to review the draft technical scoring by project staff. This could include the use of field trips to review potential projects on the 150% cut list.
7. **Public Outreach;** Metro will utilize a similar public involvement program as the previous allocation process, consistent with Metro's policies on public involvement. This included early notification of process kick-off and key decision points and opportunities for comment and a response to those comments. Key components will include a review of the technical ranking and draft 150% list and formal hearings on the recommended allocation package.
8. **Public Information;** Metro will be increasing public understanding of the MTIP and regional flexible funding program. This will be done through the inclusion of Metro information, including signage, on funded project or program materials, participation in public events and new informational materials, such as a website highlighting funded projects.
9. **Allocation Follow-up Activities;** Metro staff will also be improving project monitoring to ensure project development that is consistent with application materials post-construction data collection (particularly with demonstration projects) and awards or other recognition for quality project implementation.

## **Issues to be Addressed Prior to Solicitation For Projects and Outside of Policy Report Adoption**

### **1. Refinement of Criteria**

The TIP Subcommittee of TPAC will be convened in July to make a recommendation to TPAC concerning:

- a. Technical scoring of 2040 centers, main streets and station communities. May involve qualitative descriptions or meeting a check list of issues based on lessons learned from the centers study currently underway.
  - b. Review technical scoring of 2040 industrial areas. Develop a better understanding of job growth in trade sectors.
  - c. Developing technical scoring or administrative considerations for projects in UGB expansion areas and tie to relevant UGB expansion policies.
  - d. Incorporate qualitative evaluation considerations for safety criteria within each project category.
  - e. Review model inputs and model driven outputs used to measure criteria for effectiveness as a technical measure and propose improvements.
2. Develop Application Materials
- a. Forms that reflect updated criteria and technical measures.
  - b. Letters that provide clear instructions.
  - c. Project examples that demonstrate project elements that will score well under new criteria and technical measures.
3. Develop criteria and measures and feedback process for determination on qualifications for project match eligibility based on direct benefits to a priority 2040 land-use area.

**Draft**  
**2004-07 MTIP Allocation Schedule**

August 2002; Project Solicitation

November 2002; Project Applications Due

January 2003; Release Technical Rankings, Public Hearings

February/March 2003; 150% Cut List Recommendations/Adoption

March/April 2003; Public Hearings, Adoption of Project Allocation

May/June 2003; Air Quality Conformity, STIP Reporting, Documentation

July 2003; Full MTIP Adoption

October 2003; Obligation of Funding Begins

## STAFF REPORT

### CONSIDERATION OF RESOLUTION NO. 02-3206 FOR THE PURPOSE OF ADOPTING THE POLICY DIRECTION, PROGRAM OBJECTIVES, PROCEDURES AND CRITERIA FOR THE PRIORITIES 2003 METROPOLITAN TRANSPORTATION IMPROVEMENT PROGRAM (MTIP) AND ALLOCATION OF REGIONAL FLEXIBLE FUNDS.

July 11, 2002

Presented by: Michael Hoglund

## PROPOSED ACTION

This resolution would approve a report outlining the policy direction, program objectives, procedures, and the basic technical and administrative criteria that will be used during the Priorities 2003 MTIP update to nominate, evaluate, and select projects to receive federal transportation funds in the fiscal year 2006-07 biennium.

## BACKGROUND

The Metro Council and the Executive Officer are preparing a request to local jurisdictions to submit projects to Metro for evaluation and award of regional flexible transportation funding. Regional flexible transportation funds are those portion of federal funds accounted for in the MTIP that are allocated through the JPACT/Metro Council decision-making process. This allocation process is referred to as the Priorities 2003 MTIP update.

Metro and ODOT update the MTIP/STIP every two years to schedule funding for the following four-year period. The Priorities 2003 MTIP update encompasses the four-year period of federal fiscal year's 2004 through 2007 (FY 04 - FY 07). This update will therefore adjust, as necessary, funds already allocated to projects in FY 04 and FY 05 in the current approved MTIP. It will also allocate funds to new projects in the last two years of the new MTIP (i.e., FY 06 and FY 07).

The regional flexible funds available for allocation in the Priorities 2003 MTIP update is composed of two types of federal transportation assistance, which come with differing restrictions. The most flexible funds are surface transportation program (STP) funds that may be used for virtually any transportation purpose, identified in the Financially Constrained RTP, short of building local residential streets. The region can allocate about \$33 million of STP funds to new projects in FY 06 – 07.

The second category of money is Congestion Mitigation/Air Quality (CMAQ) funds. CMAQ funds cannot be used to build new lanes for automobile travel. Also, projects that use CMAQ funds must demonstrate that some improvement of air quality will result from building or operating the project. The region can allocate about \$19 million of CMAQ funds to new projects.

The Oregon Transportation Commission (OTC) decided not to allocate Transportation Enhancement (TE) funds in the previous MTIP update. TE funds support non-automotive transportation projects, including bike and pedestrian paths and historic and environmental mitigation improvements. The OTC suspended allocation of this class of federal funds in order to focus resources on significant maintenance and rehabilitation needs of the state's existing roads and bridges. There is no indication that the OTC intends to resume allocation of TE funds at the local level. Again though, STP funds can also be used to fund many of these types of projects.



## **ANALYSIS/INFORMATION**

1. **Known Opposition** Metro staff is unaware of any opposition at this time.
2. **Legal Antecedents** Federal planning regulations designate JPACT and the Metro Council as the Portland Area Metropolitan Planning Organization responsible for allocating federal highway and transit funds to projects in the metropolitan area. Preparation of an MTIP is the means prescribed for doing this. JPACT and the Metro Council have directed staff in Metro Resolution 01-3025B to assess whether the existing MTIP process and criteria support transportation and land use goals and objectives of the Region 2040 Growth Concept prior to initiating the next project solicitation and selection process. Projects approved for inclusion in the MTIP must come from a conforming, financially constrained transportation plan. The 2000 RTP is the current conforming plan.
3. **Anticipated Effects** Adoption of this resolution will provide policy guidance to the process of allocating regional flexible transportation funds. This new policy guidance will refine how Metro staff solicits projects for funding, how project applications will be technically ranked for policy implementation, the public outreach and decision making process to select projects for funding and the ability to analyze and provide public information concerning the effectiveness of the MTIP program in addressing program policies.
4. **Budget Impacts** none.

## **RECOMMENDED ACTION**

Council approve Resolution No. 02-3206.

TL:MH: RC

**Agenda Item Number 6.3**

**Resolution No. 02-3211, For the Purpose of Authorizing the Executive Officer to Grant a Metro Solid Waste Facility License for Yard Debris Reloading to S&H Logging, Inc., dba Landscape Products and Supplies.**

**Metro Council Meeting  
Thursday, July 25, 2002  
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE ) RESOLUTION NO. 02-3211  
EXECUTIVE OFFICER TO GRANT A METRO )  
SOLID WASTE FACILITY LICENSE FOR YARD )  
DEBRIS RELOADING TO S&H LOGGING, INC., ) Introduced by Mike Burton,  
dba LANDSCAPE PRODUCTS & SUPPLY ) Executive Officer

WHEREAS, the Metro Code requires a solid waste facility license of any facility that reloads yard debris; and,

WHEREAS, S & H Logging, Inc., dba, Landscape Products & Supply, has applied for a Solid Waste Facility License under the provisions of Metro Code Chapter 5.01 to operate such a facility; and,

WHEREAS, Landscape Products & Supply has received proper land use approval from the City of Hillsboro; and,

WHEREAS, the Landscape Products & Supply application is in conformance with the requirements of Chapter 5.01 of the Metro Code; and,

WHEREAS, Metro staff has analyzed the application and recommends approval of the applicant's request for a Solid Waste Facility License; and,

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

BE IT RESOLVED that the Metro Council authorizes the Executive Officer to grant a Solid Waste Facility License for yard debris reloading to Landscape Products & Supply that shall be substantially similar to the license attached as Exhibit A.

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

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

Approved as to Form:

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



# METRO SOLID WASTE FACILITY LICENSE

Number YD-103-02

**Issued to Landscape Products & Supply  
To conduct yard debris reloading**

*Issued by*

**Metro**

600 NE Grand Avenue

Portland, OR 97232

Telephone: (503) 797-1650

Issued in accordance with the provisions of Metro Code Chapter 5.01

<b>LICENSEE:</b> S & H Logging, Inc. dba Landscape Products & Supply 20200 SW Stafford Road Tualatin, OR 97062 Tel.: (503) 638-1011 Fax: (503) 638-0754	<b>FACILITY NAME AND LOCATION:</b> Landscape Products & Supply 1748 NE 25 <sup>th</sup> Street Hillsboro, OR 97124 Tel.: (503) 638-1011 Fax: (503) 638-0754
<b>OPERATOR:</b> S & H Logging 20200 SW Stafford Road Tualatin, OR 97062 Tel.: (503) 638-1011 Fax: (503) 638-0754	<b>PROPERTY OWNER:</b> Paul W. and Linda L. Moody 9811 NE 114 <sup>th</sup> Circle Vancouver, WA 98662 Tel.: (360) 855-1490

This license is granted to the licensee named above and may not be transferred without the prior written approval of the Executive Officer. Subject to the conditions stated in this license document, the licensee is authorized to operate and maintain a yard debris composting facility, and to accept the solid wastes and perform the activities authorized herein.

**METRO**

**Landscape Products & Supply**

Signature

Signature of Licensee

Mike Burton, Metro Executive Officer

Print name and title

Date

Date



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## 1.0 ISSUANCE

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**1.1 Licensee** S & H Logging, Inc., dba Landscape Products & Supply  
20200 SW Stafford Road  
Tualatin, OR 97062  
Tel.: (503) 638-1011 Fax: (503) 638-0754

**1.2 Contact** Casey Stroupe

**1.3 License Number** Metro Solid Waste Facility License Number YD-103-02

**1.4 Term of License** This license is issued for a term of five (5) years unless modified, suspended, or revoked under the provisions of section 11.2 of this license. The term commences from the date this license is signed by Metro.

**1.5 Facility name and mailing address** Landscape Products & Supply  
1748 NE 25<sup>th</sup> Street  
Hillsboro, OR 97124  
Tel.: (503) 638-1011 Fax: (503) 638-0754

**1.6 Operator** S & H Logging dba Landscape Products & Supply  
20200 SW Stafford Road  
Tualatin, OR 97062  
Tel.: (503) 638-1011 Fax: (503) 638-0754

**1.7 Facility legal description** Claim No. 43 in SE ¼ Section 29, T1N, R 2W of the Willamette Meridian, City of Hillsboro, County of Washington, State of Oregon

**1.8 Property owner** Paul W. and Linda L. Moody

## 2.0 CONDITIONS AND DISCLAIMERS

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**2.1 Guarantees** The granting of this license shall not vest any right or privilege in the licensee to receive specific quantities of solid wastes at the direction of Metro during the term of the license.



- 2.2 Non-exclusive license** The granting of this license shall not in any way limit Metro from granting other solid waste licenses within the District.
- 2.3 Property rights** The granting of this license does not convey any property rights in either real or personal property, nor does it authorize any injury to private property or invasion of property rights.
- 2.4 No recourse** The licensee shall have no recourse whatsoever against Metro, its officials, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of this license or because of the enforcement of the license or in the event the license or any part thereof is determined to be invalid.
- 2.5 Release of liability** Metro, its elected officials, employees, or agents do not sustain any liability on account of the granting of this license or on account of the construction, maintenance, or operation of the facility pursuant to this license.
- 2.6 Binding nature** The conditions of this license are binding on the licensee. The licensee is liable for all acts and omissions of the licensee's contractors and agents.
- 2.7 Waivers** To be effective, a waiver of any terms or conditions of this License must be in writing and signed by the Metro Executive Officer.
- 2.8 Effect of waiver** Waiver of a term or condition of this License shall not waive nor prejudice Metro's right otherwise to require performance of the same term or condition or any other term or condition.
- 2.9 Choice of law** The License shall be construed, applied and enforced in accordance with the laws of the State of Oregon.
- 2.10 Enforceability** If any provision of this License is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions contained in this License shall not be affected.
- 2.11 License not a waiver** Nothing in this license shall be construed as relieving any owner, operator, or licensee from the obligation of obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, reports or other requirements of other regulatory agencies.
- 2.12 License not limiting** Nothing in this license is intended to limit the power of a federal, state, or local agency to enforce any provision of law relating to the solid waste facility that it is authorized or required to enforce or administer.



- 2.13 Definitions** Unless otherwise specified, all other terms are as defined in Metro Code Chapter 5.01.

### **3.0 AUTHORIZATIONS**

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- 3.1 Purpose** This section of the license describes the wastes that the licensee is authorized to accept at the facility, and the waste-related activities the licensee is authorized to perform at the facility. This license is not intended to regulate non-waste-related activities such as the management of bark chips and other finished products.

- 3.2 General conditions on solid wastes** The licensee is authorized to accept at the facility only the solid wastes described in this section. The licensee is prohibited from knowingly receiving any solid waste not authorized in this section.

- 3.3 General conditions on activities** The licensee is authorized to perform at the facility only those waste-related activities that are described in this section.

- 3.4 Authorized materials** The licensee is authorized to accept for reloading, source-separated yard debris, landscape waste, and other green wastes as specifically authorized in writing by the Director of the Metro Regional Environmental Management Department. The licensee is also authorized to accept clean wood wastes (e.g. untreated lumber and wood pallets). No other wastes shall be accepted at the facility unless specifically authorized in writing by the Director of the Regional Environmental Management Department.

### **4.0 LIMITATIONS AND PROHIBITIONS**

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- 4.1 Purpose** This section of the license describes limitations and prohibitions on the wastes handled at the facility and waste-related activities performed at the facility.

- 4.2 Prohibited waste** The Licensee is prohibited from receiving, processing or disposing of any solid waste not authorized in this License. The licensee shall not knowingly accept or retain any material amounts of the following types of wastes: non-green feedstocks, special wastes as defined in chapter 5.02 of the Metro Code, materials contaminated with or containing friable asbestos; lead acid batteries; liquid waste for





disposal; vehicles; infectious, biological or pathological waste; radioactive waste; hazardous waste; any waste prohibited by the DEQ; putrescible waste other than that allowed by section 3.4 of this license and any non-putrescible waste.

