



METRO

Agenda

MEETING: METRO COUNCIL
DATE: July 30, 2009
DAY: Thursday
TIME: 2:00 p.m.
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. CONSTRUCTION EXCISE TAX (CET) ADMINISTRATIVE RULES: Shaw
BRIEFING AND OPPORTUNITY FOR PUBLIC COMMENT

4. CONSENT AGENDA

4.1 Consideration of Minutes for the July 9, 2009 Metro Council