- 4.3 **Composting prohibited** This licensee shall not keep yard debris on site long enough for more than negligible biological decomposition to begin.
- 4.4 **No disposal of recyclable materials** Yard debris and organic materials accepted at the facility may not be disposed of by landfilling.
- 4.5 **Limits not exclusive** Nothing in this section of the license shall be construed to limit, restrict, curtail, or abrogate any limitation or prohibition contained elsewhere in this license document, in Metro Code, or in any federal, state, regional or local government law, rule, regulation, ordinance, order or permit.

## 5.0 OPERATING CONDITIONS

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- 5.1 **Purpose** This section of the license describes criteria and standards for the operation of the facility.
- 5.2 **Qualified Operator** The licensee shall provide an operating staff qualified to carry out the functions required by this license and to otherwise ensure compliance with Metro Code Chapter 5.01.
- 5.3 **Operating plan** The licensee shall establish and follow procedures for accepting, managing and processing loads of solid waste received at the facility. Such procedures must be in writing and in a location where facility personnel and Metro staff can readily reference them. The licensee may, from time to time, modify such procedures. The procedures shall include at least the following:
- Methods of inspecting incoming loads for the presence of prohibited wastes.
  - Methods for managing and transporting for disposal at an authorized disposal site all prohibited waste discovered at the facility.
  - Objective criteria for accepting or rejecting loads.
  - Methods for measuring and keeping records of incoming waste
  - A general description of any processing the wastes will receive (e.g., chipping, shredding) and the maximum length of time required to move the material off-site.

**5.4 Capacity**

Processing capacities shall be sufficient to handle projected incoming volumes of materials. Facility design shall address capacity and storage issues, including:

- a. Capacity for incoming wastes waiting to be processed.
- b. Capacity for proper handling, storage, and removal of hazardous or other non-permitted wastes delivered to or generated by the facility.

**5.5 Fire prevention**

The operator shall provide fire prevention, protection, and control measures, including but not limited to, adequate water supply for fire suppression, and the isolation of potential heat sources and/or flammables from the processing area.

**5.6 Adequate vehicle accommodation**

Vehicles containing landscape waste or yard debris feedstock/waste shall not park or queue on public streets or roads except under emergency conditions. Adequate off-street parking and queuing for vehicles shall be provided.

**5.7 Managing authorized wastes**

All authorized solid wastes received at the facility must be either (a) processed, (b) appropriately stored, or (c) properly disposed of, within a timeframe that avoids creating nuisance conditions or safety hazards.

**5.8 Storage**

Stored yard debris and wood wastes shall be suitably contained and removed at sufficient frequency to avoid creating nuisance conditions or safety hazards. Storage areas must be maintained in an orderly manner and kept free of litter.

**5.9 Litter and airborne debris**

The licensee shall operate the facility in a manner that is not conducive to the generation of litter and airborne debris. The licensee shall:

- a. Take reasonable steps to notify and remind persons delivering yard debris and wood wastes to the facility that all loads must be suitably secured to prevent any material from blowing off the load during transit.
- b. Construct, maintain, and operate all vehicles and devices transferring or transporting yard debris and wood wastes from the facility to prevent leaking, spilling or blowing of such material on-site or while in transit.
- c. Conduct grinding operations in such a manner as to prevent dust and debris from blowing off-site.
- d. Keep all areas within the site and all vehicle access roads within  $\frac{1}{4}$  mile of the site free of litter and debris.



**5.10 Odor**

The licensee shall operate the facility in a manner that is not conducive to the generation of odors. The licensee shall establish and follow procedures for minimizing odor at the facility. Specific measures an operator shall take to control odor include but are not limited to adherence to the contents of a required odor minimization plan (see Section 6.0). Such procedures must be in writing and in a location where facility personnel and Metro inspectors can readily reference them. The licensee may modify such procedures from time to time.

**5.11 Vectors**

The licensee shall operate the facility in a manner that is not conducive to infestation of rodents, insects, or other animals capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another.

**5.12 Noise**

The licensee shall operate the facility in a manner that controls the creation of excessive noise to the extent necessary to meet applicable regulatory standards and land-use regulations.

**5.13 Water quality**

The licensee shall operate and maintain the facility to prevent contact of solid wastes with stormwater runoff and precipitation. Methods must be consistent with the controlling agency (local jurisdiction and DEQ).

**5.14 Public Access**

Public access to the facility shall be controlled as necessary to prevent unauthorized entry and dumping.

**5.15 Signage**

The licensee shall post signs at all public entrances to the facility, and in conformity with local government signage regulations. These signs shall be easily and readily visible, legible, and shall contain at least the following information:

- a. Name of the facility
- b. Address of the facility;
- c. Emergency telephone number for the facility;
- d. Operating hours during which the facility is open for the receipt of authorized waste;
- e. Fees and charges;
- f. Metro's name and telephone number (503) 797-1650; and
- g. A list of authorized and prohibited wastes.

**5.16 Complaints**

The licensee shall respond to all written complaints of nuisances (including, but not limited to, blowing debris, fugitive dust, odors, noise, and vectors). If licensee receives a complaint, licensee shall:

- a. Attempt to respond to that complaint within one business



day, or sooner as circumstances may require, and retain documentation of its attempts (whether successful or unsuccessful); and

- b. Log all such complaints by name, date, time and nature of complaint. Each log entry shall be retained for one year and shall be available for inspection by Metro.

- 5.17 Access to license document** The licensee shall maintain a copy of this Metro Solid Waste Facility License on the facility's premises, and in a location where facility personnel and Metro representatives have ready access to it.

## **6.0 ODOR MINIMIZATION PLAN**

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- 6.1 Purpose** This section describes the minimum requirements that must be contained in an odor minimization plan.
- 6.2 Plan requirements** The operator shall have an odor minimization plan. The plan must include methods to minimize, manage and monitor all odors, including odors produced by grass clippings. The plan must include:
- a. A management plan that describes the methods that will be used to minimize, manage, and monitor all odors of any derivation including malodorous loads received at the facility;
  - b. Procedures for receiving and recording odor complaints, immediately investigating any odor complaints to determine the cause of odor emissions, and remedying promptly any odor problem at the facility;
  - c. Procedures for avoiding delay in processing and managing landscape waste and yard debris during all weather conditions.

## **7.0 RECORD KEEPING AND REPORTING**

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- 7.1 Purpose** This section of the license describes the record keeping and reporting requirements. The Licensee shall effectively monitor facility operation and maintain accurate records of the information described in this section.
- 7.2 Feedstocks received** The licensee shall keep and maintain accurate records of the amount of material received and the amount of outgoing material. Such information shall be reported to Metro on a quarterly basis. Each report shall be provided by the 15<sup>th</sup> of the month following the end of



each quarter. The report shall be signed and certified as accurate by an authorized representative of licensee.

**7.3 Unusual occurrences**

The licensee shall keep and maintain accurate records of any unusual occurrences (such as fires or any other significant disruption) encountered during operation and methods used to resolve problems arising from these events, including details of all incidents that required implementing emergency procedures.

**7.4 Nuisance complaints**

For every nuisance complaint (e.g. odor, noise, dust, vibrations, litter) received, the licensee shall record:

- a. The nature of the complaint;
- b. The date the complaint was received;
- c. The name, address, and telephone number of the person or persons making the complaint; and
- d. Any actions taken by the operator in response to the complaint (whether successful or unsuccessful).

Records of such information shall be made available to Metro and local governments upon request.

**7.5 Regulatory information submittals**

The licensee shall submit to Metro duplicate copies of regulatory information submitted to the DEQ and local jurisdictions pertaining to the facility, at the same time as submittal to DEQ and/or a local jurisdiction.

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**8.0 FEES AND RATE SETTING**

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**8.1 Purpose**

This section of the license specifies fees payable by the licensee, and describes rate regulation by Metro.

**8.2 Annual fee**

The licensee shall pay a \$300 annual license fee, as established in Metro Code. Metro reserves the right to change the license fee at any time by action of the Metro Council.

**8.3 Fines**

Each violation of a license condition shall be punishable by fines as established in Metro Code Chapter 5.01. Each day a violation continues constitutes a separate violation. Metro reserves the right to change fines at any time by action of the Metro Council.

**8.4 Rates not regulated**

The tipping fees and other rates charged at the facility are exempt from rate regulation by Metro.



## **9.0 INSURANCE REQUIREMENTS**

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|------------|--|---|
| <b>9.1</b> | <b>Purpose</b>                         | This section describes the types of insurance that the licensee shall purchase and maintain at the licensee's expense, covering the licensee, its employees, and agents.  |
| <b>9.2</b> | <b>General liability</b>               | The licensee shall carry broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy shall be endorsed with contractual liability coverage.  |
| <b>9.3</b> | <b>Automobile</b>                      | The licensee shall carry automobile bodily injury and property damage liability insurance.  |
| <b>9.4</b> | <b>Coverage</b>                        | Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.   |
| <b>9.5</b> | <b>Additional insureds</b>             | Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSURED.  |
| <b>9.6</b> | <b>Worker's Compensation Insurance</b> | The licensee, its subcontractors, if any, and all employers working under this license, are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Licensee shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If licensee has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached in lieu of the certificate showing current Workers' Compensation. |
| <b>9.7</b> | <b>Notification</b>                    | The licensee shall give at least 30 days prior written notice to the Director of the Metro Regional Environmental Management Department of any lapse or proposed cancellation of insurance coverage.  |

## **10.0 ENFORCEMENT**

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|-------------|----------------------------------|---|
| <b>10.1</b> | <b>Generally</b>                 | Enforcement of this license shall be as specified in Metro Code.  |
| <b>10.2</b> | <b>Authority vested in Metro</b> | The power and right to regulate, in the public interest, the exercise of the privileges granted by this license shall at all times be vested in |



Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority, and to enforce all such requirements against licensee.

**10.3 No Enforcement Limitations**

Nothing in this license shall be construed to limit, restrict, curtail, or abrogate any enforcement provision contained in Metro Code or administrative procedures adopted pursuant to Metro Code Chapter 5.01, nor shall this license be construed or interpreted so as to limit or preclude Metro from adopting ordinances that regulate the health, safety, or welfare of any person or persons within the District, notwithstanding any incidental impact that such ordinances may have upon the terms of this license or the licensee's operation of the facility.

**11.0 MODIFICATIONS**

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**11.1 Modification**

At any time during the term of the license, either the Executive Officer or the licensee may propose amendments or modifications to this license.

**11.2 Modification, suspension or revocation by Metro**

The Director of the Metro Regional Environmental Management Department may, at any time before the expiration date, modify, suspend, or revoke this license in whole or in part, in accordance with Metro Code Chapter 5.01, for reasons including but not limited to:

- a. Violation of the terms or conditions of this license, Metro Code, or any applicable statute, rule, or standard;
- b. Changes in local, regional, state, or federal laws or regulations that should be specifically incorporated into this license;
- c. Failure to disclose fully all relevant facts;
- d. A significant release into the environment from the facility;
- e. Significant change in the character of solid waste received or in the operation of the facility;
- f. Any change in ownership or control, excluding transfers among subsidiaries of the licensee or licensee's parent corporation;
- g. A request from the local government stemming from impacts resulting from facility operations; or
- h. A significant history of non-compliance on the part of the licensee.

**12.0 GENERAL OBLIGATIONS**

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- 12.1 Compliance with the law** Licensee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.01 whether or not those provisions have been specifically mentioned or cited herein. All conditions imposed on the operation of the facility by federal, state, regional or local governments or agencies having jurisdiction over the facility shall be deemed part of this license as if specifically set forth herein. Such conditions and permits include those cited within or attached as exhibits to the license document, as well as any existing at the time of the issuance of the license but not cited or attached, and permits or conditions issued or modified during the term of the license.
- 12.2 Indemnification** The licensee shall indemnify and hold Metro, its employees, agents and elected officials harmless from any and all claims, damages, actions, losses and expenses including attorney's fees, or liability related to or arising out of or in any way connected with the licensee's performance or failure to perform under this license, including patent infringement and any claims or disputes involving subcontractors.
- 12.3 Deliver waste to appropriate destinations** The licensee shall ensure that solid waste transferred from the facility goes to the appropriate destinations under Metro Code Chapters 5.01 and 5.05, and under applicable local, state and federal laws, rules, regulations, ordinances, orders and permits;
- 12.4 Right of inspection and audit** Authorized representatives of Metro may take soil and water samples and perform such inspection or audit as the Regional Environmental Management Director deems appropriate and shall be permitted access to the premises of the facility during normal working hours upon giving reasonable advance notice (not less than 24 hours). Subject to the confidentiality provisions of this license, Metro's right to inspect shall include the right to review, at an office of licensee located in the Portland metropolitan area, all information from which all required reports are derived including all books, records, maps, plans, income tax returns, financial statements, contracts, and other like materials of licensee that are directly related to the operation of the facility.
- 12.5 Confidential information** Licensee may identify any information submitted to or reviewed by Metro under this Section 12.0 as confidential. Licensee shall prominently mark any information which it claims confidential with the mark "CONFIDENTIAL" prior to submittal to or review by Metro. Metro shall treat as confidential any information so marked and will make a good faith effort not to disclose such information unless Metro's refusal to disclose such information would be contrary to applicable Oregon law, including, without limitation, ORS Chapter





192. Within five (5) days of Metro's receipt, of any request for disclosure of information identified by licensee as confidential, Metro shall provide Licensee written notice of the request. Licensee shall have three (3) days within which time to respond in writing to the request before Metro determines, at its sole discretion, whether to disclose any requested information. Licensee shall be responsible for any costs incurred by Metro as a result of Metro's efforts to remove or redact any such confidential information from documents that Metro produces in response to a public records request. Nothing in this Paragraph 12.5 shall limit the use of any information submitted to or reviewed by Metro for regulatory purposes or in any enforcement proceeding. In addition, Metro may share any confidential information with representatives of other governmental agencies provided that, consistent with Oregon law, such representatives agree to continue to treat such information as confidential and make good faith efforts not to disclose such information.

**12.6 Compliance  
by agents**

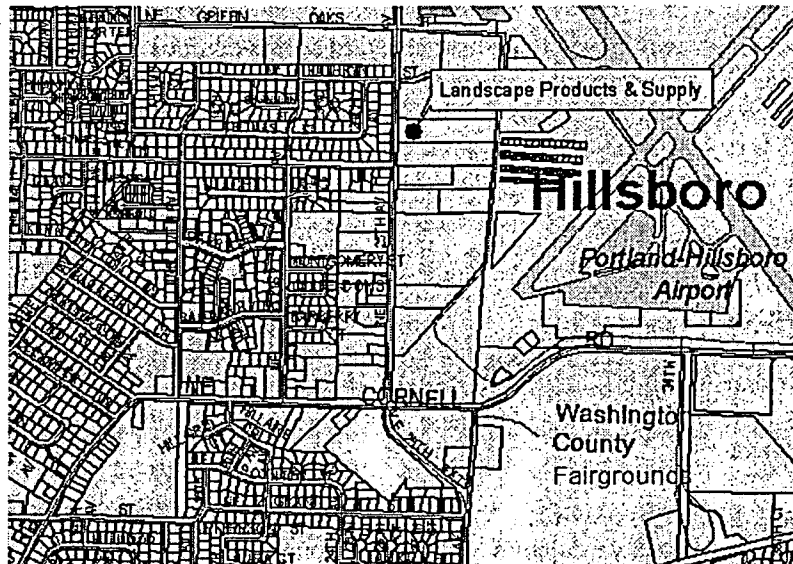
The licensee shall be responsible for ensuring that its agents and contractors operate in compliance with this license.

IN CONSIDERATION OF RESOLUTION NO. 02-3211 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO GRANT A METRO SOLID WASTE FACILITY LICENSE FOR YARD DEBRIS RELOADING TO S&H LOGGING, INC., dba LANDSCAPE PRODUCTS & SUPPLY

**Presented by: Terry Petersen**

The purpose of this report is to provide the information necessary for the Metro Council to act on the recommendation that Landscape Products & Supply be awarded a license to operate a yard debris reload facility located in Hillsboro, Oregon (Metro District 4).

Landscape Products & Supply is a 6-acre facility located at 1748 NE 25<sup>th</sup> Street in Hillsboro, in Washington County. The site is zoned MP-Industrial Park Zone and the business complies with all applicable local land use requirements.



On May 22, 2002 Metro was notified that a new yard debris reload facility might be operating in Hillsboro without a Metro license. On May 29, 2002, a Metro inspector visited the facility to determine if the information was accurate. After meeting with the site operator, it was determined that Landscape Products & Supply, in addition to selling retail landscape products, was in fact conducting yard debris reloading. Further, it was determined that Landscape Products & Supply is owned and operated by S&H Logging, Inc., (S&H) a Metro licensed yard debris reload facility located in Tualatin in Clackamas County (Metro district 2).

Metro sent S&H Logging, Inc., DBA Landscape Products & Supply, a letter reminding the applicant that a Metro license is required to operate a yard debris reload and that they should discontinue accepting yard debris at the Hillsboro site until they applied for and received a Metro license to conduct yard debris reloading.

On June 27, 2002, Landscape Products & Supply submitted a yard debris reload facility application form. The application fee was delivered at the same time. The application was determined to be complete on July 1, 2002. The Council has 120 days to either grant or deny a license (November 30, 2002).

### **Compliance History**

On August 23, 2000, the Department of Environmental Quality issued a Notice of Noncompliance (NON) to S&H for allowing particulate matter from its hogged fuel grinding operations to drift off-site.

On October 4, 2000, Metro issued an order to S&H to cease yard debris reload activities until such time as it acquired the necessary local land use approval and a Metro license.

On June 13, 2001, in the course of a routine inspection of Clackamas Compost, a composting facility owned and operated by the applicant, a Metro facility inspector noted that yard debris was being tipped from a truck marked "Clackamas Compost Products." Further investigation revealed that the yard debris tipped at Clackamas Compost had been reloaded at S&H Logging. On June 25, 2001, Metro issued S&H a Notice of Noncompliance for resuming yard debris reloading activities without the appropriate Metro license and in violation of the order issued on October 4, 2000.

The applicant also operates two large Metro-licensed yard debris composting facilities; American Compost & Recycling, LLC, located at 9709 N. Columbia Blvd. in Portland and Clackamas Compost Products, LLC, located at 11620 SE Capps Rd. in Clackamas. Both facilities are well run and have a good compliance history under the applicant's management.

### **ANALYSIS/INFORMATION**

#### **1. Known Opposition**

There is no known opposition.

#### **2. Legal Antecedents**

Metro Code Section 5.01.045(b) requires a Metro Solid Waste License for a person to own and operate a facility that processes or reloads yard debris. The Metro Council approves all Solid Waste Licenses [Metro Code 5.01.067(a)]. A decision to approve or deny is made following an investigation and recommendation by the Executive Officer [Metro Code 5.01.070(b)].

Metro Code Section 5.01.055 requires license applicants to participate in a pre-application conference and to file an application within one year from the date of that conference. Metro staff held a pre-application conference call with the applicant on June 27, 2002, and the applicant submitted the application by mail on the same day, along with an application fee as required by Metro Code Section 5.01.062.

Metro Code Section 5.01.060 provides:

*(a) Applications for a Certificate, Franchise or License or for renewal of an existing Certificate, Franchise or License shall be filed on forms or in the format provided by the Executive Officer.*

The application was filed on forms and in the format provided by the Executive Officer.

*(b) In addition to any information required on the forms or in the format provided by the Executive Officer, all applications shall include a description of the Activities proposed to be conducted and a description of Wastes sought to be accepted.*

The application contains a description of the activities proposed to be conducted and a description of wastes sought to be accepted. The proposed activities consist of reloading yard debris for delivery to a Metro licensed composting facility.

*(c) In addition to the information required on the forms or in the format provided by the Executive Officer, applications for a License or Franchise shall include the following information to the Executive Officer:*

- (1) Proof that the applicant can obtain the types of insurance specified by the Executive Officer during the term of the Franchise or License;*

A certificate of insurance was provided with the application.

- (2) A duplicate copy of all applications for necessary DEQ permits and any other information required by or submitted to DEQ;*

At this time the DEQ is not requiring a permit for yard debris reload facilities. Metro licenses satisfy DEQ permitting requirements per an Intergovernmental Agreement (IGA) between Metro & DEQ.

- (3) A duplicate copy of any closure plan required to be submitted to DEQ, or if DEQ does not require a closure plan, a closure document describing closure protocol for the Solid Waste Facility at any point in its active life;*
- (4) A duplicate copy of any documents required to be submitted to DEQ demonstrating financial assurance for the costs of closure, or if DEQ does not require such documents, proof of financial assurance for the costs of closure of the facility;*

DEQ does not regulate yard debris reload facilities. Because the facility will not accumulate any appreciable amount of waste material and because yard debris reloading comprises only a small part of the facility's activities, a closure protocol and an instrument of financial assurance were not required.

- (5) Signed consent by the owner(s) of the property to the proposed use of the property. The consent shall disclose the property interest held by the Licensee or Franchisee, the duration of that interest and shall include a statement that the property owner(s) have read and agree to be bound by the provisions of section 5.01.180(e) of this chapter if the License or Franchise is revoked or any License or Franchise renewal is refused;*

The property that underlies the facility is owned by Paul W. and Linda L. Moody. A signed consent by the property owners has been received by Metro.

- (6) *Proof that the applicant has received proper land use approval; or, if land use approval has not been obtained, a written recommendation of the planning director of the local governmental unit having land use jurisdiction regarding new or existing disposal sites, or alterations, expansions, improvements or changes in the method or type of disposal at new or existing disposal sites. Such recommendation may include, but is not limited to a statement of compatibility of the site, the Solid Waste Disposal Facility located thereon and the proposed operation with the acknowledged local comprehensive plan and zoning requirements or with the Statewide Planning Goals of the Land Conservation and Development Commission; and*

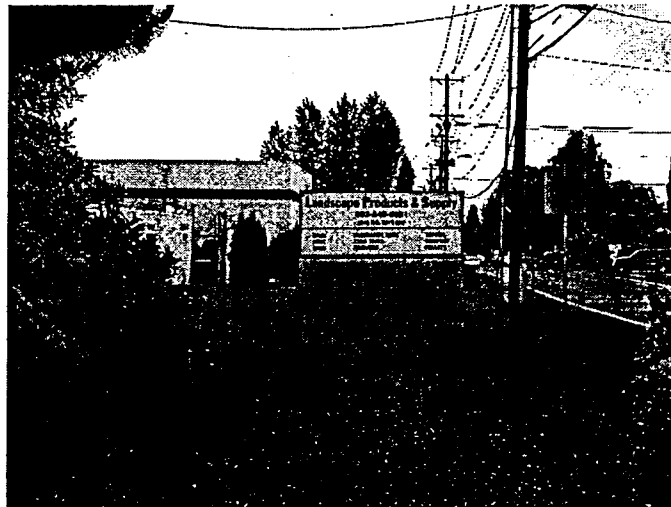
Proof of land use approval has been provided in the form of a Metro Land Use Compatibility Statement (LUCS) signed by the City of Hillsboro Planning Director. The LUCS states that the business complies with all applicable local land use requirements.

- (7) *Identify any other known or anticipated permits required from any other governmental agency. If application for such other permits has been previously made; a copy of such permit application; and any permit that has been granted shall be provided.*

No other required permits are known or anticipated by Metro staff.

### 3. Anticipated Effects

Approval of Resolution No. 02-3211 will authorize the Executive Officer to issue a new Solid Waste Facility License for yard debris reloading to Landscape Products & Supply located at 1748 NE 25<sup>th</sup> Street in Hillsboro, Oregon (Metro District 4). Issuance of a license will authorize the facility to accept yard debris for the purpose of grinding and reloading it for delivery to an authorized composting facility. Landscape Products & Supply will not be authorized to do composting or other processing on-site.



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

The facility will reload yard debris. Since this material is exempt from Metro fees under Metro Code Section 5.01.150(b)(3) (which provides that "user fees shall not apply to source-separated yard debris accepted at Licensed . . . yard debris reload facilities"), there will be no budget impact.

#### **RECOMMENDED ACTION**

The Executive Officer recommends approval of Resolution No. 02-3211, granting a Solid Waste Facility License to Landscape & Supply for the authorization of yard debris reload activities. The facility is subject to the terms and conditions incorporated into the license document attached as "Exhibit A" to Resolution No. 02-3211.

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**Resolution No. 02-3207, For the Purpose of Authorizing the Executive Officer to Purchase Conservation and Trail Easements Over the Lucklow and White Properties in the Newell Creek Canyon Target Areas.**

**Metro Council Meeting  
Thursday, July 25, 2002  
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING	)	RESOLUTION NO. 02-3207
THE EXECUTIVE OFFICER TO	)	
PURCHASE CONSERVATION AND TRAIL	)	Introduced by Mike Burton,
EASEMENTS OVER THE LUCKOW AND	)	Executive Officer
WHITE PROPERTIES IN THE NEWELL	)	
CREEK CANYON TARGET AREA	)	

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

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

WHEREAS, the Newell Creek Canyon regional target area was designated as a greenspace of regional significance in the Greenspaces Master Plan and identified as a regional target area in the Open Spaces, Parks and Streams Bond Measure; and

WHEREAS, on April 11, 1996, the Metro Council adopted a refinement plan for the Newell Creek Canyon regional target area which authorized the purchases of sites in Newell Creek Canyon, as set forth in a confidential tax-lot-specific map identifying priority properties for acquisition; and

WHEREAS, on November 6, 1997, the Metro Council adopted Ordinance No. 97-714, codified as Metro Code Section 10.03.60, establishing the procedure by which Metro can acquire and hold conservation easements, and requiring public notice and a vote of the Metro Council; and

WHEREAS, Gerald and Dolores Luckow own approximately 1.5 acres along Newell Creek Canyon and that property is further identified and depicted in Exhibit A (the "Luckow Property"); and

WHEREAS, the Luckows propose to sell a conservation and trail easement to Metro that would encumber the Luckow Property and which would restrict land uses over the property such that its natural condition would be permanently protected pursuant to the terms and conditions set forth in Exhibit B and would allow Metro to construct and maintain a public recreation trail on and through the property; and

WHEREAS, Glendon and Helen White own approximately 0.3 acres along Newell Creek Canyon and that property is further identified and depicted in Exhibit C (the "White Property"), and

WHEREAS, the Whites propose to sell a conservation and trail easement to Metro that would encumber the White Property and which would restrict land uses over the property such that its natural condition would be permanently protected pursuant to the terms and conditions set forth in Exhibit D and would allow Metro to construct and maintain a public recreation trail on and through the property; and

WHEREAS, Metro's Regional Trails and Greenways Plan identifies the Oregon City Loop Trail and Beaver Lake Trail as proposed regional trails, and the Luckow and White conservation and trail easements provide links in that conceptual trail alignment; and



WHEREAS, the Luckow and White Properties are included in the Newell Creek Canyon regional target area and the acquisition of the Luckow and White conservation and trail easements would serve the Newell Creek Canyon target area refinement plan objectives of 1) establishing pedestrian and wildlife linkages between the two sides of the canyon split by the Highway 213 bypass and 2) protecting views of the canyon as seen from Highway 213 by acquiring lands adjacent to the road; and

WHEREAS, acquisition of the Luckow and White conservation and trail easements will provide public access to the Newell Creek Canyon and will help protect the natural, scenic, and open space values of real property; and

WHEREAS, Metro would assume minimal land management costs by acquiring conservation easements over a portion of the Luckow and White properties; and

WHEREAS, Metro has met public notice requirements for conservation easements as set forth in Metro Code Section 10.03.020; now therefore,

BE IT RESOLVED that the Metro Council authorizes the Executive Officer to purchase the conservation and trail easement over the Luckow Property in the form as attached as Exhibit B; and

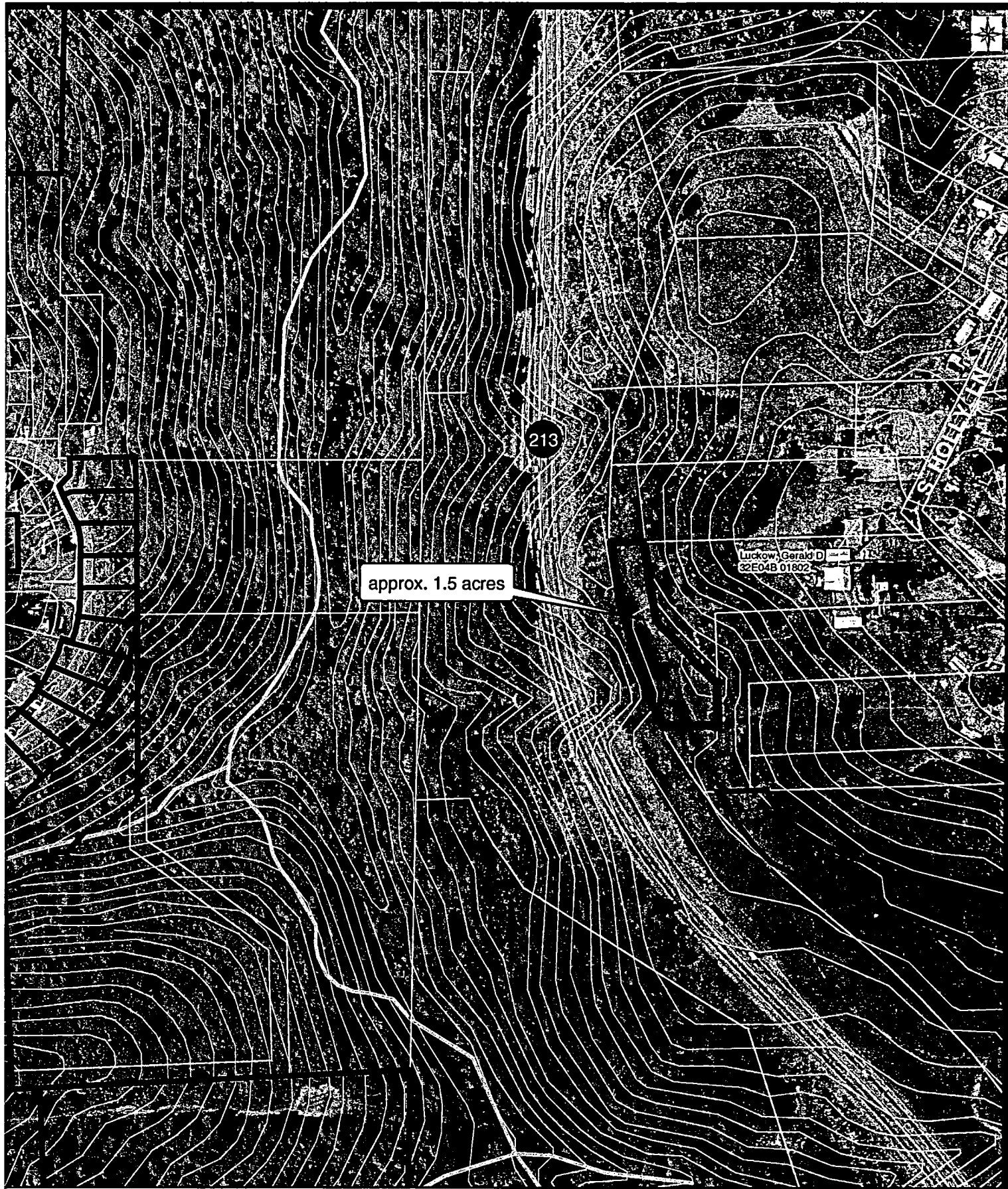
BE IT FURTHER RESOLVED that the Metro Council authorizes the Executive Officer to purchase the conservation and trail easement over the White Property in the form as attached as Exhibit D.

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

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

Approved as to Form:

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



REGIONAL LAND INFORMATION SYSTEM

1 inch equals 300 feet

MACOG is a regional organization of 15 local governments in the Metro area. We work together to provide services and programs that benefit the entire region.

### Metro Open Spaces, Parks & Streams Bond Measure:

Proposed Luckow Conservation Easement and Trail Easement

Approx Easement Boundary

contour - 10 ft (yellow)

Bond Measure Acquisitions

Bond Measure Acquisitions as of 05.09.02

**EXHIBIT A**

**Resolution 02-3207**

Map prepared by: [illegible]  
Map date: [illegible]  
Map scale: [illegible]  
Map projection: [illegible]  
Map datum: [illegible]  
Map units: [illegible]  
Map status: [illegible]  
Map version: [illegible]  
Map description: [illegible]  
Map notes: [illegible]

Location Map

**EXHIBIT B**  
**Resolution No. 02-3207**

When recorded return to:

Metro Office of General Counsel  
600 NE Grand Avenue  
Portland, OR 97232

**DEED OF CONSERVATION EASEMENT  
AND TRAIL EASEMENT DEDICATION**

THIS DEED OF CONSERVATION EASEMENT AND TRAIL EASEMENT DEDICATION ("Conservation and Trail Easements") (and/or collectively herein as the "Easements") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2002, by Gerald D. Luckow and Dolores O. Luckow, having an address at 18191 South Holly Lane, Oregon City, OR 97045 ("Grantors"), in favor of Metro, a municipal corporation and political subdivision of the State of Oregon, having an address at 600 NE Grand Avenue, Portland, OR ("Metro").

**RECITALS**

WHEREAS, Grantors are the owner in fee simple of that certain real property (the "Protected Property") located on South Holly Lane in the City of Oregon City, in the County of Clackamas, State of Oregon, more particularly described in Attachment A (legal description) and depicted in Attachment B (site plan), attached hereto and incorporated into this Easement by reference herein;

WHEREAS, the Protected Property possesses scenic, open space, educational and recreational values of great importance to Grantors, the people of Oregon City, Clackamas County, the Portland Metropolitan Region, and the State of Oregon (collectively, "Conservation Values");

WHEREAS, the Protected Property is of moderate to steep slope, supports a mixed deciduous/conifer forest, and provides a vital link in a wildlife habitat corridor in the Newell Creek watershed. The scenic setting, as well as wildlife viewing, education and interpretation opportunities are also unique;

WHEREAS, the specific Conservation Values of the Protected Property are or will be documented in an inventory of relevant features of the Protected Property, dated \_\_\_\_\_, 2002, on file at the offices of Metro and incorporated into this Easement by this reference ("Baseline Documentation"). The Baseline Documentation consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. Grantors and Metro further agree that within three (3) months of the execution of this Easement, a collection of additional Baseline Documentation may be compiled by Metro, and incorporated into the Easement by this reference. Failure to timely compile the additional Baseline Documentation shall not affect the enforceability of this Easement or any of its provisions;

WHEREAS, Grantors, as owners of the Protected Property, have the right to identify, protect, and preserve in perpetuity the Conservation Values of the Protected Property, and desire to transfer such rights to Metro;

WHEREAS, Metro is a political subdivision of the State of Oregon, whose purpose includes the protection, management and restoration of urban natural areas and areas in proximity to the urban area deemed to be of regional and metropolitan concern; and

WHEREAS, Metro agrees, by accepting this Easement, to honor the intentions of Grantors as stated in this Easement and to preserve and protect in perpetuity the Conservation Values of the Protected Property for the benefit of this generation and the generations to come.

NOW, THEREFORE, in consideration of TWENTY THOUSAND DOLLARS (\$20,000.00) PER ACRE multiplied by the amount of acreage (or a pro-rata part of \$20,000 for a part of an acre), as established by survey and the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of Oregon, Grantors hereby voluntarily grant and convey to Metro a Conservation Easement in perpetuity on, through and over the Protected Property of the nature and character and to the extent set forth hereinbelow, and dedicate a public recreational Trail Easement of the nature and character set forth hereinbelow. Grantors expressly intend that these perpetual Easements run with the land and that these Easements shall be binding upon Grantors' personal representatives, heirs, successors, and assigns. All references to "Grantors" herein apply equally to Grantors' personal representatives, heirs, successors, and assigns.

1. **Conservation Easement.** The Purpose of this Conservation Easement is to assure that (with the exception of the Trail, as defined below) the Protected Property will be retained forever predominantly in its natural condition as "a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem" (as that phrase is used in 26 U.S.C. § 170(h)(4)(A)(ii), as amended and in regulations promulgated under this law), and to prevent any use of or activity on, the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property (the "Purpose"). Grantors intend that this Easement will confine the use of or activity on the Protected Property to such uses and activities that are consistent with this Purpose.
2. **Trail Easement.**
  - a. **Purpose.** The Purpose of the Trail Easement Dedication is to provide for the development, at Metro's discretion, of a public recreational trail on and through the Protected Property. The Trail Easement Dedication provides Metro with the perpetual right to construct and maintain a trail for public access to, on and through the Protected Property (the "Trail") in a location acceptable to Metro in its sole discretion.
  - b. **Access by Public.** It is the intent of Metro to construct and maintain a Trail that will be open to the public, consistent with the Conservation Values of this Easement. Access by the general public to the Protected Property shall not unreasonably interfere with the Conservation Values of the Protected Property.
3. **Conservation Easement Rights Conveyed to Metro.** To accomplish the Purpose of the Conservation Easement, the following rights are hereby conveyed to Metro:
  - A. **Identification and Protection.** To identify, preserve and protect in perpetuity and to enhance the Conservation Values of the Protected Property.
  - B. **Access.** In addition to the access provided to Metro and the public as set forth herein for the Trail Easement, access over Grantor's Retained Property, legally described as set

forth in Exhibit C attached, to the Protected Property for Metro staff, vehicles and equipment is hereby granted, subject to the limitations below, for the following purposes:

- i. Quarterly general inspections to assure compliance with this Easement;
- ii. Emergency access and entry at other such times as are necessary if there is a reason to believe that a violation of the Easement is occurring or has occurred, for the Purpose of enforcing the provisions of this Easement;
- iii. Restoration and Enhancement of Native Vegetation and Wildlife Habitat Enhancement;
- iv. Access via the 18191 South Holly Lane driveway shall be preceded by 24-hours' notice via telephone or in writing, attached to the front door of the residence located thereon;
- v. No heavy equipment, such as back hoes, dump trucks, or bulldozers shall be driven across the Retained Property to enter the Protected Property, unless expressly agreed to by Grantor;
- vi. Access via any other location, and activities performed by Metro elsewhere on the Protected Property consistent with the terms of this Easement, requires no prior notice.

C. **Restoration of Native Vegetation; Wildlife Habitat Enhancement.** To restore, at Metro's discretion, but not its obligation, native vegetation on the Protected Property, and to enhance wildlife habitat on the Protected Property. Restoration and enhancement may include but is not limited to:

- i. The removal of existing vegetation, including, but not limited to, blackberry, alder, and maple, and the planting of native vegetation, including, but not limited to, fir trees and other conifers, to enhance the Conservation Values of the Protected Property;
- ii. The alteration of the land surface to restore natural systems and enhance the Conservation Values of the Protected Property; and
- iii. The alteration of water courses to restore natural systems and enhance the Conservation Values of the Protected Property.

D. **Injunction.** To enjoin any use of, or activity in, the Protected Property that is inconsistent with the Purpose of this Easement, including trespasses by neighboring property owners and unauthorized access by members of the public, and at Metro's sole option to undertake or cause to be undertaken the restoration of such areas or features of the Protected Property as may be damaged by uses or activities contrary to the provisions of this Easement, all in accordance with Section 6 of this Easement.

E. **Enforcement.** To enforce the terms of this Easement, consistent with Section 7.

- F. **Assignment.** To assign, convey, or otherwise transfer Metro's interest in the Protected Property in accordance with Section 15.
4. **Prohibited Uses.** Grantors acknowledge and agree that they will not conduct, engage in or permit any activity on or use of the Protected Property inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the Grantors and their agents, heirs and assigns are expressly prohibited from engaging in the following activities and uses
- A. **Subdivision.** The legal or "de facto" subdivision of the Protected Property.
- B. **Utilities.** The above or below ground installation of new utility systems or extensions of existing utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities.
- C. **Construction.** The placement or construction by Grantors of any buildings, structures, or other improvements of any kind (including, without limitation, pipelines, wells, septic systems, drainfields, fences, roads, and parking areas), except for Metro's activities as provided for in Sections 2 and 3 (B & C) herein.
- D. **Alteration of Land.** The alteration of the surface of the land, including, without limitation, the excavation, fill or removal of soil, sand, gravel, rock, peat, or sod; except for Metro's activities as provided for in Sections 2 and 3 (B & C) herein.
- E. **Alteration of Water Courses.** The draining, filling, dredging, ditching, or diking of wetland areas, the alteration or manipulation of ponds and water courses, or the creation of new wetlands, water impoundments, or water courses; except as deemed necessary by Metro to preserve, protect or enhance the Conservation Values of the Protected Property.
- F. **Erosion or Water Pollution.** Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters.
- G. **Agricultural Activities.** The conducting of grazing or agricultural activities of any kind.
- H. **Feedlots.** The establishment and maintenance of a commercial feedlot. For the purposes of this Easement, a commercial feedlot is a confined area or facility within which the land is not grazed or cropped at least annually and which is used to receive livestock that has been raised off the Protected Property for feeding and fattening for market.
- I. **Waste Disposal.** The disposal or storage of rubbish, garbage, debris, vehicles, abandoned equipment, parts thereof or other unsightly, offensive, or hazardous waste or material on the Protected Property.
- J. **Signs.** The placement of commercial signs, billboards, or other advertising material on the Protected Property.
- K. **Hunting.** Hunting or trapping; except to the extent determined necessary by Metro to preserve, protect or enhance the Conservation Values of the Protected Property.

- L. **Mining.** The exploration for, or development and extraction of, minerals and hydrocarbons on or below the surface of the Protected Property.
  - M. **Wildlife Disruption.** The disruption of wildlife breeding, foraging and nesting activities.
  - N. **Domestic Animals.** Use of the site to exercise, train or pasture any domestic animal on the Protected Property.
  - O. **Herbicides or Pesticides.** The use of any herbicides or pesticides; except for Metro's activities pursuant to Section 3 (C) herein and except as deemed necessary by Metro to preserve, protect or enhance the Conservation Values of the Protected Property.
  - P. **Removal of Trees and Other Vegetation.** The pruning, cutting down, or other destruction or removal of live and dead trees and other vegetation located on the Protected Property; except as deemed necessary by Metro to preserve, protect or enhance the Conservation Values of the Protected Property or to conduct educational or research activities consistent with the Purpose of this Easement.
  - Q. **Introduced Vegetation.** The introduction of non-native wetland plants and non-native invasive species on the Protected Property, or the planting or introduction of any species of vegetation; except as deemed necessary by Metro to enhance the Conservation Values of the Protected Property.
  - R. **Harvesting of Native Plants.** The gathering, picking, taking, or harvesting of native plants, or any parts thereof, from the Protected Property, except when used for habitat enhancement within the Protected Property.
  - S. **Off-Road Vehicles and Excessive Noise.** The operation of motorcycles, snow mobiles, or any other type of off-road motorized vehicles or the operation of other sources of excessive noise pollution.
  - T. **Use of Firearms.** The discharge of firearms, bows and arrows, air guns, slingshots, and similar devices.
  - U. **Fires.** Fires of all forms, except those necessary for maintenance and consistent with Conservation Values of the Protected Property.
  - V. **Fireworks.** Use of all forms of fireworks.
  - W. **Motorized Vehicles.** Operation of motorized or mechanized vehicles or motorized equipment except when approved by Metro and in association with the maintenance of Conservation Values, and except pursuant to the provisions of Sections 2 and 3 herein.
  - X. **Amplified Sound.** Uses of devices which amplify or emit amplified sound.
5. **Reserved Rights.** Grantors specifically reserve for themselves and their personal representatives, heirs, successors and assigns, the following uses of and activities on the Protected Property that are consistent with the Purpose of the Easement and that are not prohibited by this Easement.

- A. **Recreation.** The undertaking of passive recreational activities such as hiking, and bird watching, on the Protected Property, provided that such activities are conducted in a manner and intensity that does not adversely impact the Conservation Values of the Protected Property.
- B. **Protection of Public Health or Safety.** The undertaking of other activities necessary to protect public health or safety on the Protected Property, or that are actively required by and subject to compulsion of any governmental agency with authority to require such activity, provided that any such activity shall be conducted so that interference with the Conservation Values of the Protected Property is avoided, or, if avoidance is not possible, minimized to the extent possible. Grantors shall provide Metro with notice of their intent to take action under this subsection.

6: **Notice and Approval.**

- A. **Notice of Intention to Undertake Certain Permitted Actions.** The purpose of requiring Grantors to notify Metro prior to undertaking certain permitted activities, as provided in Section 5(B), is to afford Metro an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the Purpose of this Easement. Whenever notice is required, Grantors shall notify Metro in writing not less than 7 days prior to the date Grantors intend to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit Metro to make an informed judgment as to its consistency with the Purpose of this Easement. If Grantors must undertake emergency action to protect health or safety on the Protected Property or must act by and subject to compulsion of any governmental agency, Grantors may proceed with such action without Metro's approval only if Grantors notify Metro prior to taking such action and Metro fails to provide its approval, with or without conditions, within such time as is reasonable under the circumstances.
- B. **Metro's Approval.** Where Metro's approval is required, Metro shall grant or withhold its approval in writing within 7 days of receipt of Grantors' written request therefor. Metro's approval may be withheld only upon a reasonable determination by Metro that the action as proposed would be inconsistent with the Purpose of this Easement.
- C. **Addresses.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantors:

Gerald D. Luckow and Dolores O. Luckow  
18191 South Holly Lane  
Oregon City, Oregon 97045

To Metro:

Metro  
Department of Parks and Greenspaces  
Attn: Charles Ciecko  
600 NE Grand Avenue  
Portland, OR 97232



With a copy to:

Metro  
Office of General Counsel  
600 NE Grand Avenue  
Portland, OR 97232

or to such other address as either party designates by written notice to the other.

7. **Metro's Remedies.**

A. **Notice of Violation.** If Metro determines that Grantors are in violation of the terms of this Easement or that a violation is threatened, Metro shall give written notice to Grantors of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Protected Property so injured. Grantors shall thereafter cure the violation or restore any portion of the Protected Property injured by Grantors.

B. **Grantors' Failure To Respond.** If Grantors fail to cure the violation within 30 days after receipt of notice thereof from Metro, or under circumstances where the violation cannot reasonably be cured within a 30-day period, fail to begin curing such violation within the 30-day period, or fail to continue diligently to cure such violation until finally cured, Metro may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement.

C. **Metro's Action to Remedy Violation.**

- (1) To enjoin the violation ex parte as necessary, by temporary or permanent injunction;
- (2) To recover from Grantors or third parties any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, occurring after the date of recording of the Easement, including damages for the loss of scenic, aesthetic, or environmental values; and
- (3) To require the restoration of the Protected Property to the condition that existed prior to any such injury.

Without limiting Grantors' liability therefor, Metro, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property.

D. **Immediate Action Required.** If Metro in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Metro may pursue its remedies under this paragraph without prior notice to Grantors or without waiting for the period provided for cure to expire. Metro's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement and Grantors agree that

Metro's remedies at law for any violation of the terms of this Easement are inadequate and that Metro shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Metro may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Metro's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

- E. **Cost of Enforcement.** Any costs incurred by Metro in enforcing the terms of this Easement against Grantors, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Easement shall be borne by Grantors. If Grantors prevail in any action to enforce the terms of this Easement, Grantors' costs of suit, including, without limitation attorneys' fees, shall be borne by Metro.
- F. **Metro's Discretion.** Metro acknowledges its commitment to protect the Purpose of this Easement. Enforcement of the terms of this Easement shall be at the discretion of Metro, and any forbearance by Metro to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantors, their agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Metro of such term of any of grant of rights under this Easement. No delay or omission by Metro in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.
- G. **Waiver of Certain Defenses.** Grantors acknowledge that they have carefully reviewed this Easement and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Grantors hereby waive any claim or defense they may have against Metro or its successors or assigns under or pertaining to this Easement based upon waiver, laches, estoppel, adverse possession or prescription.
- H. **Acts Beyond Grantors' Control.** Nothing contained in this Easement shall be construed to entitle Metro to bring any action against Grantors to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from causes beyond Grantors' control including, without limitations natural changes, fire, flood, storm or earth movement, or from acts of trespassers, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.
8. **Costs, Liabilities and Insurance.** Grantors retain all responsibilities and shall bear all costs relating to the ownership of the Protected Property, including the maintenance of adequate comprehensive general liability coverage. Grantors shall keep the Protected Property free of any liens arising out of any work performed for, or materials furnished to Grantors. Metro shall be responsible for the operation, upkeep and maintenance of the Trail, if built by Metro on the Protected Property, and for any other activity performed or responsibility assumed by Metro under Sections 2 and 3 herein. Metro shall bear no responsibility for any other costs or liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property.

9. **Taxes.** Grantors shall pay before delinquency all taxes, assessments, fees, charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), and shall furnish Metro with satisfactory evidence of payment upon request. If Grantors fail to pay any taxes when due, Metro is authorized, but in no event obligated, to make or advance such payment of taxes upon three (3) days prior written notice to Grantors, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement or estimate, and the obligation of Grantors to reimburse Metro created by such payment shall bear interest until paid by Grantors at the maximum rate allowed by law.
10. **Hold Harmless.** Grantors shall hold harmless, indemnify, and defend Metro and its elected officials, officers, employees, agents, and contractors and the personal representatives, heirs, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any occurrence, omission, condition, or other matter relating to or on or about the Protected Property that is due to any act, or failure to act upon legal duty to do so, of Grantors, their successors and assigns and their invitees; (2) violations or alleged violations of any federal, state or local environmental law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials, unless such violations or alleged violations are due to the acts or omissions of any of the Indemnified parties on the Protected Property; and (3) Grantors' reserved rights under Section 5 and obligations under Sections 9 and 10. Grantors shall be afforded the full protection from liability to the public provided under Oregon Revised Statutes 105.672-696 (2001).
11. **Environmental Representations and Warranties.** Grantors represent and warrant that to the best of Grantors' knowledge:
- A. There are no apparent or latent environmental defects in or on the Protected Property;
  - B. There has been no release, dumping, burying, abandonment or migration from off-site on the Protected Property of any substances, materials or wastes that are hazardous, toxic, dangerous, or harmful or are designated as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute, or ordinance;
  - C. Neither Grantors nor Grantors' predecessors in interest have disposed of any hazardous substances off-site, nor have they disposed of substances on the Protected Property regulated by State or Federal environmental laws, including but not limited to ORS Chapter 465 and 42 U.S.C. § 9601 et seq; and
  - D. There is no pending or threatened litigation affecting the Protected Property or any portion of the Protected Property that will materially impair the Conservation Values of any portion of the Protected Property. No civil or criminal proceedings have been instigated or are pending against Grantors or their predecessors by government agencies or third parties arising out of alleged violations of environmental laws, and neither Grantors nor their predecessors in interest have received any notices of violation,

penalties, claims, demand letters, or other notifications relating to a breach of environmental laws.

**12. Subsequent Transfer and Extinguishment.**

- A. **Extinguishment.** If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court having jurisdiction. The amount of the proceeds to which Metro shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined, in accordance with Section 13(B) of this Easement. Metro shall use all such proceeds in a manner consistent with the Purpose of this Easement.
- B. **Condemnation.** In the event that the Protected Property is taken, in whole or in part, by the exercise of the power of eminent domain, Metro shall be entitled to compensation in accordance with applicable law.
- C. **Subsequent Transfers.** Grantors agree to:
1. Incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest;
  2. Describe this Easement in and append it to, any executory contract for the transfer of any interest in the Protected Property; and
  3. Give written notice to Metro of the transfer of any interest in all or a portion of the Protected Property no later than forty-five (45) days prior to the date of such transfer. Such notice to Metro shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.

The failure of Grantors to perform any act required by this subsection shall not impair the validity of this Easement or limit its enforceability in any way.

13. **Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantors and Metro are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Metro under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision(s) then applicable). Any such amendment shall be consistent with the Purpose of this Easement, shall not affect its perpetual duration, and shall be recorded in the official records of Clackamas County, Oregon, and any other jurisdiction in which such recording is required.

14. **Assignment.** Metro may assign this Easement to Clackamas County, to the City of Oregon City, or to any qualified holder of a Conservation Easement without the agreement of Grantors. Any other assignment of this Easement by Metro or any subsequent assignment by Clackamas County or the City of Oregon City, must be approved by Grantors, which approval shall not be unreasonably withheld. As a condition of such transfer, Metro shall require that the transferee

exercise its rights under the assignment consistent with the Purpose of this Easement. Metro shall notify Grantors in writing, at Grantors' last known address, in advance of such assignment.

15. **Recording.** Metro shall record this instrument in a timely fashion in the official records of Clackamas County, Oregon, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.

16. **General Provisions.**

- A. **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Oregon.
- B. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the Purpose of this Easement and the policy and purpose of ORS Chapter 271. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- C. **Severability.** If any provision of this Easement, or its application to any person, entity, or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.
- D. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Protected Property, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 14.
- E. **No Forfeiture.** Nothing contained in this Easement will result in a forfeiture or reversion of Grantors' title in any respect.
- F. **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.
- G. **Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- H. **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- I. **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall be signed by both parties. Each counterpart shall be deemed an original

instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

17. **Portland General Electric Easement.** Grantor and Grantee recognize that the Protected Property is subject to the rights of Portland General Electric (PGE) to use part of the Protected Property for its electrical power transmission lines as provided in the easement recorded on 5/12/1958 Book 540, Page 50 in Clackamas County Oregon. Furthermore, grantor will not be in violation of the terms of this Conservation Easement for the acts of PGE in exercise of PGE's rights under its 1958 easement on the Protected Property.

18. **Schedule of Attachments**

- A. Legal Description of Protected Property.
- B. Site Plan.
- C. Legal Description of Retained Property

TO HAVE AND TO HOLD unto Metro, its successors, and assigns forever.

IN WITNESS WHEREOF, the undersigned Grantors have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Gerald D. Luckow

\_\_\_\_\_  
Dolores O. Luckow

State of Oregon       )  
                                  ) ss.

County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2002, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared Gerald D. Luckow and Dolores O. Luckow, personally known to me (or proved to be on the basis of satisfactory evidence) to be the person(s) whose name(s) is (are) subscribed to this instrument, and acknowledged that he (she or they) executed it.

\_\_\_\_\_  
My commission expires: \_\_\_\_\_

Metro does hereby accept the above Deed of Conservation Easement and Trail Easement Dedication.

METRO

Dated: \_\_\_\_\_

\_\_\_\_\_  
By: Mike Burton  
Its: Executive Officer

State of Oregon       )  
                                  ) ss.  
County of Multnomah )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2002, before me, the undersigned, \_\_\_\_\_ a Notary Public for Oregon, personally appeared the within named Mike Burton, as Executive Officer for Metro, a municipal corporation, known to me to be the identical individual described in and who executed the within instrument and acknowledged to me that he executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_



REGIONAL LAND INFORMATION SYSTEM

1 inch equals 300 feet



# **Metro Open Spaces, Parks & Streams Bond Measure:** Proposed White Conservation Easement and Trail Easement

 Approx Easement Boundary      contour - 10 ft (yellow)

 Bond Measure Acquisitions

Bond Measure Acquisitions as of 05.09.02

**EXHIBIT C**  
Resolution 02-3207

Legend  
This map was prepared by the Metro Open Spaces, Parks & Streams Bond Measure. It shows the proposed White Conservation Easement and Trail Easement. The map is based on aerial photography and other data. It is not a legal document. For more information, contact the Metro Open Spaces, Parks & Streams Department.

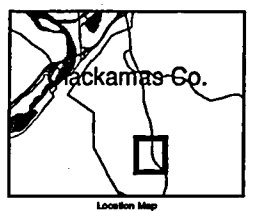




EXHIBIT D  
Resolution 02-3207

When recorded return to:

Metro Office of General Counsel  
600 NE Grand Avenue  
Portland, OR 97232

**DEED OF CONSERVATION EASEMENT  
AND TRAIL EASEMENT DEDICATION**

THIS DEED OF CONSERVATION EASEMENT AND TRAIL EASEMENT DEDICATION ("Conservation and Trail Easements") (and/or collectively herein as the "Easements") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2002, by Glendon Dale White and Helen F. White, having an address at 18181 South Holly Lane, Oregon City, OR 97045 ("Grantors"), in favor of Metro, a municipal corporation and political subdivision of the State of Oregon, having an address at 600 NE Grand Avenue, Portland, OR ("Metro").

**RECITALS**

WHEREAS, Grantors are the owner in fee simple of that certain real property (the "Protected Property") located on South Holly Lane in the City of Oregon City, in the County of Clackamas, State of Oregon, more particularly described in Attachment A (legal description) and depicted in Attachment B (site plan), attached hereto and incorporated into this Easement by reference herein;

WHEREAS, the Protected Property possesses scenic, open space, educational and recreational values of great importance to Grantors, the people of Oregon City, Clackamas County, the Portland Metropolitan Region, and the State of Oregon (collectively, "Conservation Values");

WHEREAS, the Protected Property is of moderate to steep slope, supports a mixed deciduous/conifer forest, and provides a vital link in a wildlife habitat corridor in the Newell Creek watershed. The scenic setting, as well as wildlife viewing, education and interpretation opportunities are also unique;

WHEREAS, the specific Conservation Values of the Protected Property are or will be documented in an inventory of relevant features of the Protected Property, dated \_\_\_\_\_, 2002, on file at the offices of Metro and incorporated into this Easement by this reference ("Baseline Documentation"). The Baseline Documentation consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. Grantors and Metro further agree that within three (3) months of the execution of this Easement, a collection of additional Baseline Documentation may be compiled by Metro, and incorporated into the Easement by this reference. Failure to timely compile the additional Baseline Documentation shall not affect the enforceability of this Easement or any of its provisions;

WHEREAS, Grantors, as owners of the Protected Property, have the right to identify, protect, and preserve in perpetuity the Conservation Values of the Protected Property, and desire to transfer such rights to Metro;

WHEREAS, Metro is a political subdivision of the State of Oregon, whose purpose includes the protection, management and restoration of urban natural areas and areas in proximity to the urban area deemed to be of regional and metropolitan concern; and

WHEREAS, Metro agrees, by accepting this Easement, to honor the intentions of Grantors as stated in this Easement and to preserve and protect in perpetuity the Conservation Values of the Protected Property for the benefit of this generation and the generations to come.

NOW, THEREFORE, in consideration of TWENTY THOUSAND DOLLARS (\$20,000.00) PER ACRE multiplied by the amount of acreage (or a pro-rata part of \$20,000 for a part of an acre), as established by the survey and the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of Oregon, Grantors hereby voluntarily grant and convey to Metro a Conservation Easement in perpetuity on, through and over the Protected Property of the nature and character and to the extent set forth hereinbelow, and dedicate a public recreational Trail Easement of the nature and character set forth hereinbelow. Grantors expressly intend that these perpetual Easements run with the land and that these Easements shall be binding upon Grantors' personal representatives, heirs, successors, and assigns. All references to "Grantors" herein apply equally to Grantors' personal representatives, heirs, successors, and assigns.

1. **Conservation Easement.** The Purpose of this Conservation Easement is to assure that (with the exception of the Trail, as defined below) the Protected Property will be retained forever predominantly in its natural condition as "a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem" (as that phrase is used in 26 U.S.C. § 170(h)(4)(A)(ii), as amended and in regulations promulgated under this law), and to prevent any use of or activity on, the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property (the "Purpose"). Grantors intend that this Easement will confine the use of or activity on the Protected Property to such uses and activities that are consistent with this Purpose.
2. **Trail Easement.**
  - a. **Purpose.** The Purpose of the Trail Easement Dedication is to provide for the development, at Metro's discretion, of a public recreational trail on and through the Protected Property. The Trail Easement Dedication provides Metro with the perpetual right to construct and maintain a trail for public access to, on and through the Protected Property (the "Trail") in a location acceptable to Metro in its sole discretion
  - b. **Access by Public.** It is the intent of Metro to construct and maintain a Trail that will be open to the public, consistent with the Conservation Values of this Easement. Access by the general public to the Protected Property shall not unreasonably interfere with the Conservation Values of the Protected Property.
3. **Conservation Easement Rights Conveyed to Metro.** To accomplish the Purpose of the Conservation Easement, the following rights are hereby conveyed to Metro:
  - A. **Identification and Protection.** To identify, preserve and protect in perpetuity and to enhance the Conservation Values of the Protected Property.
  - B. **Access.** In addition to the access provided to Metro and the public as set forth herein for the Trail Easement, access over Grantor's Retained Property, legally described as set

forth in Exhibit C attached, to the Protected Property for Metro staff, vehicles and equipment is hereby granted, subject to the limitations below, for the following purposes:

- i. Quarterly general inspections to assure compliance with this Easement;
- ii. Emergency access and entry at other such times as are necessary if there is a reason to believe that a violation of the Easement is occurring or has occurred, for the Purpose of enforcing the provisions of this Easement;
- iii. Restoration and Enhancement of Native Vegetation and Wildlife Habitat Enhancement;
- iv. Access via the 18181 South Holly Lane driveway shall be preceded by 24-hours' notice via telephone or in writing, attached to the front door of the residence located thereon;
- v. No heavy equipment, such as back hoes, dump trucks, or bulldozers shall be driven across the Retained Property to enter the Protected Property, unless expressly agreed to by Grantor; and
- vi. Access via any other location, and activities performed by Metro elsewhere on the Protected Property consistent with the terms of this Easement, requires no prior notice

**C. Restoration of Native Vegetation; Wildlife Habitat Enhancement.** To restore, at Metro's discretion, but not its obligation, native vegetation on the Protected Property, and to enhance wildlife habitat on the Protected Property. Restoration and enhancement may include but is not limited to:

- i. The removal of existing vegetation, including, but not limited to, blackberry, alder, and maple, and the planting of native vegetation, including, but not limited to, fir trees and other conifers, to enhance the Conservation Values of the Protected Property;
- ii. The alteration of the land surface to restore natural systems and enhance the Conservation Values of the Protected Property; and
- iii. The alteration of water courses to restore natural systems and enhance the Conservation Values of the Protected Property.

**D. Injunction.** To enjoin any use of, or activity in, the Protected Property that is inconsistent with the Purpose of this Easement, including trespasses by neighboring property owners and unauthorized access by members of the public, and at Metro's sole option to undertake or cause to be undertaken the restoration of such areas or features of the Protected Property as may be damaged by uses or activities contrary to the provisions of this Easement, all in accordance with Section 6 of this Easement.

**E. Enforcement.** To enforce the terms of this Easement, consistent with Section 7.

- F. **Assignment.** To assign, convey, or otherwise transfer Metro's interest in the Protected Property in accordance with Section 15.
4. **Prohibited Uses.** Grantors acknowledge and agree that they will not conduct, engage in or permit any activity on or use of the Protected Property inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the Grantors and their agents, heirs and assigns are expressly prohibited from engaging in the following activities and uses:
- A. **Subdivision.** The legal or "de facto" subdivision of the Protected Property.
  - B. **Utilities.** The above or below ground installation of new utility systems or extensions of existing utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities.
  - C. **Construction.** The placement or construction by Grantors of any buildings, structures, or other improvements of any kind (including, without limitation, pipelines, wells, septic systems, drainfields, fences, roads, and parking areas), except for Metro's activities as provided for in Sections 2 and 3 (B & C) herein.
  - D. **Alteration of Land.** The alteration of the surface of the land, including, without limitation, the excavation, fill or removal of soil, sand, gravel, rock, peat, or sod; except for Metro's activities as provided for in Sections 2 and 3 (B & C) herein.
  - E. **Alteration of Water Courses.** The draining, filling, dredging, ditching, or diking of wetland areas, the alteration or manipulation of ponds and water courses, or the creation of new wetlands, water impoundments, or water courses; except as deemed necessary by Metro to preserve, protect or enhance the Conservation Values of the Protected Property.
  - F. **Erosion or Water Pollution.** Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters.
  - G. **Agricultural Activities.** The conducting of grazing or agricultural activities of any kind.
  - H. **Feedlots.** The establishment and maintenance of a commercial feedlot. For the purposes of this Easement, a commercial feedlot is a confined area or facility within which the land is not grazed or cropped at least annually and which is used to receive livestock that has been raised off the Protected Property for feeding and fattening for market.
  - I. **Waste Disposal.** The disposal or storage of rubbish, garbage, debris, vehicles, abandoned equipment, parts thereof or other unsightly, offensive, or hazardous waste or material on the Protected Property.
  - J. **Signs.** The placement of commercial signs, billboards, or other advertising material on the Protected Property.
  - K. **Hunting.** Hunting or trapping; except to the extent determined necessary by Metro to preserve, protect or enhance the Conservation Values of the Protected Property.

- L. **Mining.** The exploration for, or development and extraction of, minerals and hydrocarbons on or below the surface of the Protected Property.
  - M. **Wildlife Disruption.** The disruption of wildlife breeding, foraging and nesting activities.
  - N. **Domestic Animals.** Use of the site to exercise, train or pasture any domestic animal on the Protected Property.
  - O. **Herbicides or Pesticides.** The use of any herbicides or pesticides; except for Metro's activities pursuant to in Section 3 (C) herein and except as deemed necessary by Metro to preserve, protect or enhance the Conservation Values of the Protected Property.
  - P. **Removal of Trees and Other Vegetation.** The pruning, cutting down, or other destruction or removal of live and dead trees and other vegetation located on the Protected Property; except as deemed necessary by Metro to preserve, protect or enhance the Conservation Values of the Protected Property or to conduct educational or research activities consistent with the Purpose of this Easement.
  - Q. **Introduced Vegetation.** The introduction of non-native wetland plants and non-native invasive species on the Protected Property, or the planting or introduction of any species of vegetation; except as deemed necessary by Metro to enhance the Conservation Values of the Protected Property.
  - R. **Harvesting of Native Plants.** The gathering, picking, taking, or harvesting of native plants, or any parts thereof, from the Protected Property, except when used for habitat enhancement within the Protected Property.
  - S. **Off-Road Vehicles and Excessive Noise.** The operation of motorcycles, snow mobiles, or any other type of off-road motorized vehicles or the operation of other sources of excessive noise pollution.
  - T. **Use of Firearms.** The discharge of firearms, bows and arrows, air guns, slingshots, and similar devices.
  - U. **Fires.** Fires of all forms, except those necessary for maintenance and consistent with Conservation Values of the Protected Property.
  - V. **Fireworks.** Use of all forms of fireworks.
  - W. **Motorized Vehicles.** Operation of motorized or mechanized vehicles or motorized equipment except when approved by Metro and in association with the maintenance of Conservation Values, and except pursuant to the provisions of Sections 2 and 3 herein.
  - X. **Amplified Sound.** Uses of devices which amplify or emit amplified sound.
5. **Reserved Rights.** Grantors specifically reserve for themselves and their personal representatives, heirs, successors and assigns, the following uses of and activities on the Protected Property that are consistent with the Purpose of the Easement and that are not prohibited by this Easement.

- A. **Recreation.** The undertaking of passive recreational activities such as hiking, and bird watching, on the Protected Property, provided that such activities are conducted in a manner and intensity that does not adversely impact the Conservation Values of the Protected Property.
- B. **Protection of Public Health or Safety.** The undertaking of other activities necessary to protect public health or safety on the Protected Property, or that are actively required by and subject to compulsion of any governmental agency with authority to require such activity, provided that any such activity shall be conducted so that interference with the Conservation Values of the Protected Property is avoided, or, if avoidance is not possible, minimized to the extent possible. Grantors shall provide Metro with notice of their intent to take action under this subsection.

6. **Notice and Approval.**

- A. **Notice of Intention to Undertake Certain Permitted Actions.** The purpose of requiring Grantors to notify Metro prior to undertaking certain permitted activities, as provided in Section 5(B), is to afford Metro an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the Purpose of this Easement. Whenever notice is required, Grantors shall notify Metro in writing not less than 7 days prior to the date Grantors intend to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit Metro to make an informed judgment as to its consistency with the Purpose of this Easement. If Grantors must undertake emergency action to protect health or safety on the Protected Property or must act by and subject to compulsion of any governmental agency, Grantors may proceed with such action without Metro's approval only if Grantors notify Metro prior to taking such action and Metro fails to provide its approval, with or without conditions, within such time as is reasonable under the circumstances.
- B. **Metro's Approval.** Where Metro's approval is required, Metro shall grant or withhold its approval in writing within 7 days of receipt of Grantors' written request therefor. Metro's approval may be withheld only upon a reasonable determination by Metro that the action as proposed would be inconsistent with the Purpose of this Easement.
- C. **Addresses.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantors:

Glendon Dale White and Helen F. White  
18181 South Holly Lane  
Oregon City, Oregon 97045

To Metro:

Metro  
Department of Parks and Greenspaces  
Attn: Charles Ciecko  
600 NE Grand Avenue  
Portland, OR 97232

With a copy to:

Metro  
Office of General Counsel  
600 NE Grand Avenue  
Portland, OR 97232

or to such other address as either party designates by written notice to the other.

7. **Metro's Remedies.**

A. **Notice of Violation.** If Metro determines that Grantors are in violation of the terms of this Easement or that a violation is threatened, Metro shall give written notice to Grantors of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Protected Property so injured. Grantors shall thereafter cure the violation or restore any portion of the Protected Property injured by Grantors.

B. **Grantors' Failure To Respond.** If Grantors fail to cure the violation within 30 days after receipt of notice thereof from Metro, or under circumstances where the violation cannot reasonably be cured within a 30-day period, fail to begin curing such violation within the 30-day period, or fail to continue diligently to cure such violation until finally cured, Metro may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement.

C. **Metro's Action to Remedy Violation.**

- (1) To enjoin the violation ex parte as necessary, by temporary or permanent injunction;
- (2) To recover from Grantors or third parties any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, occurring after the date of recording of the Easement, including damages for the loss of scenic, aesthetic, or environmental values; and
- (3) To require the restoration of the Protected Property to the condition that existed prior to any such injury.

Without limiting Grantors' liability therefor, Metro, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property.

D. **Immediate Action Required.** If Metro in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Metro may pursue its remedies under this paragraph without prior notice to Grantors or without waiting for the period provided for cure to expire. Metro's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement and Grantors agree that

Metro's remedies at law for any violation of the terms of this Easement are inadequate and that Metro shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Metro may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Metro's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

- E. **Cost of Enforcement.** Any costs incurred by Metro in enforcing the terms of this Easement against Grantors, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Easement shall be borne by Grantors. If Grantors prevail in any action to enforce the terms of this Easement, Grantors' costs of suit, including, without limitation attorneys' fees, shall be borne by Metro.
- F. **Metro's Discretion.** Metro acknowledges its commitment to protect the Purpose of this Easement. Enforcement of the terms of this Easement shall be at the discretion of Metro, and any forbearance by Metro to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantors, their agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Metro of such term of any of grant of rights under this Easement. No delay or omission by Metro in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.
- G. **Waiver of Certain Defenses.** Grantors acknowledge that they have carefully reviewed this Easement and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Grantors hereby waive any claim or defense they may have against Metro or its successors or assigns under or pertaining to this Easement based upon waiver, laches, estoppel, adverse possession or prescription.
- H. **Acts Beyond Grantors' Control.** Nothing contained in this Easement shall be construed to entitle Metro to bring any action against Grantors to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from causes beyond Grantors' control including, without limitations natural changes, fire, flood, storm or earth movement, or from acts of trespassers; or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.
8. **Costs, Liabilities and Insurance.** Grantors retain all responsibilities and shall bear all costs relating to the ownership of the Protected Property, including the maintenance of adequate comprehensive general liability coverage. Grantors shall keep the Protected Property free of any liens arising out of any work performed for, or materials furnished to Grantors. Metro shall be responsible for the operation, upkeep and maintenance of the Trail, if built by Metro on the Protected Property, and for any other activity performed or responsibility assumed by Metro under Sections 2 and 3 herein. Metro shall bear no responsibility for any other costs or liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property.



9. **Taxes.** Grantors shall pay before delinquency all taxes, assessments, fees, charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), and shall furnish Metro with satisfactory evidence of payment upon request. If Grantors fail to pay any taxes when due, Metro is authorized, but in no event obligated, to make or advance such payment of taxes upon three (3) days prior written notice to Grantors, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement or estimate, and the obligation of Grantors to reimburse Metro created by such payment shall bear interest until paid by Grantors at the maximum rate allowed by law.
10. **Hold Harmless.** Grantors shall hold harmless, indemnify, and defend Metro and its elected officials, officers, employees, agents, and contractors and the personal representatives, heirs, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any occurrence, omission, condition, or other matter relating to or on or about the Protected Property that is due to any act, or failure to act upon legal duty to do so, of Grantors, their successors and assigns and their invitees; (2) violations or alleged violations of any federal, state or local environmental law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials, unless such violations or alleged violations are due to the acts or omissions of any of the Indemnified parties on the Protected Property; and (3) Grantors' reserved rights under Section 5 and obligations under Sections 9 and 10. Grantors shall be afforded the full protection from liability to the public provided under Oregon Revised Statutes 105.672-696 (2001).
11. **Environmental Representations and Warranties.** Grantors represent and warrant that to the best of Grantors' knowledge:
- A. There are no apparent or latent environmental defects in or on the Protected Property;
  - B. There has been no release, dumping, burying, abandonment or migration from off-site on the Protected Property of any substances, materials or wastes that are hazardous, toxic, dangerous, or harmful or are designated as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute, or ordinance;
  - C. Neither Grantors nor Grantors' predecessors in interest have disposed of any hazardous substances off-site, nor have they disposed of substances on the Protected Property regulated by State or Federal environmental laws, including but not limited to ORS Chapter 465 and 42 U.S.C. § 9601 et seq; and
  - D. There is no pending or threatened litigation affecting the Protected Property or any portion of the Protected Property that will materially impair the Conservation Values of any portion of the Protected Property. No civil or criminal proceedings have been instigated or are pending against Grantors or their predecessors by government agencies or third parties arising out of alleged violations of environmental laws, and neither Grantors nor their predecessors in interest have received any notices of violation,

penalties, claims, demand letters, or other notifications relating to a breach of environmental laws.

**12. Subsequent Transfer and Extinguishment.**

- A. **Extinguishment.** If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court having jurisdiction. The amount of the proceeds to which Metro shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined, in accordance with Section 13(B) of this Easement. Metro shall use all such proceeds in a manner consistent with the Purpose of this Easement.
- B. **Condemnation.** In the event that the Protected Property is taken, in whole or in part, by the exercise of the power of eminent domain, Metro shall be entitled to compensation in accordance with applicable law.
- C. **Subsequent Transfers.** Grantors agree to:
1. Incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest;
  2. Describe this Easement in and append it to, any executory contract for the transfer of any interest in the Protected Property; and
  3. Give written notice to Metro of the transfer of any interest in all or a portion of the Protected Property no later than forty-five (45) days prior to the date of such transfer. Such notice to Metro shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.

The failure of Grantors to perform any act required by this subsection shall not impair the validity of this Easement or limit its enforceability in any way.

13. **Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantors and Metro are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Metro under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision(s) then applicable). Any such amendment shall be consistent with the Purpose of this Easement, shall not affect its perpetual duration, and shall be recorded in the official records of Clackamas County, Oregon, and any other jurisdiction in which such recording is required.

14. **Assignment.** Metro may assign this Easement to Clackamas County, to the City of Oregon City, or to any qualified holder of a Conservation Easement without the agreement of Grantors. Any other assignment of this Easement by Metro or any subsequent assignment by Clackamas County or the City of Oregon City, must be approved by Grantors, which approval shall not be

unreasonably withheld. As a condition of such transfer, Metro shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement. Metro shall notify Grantors in writing, at Grantors' last known address, in advance of such assignment.

15. **Recording.** Metro shall record this instrument in a timely fashion in the official records of Clackamas County, Oregon, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.

16. **General Provisions.**

- A. **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Oregon.
- B. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the Purpose of this Easement and the policy and purpose of ORS Chapter 271. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- C. **Severability.** If any provision of this Easement, or its application to any person, entity, or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.
- D. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Protected Property, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 14.
- E. **No Forfeiture.** Nothing contained in this Easement will result in a forfeiture or reversion of Grantors' title in any respect.
- F. **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.
- G. **Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- H. **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- I. **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall be signed by both parties. Each counterpart shall be deemed an original

instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

17. **Portland General Electric Easement.** Grantor and Grantee recognize that the Protected Property is subject to the rights of Portland General Electric (PGE) to use part of the Protected Property for its electrical power transmission lines as provided in the easement recorded on 4/29/1958 Book 539, Page 352 in Clackamas County Oregon. Furthermore, grantor will not be in violation of the terms of this Conservation Easement for the acts of PGE in exercise of PGE's rights under its 1958 easement on the Protected Property.

18. **Schedule of Attachments**

- A. Legal Description of Property Property.
- B. Site Plan.
- C. Legal Description of Retained Property.

TO HAVE AND TO HOLD unto Metro, its successors, and assigns forever.

IN WITNESS WHEREOF, the undersigned Grantors have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Glendon Dale White

\_\_\_\_\_  
Helen F. White

State of Oregon                    )  
  ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2002, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared Glendon Dale White and Helen F. White, personally known to me (or proved to be on the basis of satisfactory evidence) to be the person(s) whose name(s) is (are) subscribed to this instrument, and acknowledged that he (she or they) executed it.

\_\_\_\_\_  
My commission expires: \_\_\_\_\_

Metro does hereby accept the above Deed of Conservation Easement and Trail Easement Dedication.

METRO

Dated: \_\_\_\_\_

\_\_\_\_\_  
By: Mike Burton  
Its: Executive Officer

State of Oregon                    )  
  ) ss.  
County of Multnomah )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2002, before me, the undersigned, \_\_\_\_\_ a Notary Public for Oregon, personally appeared the within named Mike Burton, as Executive Officer for Metro, a municipal corporation, known to me to be the identical individual described in and who executed the within instrument and acknowledged to me that he executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires:

## **Staff Report**

### **CONSIDERATION OF RESOLUTION NO. 02-3207 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE CONSERVATION AND TRAIL EASEMENTS OVER THE LUCKOW AND WHITE PROPERTIES IN THE NEWELL CREEK CANYON TARGET AREA**

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Date: July 10, 2002

Presented by: Charles Ciecko  
Jim Desmond

## **BACKGROUND**

Resolution No. 02-3207 requests authorization for the Executive Officer to purchase conservation and trail easements over property owned by Gerald and Dolores Luckow and property owned by Glendon and Helen White in the Newell Creek Canyon target area.

The Luckows own a 4.9-acre parcel of land located east of State Highway 213 and west of South Holly Lane, in unincorporated Clackamas County, near Oregon City. Metro proposes to purchase a perpetual conservation and trail easement over an undeveloped 1.5-acre portion of the Luckow property. The Whites own 2.6 acres of land immediately to the north of the Luckow property. Metro proposes to also purchase a perpetual conservation and trail easement over an undeveloped 0.3-acre portion of the White property.

The White and Luckow Easement areas (collectively, "the Easements") are contiguous and follow the former right of way of the Willamette Valley Southern Railroad, which was abandoned sometime in the middle of the last century. Furthermore, the Luckow property is within a few hundred feet and only one property to the north of a 6-acre Metro open space that is also a former segment of the abandoned railroad line. The Easements also support a mixed deciduous/conifer forest and provide a link in the wildlife habitat corridor in the Newell Creek watershed.

The primary purpose of the Easements is to allow Metro or other entity to construct and maintain a public recreation trail on and through the Luckow and White properties. The former railroad bed that passes through the Easements and nearby Metro property will make an appropriate pathway for the proposed Oregon City Loop and Beaver Lake Trails, as included in the regional trail system. Secondly, the easements would allow Metro to retain the properties forever predominately in their natural condition. The specific terms of the Easements are attached as Exhibits B and D to the accompanying resolution.

## **ANALYSIS/INFORMATION**

### **1. Known Opposition**

None.

### **1. Legal Antecedents**

#### **A. Refinement Plans**

In May 1995, the Metro area voters approved the Open Spaces, Parks and Streams bond measure that authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and certain park-related capital improvements. Metro Code 2.04.026 (a) (3) requires that the Executive

Officer obtain the authorization of the Metro Council prior to executing any contract for the purchase of real property.

The Open Spaces Implementation Work Plan, adopted by the Metro Council via Resolution 95-2228A (and amended via Resolution 96-2424) established acquisition parameters that authorize the Executive Officer to purchase property, within the Council-approved target area refinement plan maps. Via Resolution 96-2301 (and amended by Resolution 96-2377) the Metro Council adopted a refinement plan, which outlined a land protection strategy for the Newell Creek Canyon target area. Through that resolution, the Metro Council also approved the target area refinement plan tax-lot specific map, which includes the subject properties as a Tier IB priority.

Acquiring the Easements meets two objectives of the Newell Creek Canyon target area refinement plan:

- “Establish pedestrian and wildlife linkages between the two sides of the canyon split by the Highway 213 bypass.” The Easements will provide two necessary links for the proposed Newell Creek alignment of the Oregon City Loop and Beaver Lake Regional Trails.
- “Protect views of the canyon as seen from Highway 213 by acquiring lands adjacent to the road.” Since the Easement areas are adjacent to Highway 213, passing motorists can easily see the land.

#### **B. Resolution 01-3106 Criteria**

The acquisition of the Easements would also meet two of the criteria set forth in Resolution 01-3106 (“For The Purpose of Modifying The Open Spaces Implementation Work Plan and Open Spaces Acquisition Regional Target Area Refinement Plans To Direct Future Acquisitions Of Properties That Satisfy Specific Identified Criteria”).

- “Complete the acquisition of existing public ownership gaps in trails and greenways identified in the bond measure.” Acquiring the Easements will enhance the Newell Creek greenway and provide two critical links for the proposed Oregon City Loop and Beaver Lake Regional Trails.
- “Achieve, wherever possible, the minimum acreage goals established in the bond measure for each target area, subject to the ‘willing seller’ nature of the program.” Metro has acquired 145 acres in Newell Creek Canyon out of a goal of 370.

Since Metro has not exceeded the minimum 370-acre goal established for the Newell Creek Canyon target area, purchase of the Easements do not require Metro Council authorization pursuant to Resolution 01-3106.

#### **C. Conservation Easements**

Oregon Revised Statute Section 271.725 authorizes the state, any county, metropolitan service district, or city or park and recreation district to acquire conservation easements by purchase, agreement or donation upon a determination that such acquisition will be in the public interest.

Metro Code Chapter 10.03, entitled “Conservation Easements,” authorizes Metro to purchase and accept conservation easements. The Metro Code explicitly states the purpose of this chapter as “encourag[ing] the voluntary retention and protection of the natural, scenic, or open space values of real property . . . through sale, donation, or dedication of conservation easements to Metro.” Code Section 10.03.020.

Metro Code Section 10.03.060 provides that prior to the acquisition or acceptance of a conservation easement, Metro shall hold one or more public hearings on the proposal, with notice as stated therein, and at the conclusion of the hearing, the Metro council shall decide whether to accept, reject, or condition such easement, and upon acceptance Metro may execute all necessary documents to obtain conveyance of the conservation easement.

#### **4. Anticipated Effects**

Acquisition of this Property is key to assembling a pathway for the proposed Beaver Lake Trail, an integral component of the Newell Creek Canyon regional target area.

#### **5. Budget Impacts**

Bond funds will supply Metro's share of the acquisition money. Costs associated with monitoring and managing the Easements are expected to be minimal.

#### **6. Outstanding Questions**

None.

### **FINDINGS**

Acquisition of the Luckow and White Easements with the above-stated terms is recommended based on the following:

- The Easements lie in Tier IB of the Newell Creek Canyon target area and fulfill the goals of the target area refinement plan.
- The Easements fill a key gap in creating a trail and greenway along Newell Creek in Oregon City.
- Metro is below its goal of acquiring 370 acres in the Newell Creek Canyon target area.
- Metro has met the public notice requirements for acquisition of conservation easements detailed in Metro Ordinance 97-714 ("For the Purpose of Enacting a Policy to Allow Metro to Purchase and Accept Conservation Easements to Promote the Protection of Regionally Significant Natural Resources, Adding the Policy to the Metro Code, and Declaring an Emergency").

### **RECOMMENDED ACTION**

The Executive Officer recommends passage of Resolution No. 02-3207.



**TRANSPORTATION COMMITTEE REPORT**

CONSIDERATION OF ORDINANCE NO. 02-945A, FOR THE PURPOSE OF AMENDING THE 2000 REGIONAL TRANSPORTATION PLAN FINANCIAL CONSTRAINED SYSTEM; AMENDING ORDINANCE NO. 00-869A AND RESOLUTION NO. 00-2969A TO REFLECT RESOLUTION NO. 02-3186.

Date: July 22, 2002

Introduced by: Councilor Burkholder

**Committee Action:** At its June 6, 2002 meeting, the Transportation Committee voted 3-0 to amend and recommend Council adoption of Resolution 02-3159A. Voting in favor: Councilors Atherton, Monroe, and Burkholder.

**Background:** This ordinance is a companion to Resolution 02-3186B. They were heard together in the Transportation Committee on June 6, 2002. Resolution 02-3186B was subsequently adopted by the Metro Council on June 20, 2002. Ordinance 02-945A was held over at Council to allow time for notice to state and local agencies.

Ordinance 02-945A amends the Regional Transportation Plan, while Resolution 02-3186B amends the Metropolitan Transportation Improvement Program (MTIP). Both pieces of legislation respond to the Oregon Transportation Act (OTIA). About \$105 million of phase II OTIA bond funds are directed to 17 regional projects. Additionally, \$359,000 of reserve Surface Transportation Program (STP) funds are directed to widening US 26 to three lanes in each direction between Murray Blvd. and SW 185<sup>th</sup>. Finally, the legislation approves a conformity determination prepared by Metro that shows that these actions, and related RTP amendments will conform with the State Implementation Plan for maintenance of the region's air quality.

**Committee Issues/Discussion:**

Mike Hogland, regional planning director, made the staff presentation on both pieces of legislation. The legislation brings the projects into the RTP financially constrained list so the MTIP can be amended, conformity can be done and ODOT can begin spending money to design and implement the projects.

He went on to clarify an inconsistency in the RTP as to how the Sunrise Corridor is laid out in the financially constrained list, and ensuing discussion at TPAC. Clackamas County officials were concerned that their eventual desires to improve the corridor beyond 122<sup>nd</sup> were not adequately addressed, and could harm chances of funding in the future. Their concerns are addressed in a note added to exhibit B of the ordinance, and agreement to longer-term discussion with Metro.

- Existing Law: This action is required by federal and state transportation and air quality regulations, including: the Clean Air Act of 1991, and OAR chapter 340, Division 252, Section 0010 et. seq.

- **Budget Impact:** There is no impact on Metro's budget. The MTIP is amended to schedule and allocate about \$100 million, and \$359,000 for different aspects of the MTIP.

**SOLID WASTE AND RECYCLING COMMITTEE REPORT**

CONSIDERATION OF RESOLUTION NO. 02-3211, FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO GRANT A METRO SOLID WASTE FACILITY LICENSE FOR YARD DEBRIS RELOADING TO S& H LOGGING, INC. DBA LANDSCAPE PRODUCTS & SUPPLY.

Date: July, 24 2002

Presented by: Councilor Atherton

**Committee Action:** At its July 17 meeting, the Solid Waste and Recycling Committee voted 5-0 to recommend Council adoption of Resolution 02-3211. Voting in favor: Councilors Bragdon, McLain, Monroe, Park and Atherton.

**Background:** Resolution 02-3211 authorizes the Executive Officer to issue a new Solid Waste Facility License for yard debris reloading to Landscape Products & Supply, located in Hillsboro. The license will authorize the facility to accept yard debris for the purpose of grinding and reloading it for delivery to an authorized composting facility. Landscape Products & Supply will not be authorized to do composting or other processing on-site.

**Committee Issues/Discussion:** Roy Brower, Regulatory Affairs Administrator for the REM department, made the staff presentation. He stated that everything is in order on this application, and staff recommends approval. The committee clarified the type of license being sought and the location of the facility.

- Existing Law: Metro Code 501.045, et seq.
- Budget Impact: There is no budget impact.

## BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO	)	ORDINANCE NO. 02-951A	
CODE CHAPTER 5.02 TO MODIFY THE	)		
REGIONAL SYSTEM FEE CREDIT PROGRAM	)	Amendments Introduced by Councilor Susan	
	)	McLain	

Metro Code section 5.02.047 is further amended to add the following:

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

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## BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO	)	ORDINANCE NO. 02-950 <u>A</u>	
CODE CHAPTER 7.01 TO INCREASE THE	)		
CREDITS AVAILABLE AGAINST THE SOLID	)	Amendments Introduced by Councilor Susan	
WASTE EXCISE TAX AND MAKING OTHER	)	McLain	
RELATED CHANGES	)		

Metro Code sub-section 7.01.020(g) is further amended to add the following:

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

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July 25, 2002

Carl Hosticka, Presiding Officer  
Metro Council  
Metro Regional Parks and Greenspaces  
600 NE Grand Avenue  
Portland, OR 97232

RE: METRO COUNCIL MEETING 7/25/02, AGENDA ITEM 6, RESOLUTION  
NO. 02-31921

This letter is in support of Metro Council's adoption of proposed amendments to the Regional Trail and Greenways Plan (Resolution No. 02-3192).

It is noteworthy that the Greenspaces Technical Advisory Committee, as part of a year long process, reviewed proposed additions and changes to the regional trail map and developed the amendments based on objective criteria.

We particularly wish to express strong support for the proposed addition of the Washington Square Regional Center Loop Trail to the regional trail map. Construction of this trail is a key component of the Washington Square Implementation Program. The completed trail will provide access and links within and through the area and will be an important visual and recreational amenity for area residents and visitors. The loop trail extends through three jurisdictions, Beaverton, Washington County, and Tigard, all of whom support the concept of the loop trail.

In closing, we appreciate the many hours and hard work that Metro Greenspaces staff, most notably, Charles Chieko, Heather Nelson Kent, and Mel Huie, have devoted to the regional trail amendment process.

Sincerely,

Jim Griffith  
Mayor

c: Rob Drake  
Tom Brian

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P.01  
CC: Councilors


Planning & Development  
1120 SW Fifth Ave., Suite 1302  
Portland, OR 97204  
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## PORTLAND PARKS & RECREATION

**To:** Rex Burkholder, Metro Council  
Rod Monroe, Metro Council

**From:** Gregg Everhart 

**Date:** July 25, 2002

**Subject:** Regional Trails and Greenways Plan and Map Amendments

**FAXED**  
7.29.02

I regret that neither Jim Sjulín, Natural Resources Supervisor, nor I who do much of PP&R trail planning can attend the Metro Council meeting today. We sent the following comments to the Natural Resources Committee that met last week but wished to be certain you understand our support of this regional trails effort. We have participated in the GTAC process that drafted the plan being considered and Portland Parks and Recreation sponsored the nomination of the following trails. Our intent is to sponsor these trails as conceptual alignments since at this point there is wide variability in the amount of study, public involvement and official recognition that has been applied to the routes. In most cases additional study and a public process are needed to help determine how alignments might work on the ground. In addition, public access rights have not been secured for many of the routes and land use review is generally required before any trail alignment could be built.

- #5. Hillsdale to Lake Oswego Trail. (Note that Oregon State Parks has already submitted a letter directly to Metro supporting the conceptual alignment. In addition, we believe Lake Oswego has also sent supportive comments.)
- #4. North Willamette River Greenway Trail.
- #6. Willamette Shoreline Trolley: Rail with Trail. (We believe Lake Oswego has also sent supportive comments. As you know, funding was recently secured for a feasibility study of this route.)
- #17. Sullivan's Gulch / I-84 Trail. (This route is already shown on the *Portland Transportation System Plan (TSP)* developed by the Office of Transportation, under the bicycle classification.)

At the January 9<sup>th</sup> GTAC meeting, the following trail alignments were drawn in that, I believe, were also accepted as nominations. Please consider this a letter of sponsorship for the following additions:

- #18. Peninsula Canal segment of the 40-Mile Loop that connects the trail along Marine Drive with the trail along the Columbia Slough. The nearest crossing Avenue would be approximately NE 18<sup>th</sup>. This route is shown as public recreational trail on Portland's *Comprehensive Plan*, and pedestrian classification in *TSP*. It would be best shown on the east side of the canal.
- #16. Cross Levee segment of the 40-Mile Loop, also connecting the trail along Marine Drive with the trail along the Columbia Slough. The nearest crossing Avenue would be approximately NE 143<sup>rd</sup>. This route is shown as public recreational trail on Portland's *Comprehensive Plan*.

I believe that the relatively minor changes in the following locations were considered technical adjustments but, for the record, we also support the following:

- Technical adjustments through the St. Johns town center to conform to the City of Portland's *Comprehensive Plan*.

- Technical adjustment connecting Wildwood & Leif Erikson in Forest Park to the St. Johns Bridge as shown on City of Portland's *Comprehensive Plan*, *TSP* and in the *Forest Park Natural Resources Management Plan*.
- Extending the Wildwood Trail north to NW Newberry Road. Trail is already in place and showing this extension would indicate a connection to the Powerline Trail to the west.

Working toward a completed network of regional trails adds value to what each local jurisdiction is trying to accomplish. In recognition of that, Portland Parks & Recreation would like to "second" the nomination of the following routes nominated by others (some even outside our jurisdiction) that obviously add significant value to Portland trail alignments.

#13. Scouter Mountain Trail Extension. Sponsored by Clackamas County Parks.

D. Willamette River Greenway (west side of river: Lake Oswego and West Linn). Sponsored by Three Rivers Land Conservancy.

#15. Columbia River Trail Extension / 40-Mile Loop. Sponsored by Troutdale.

#12. East Buttes Power Line Corridor Trail. Sponsored by Pleasant Valley Planning Group. (PPR endorses letter of support from mayors of Gresham and Portland)

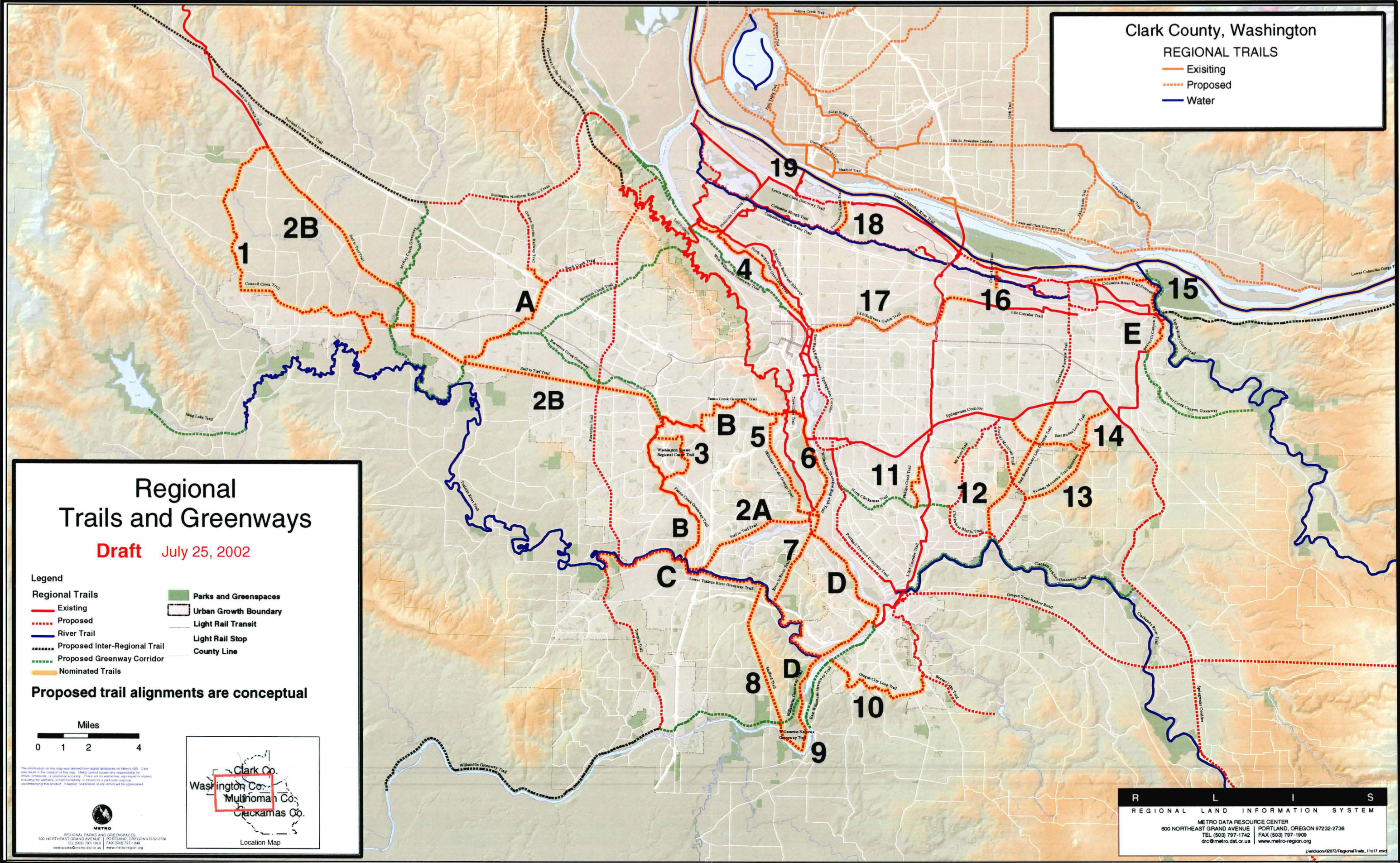
B. Fanno Creek Greenway Trail. Sponsored by Metro Regional Parks and Greenspaces.

#14. East Buttes Loop Trail. Sponsored by Metro Regional Parks and Greenspaces. (PPR endorses letter of support from mayors of Gresham and Portland)

Since we have reviewed the plan on 11" x 17" .pdf format that email could deliver, we hope that staff will be allowed leeway for a few map revisions. These are mostly small modifications of trail names or corrections of existing or proposed status of short trail segments. Another map change that has been discussed at GTAC and the regional Trails Group, is the coding of Greenways. It is now difficult to distinguish between river trails, trails along waterways, natural area greenways not intended for people trails, and greenways for which a trail determination has not yet been made. This is probably described in the text amendments but a change to map color coding might make this most legible.

We also support a more significant map revision that would better illustrate the regional trails and greenways in Washington. Including the data that was readily available is a great first start to showing the entire regional trail network but the current format is not as effective as possible. Using similar legend and colors would make this map an important tool in the quest to secure funding for the Lewis & Clark Discovery Greenway. Portland Parks, and Recreation, Vancouver-Clark County Parks, Metro, and many Oregon jurisdictions have joined efforts to complete this trail on both sides of the river in conjunction with the bicentennial celebration.







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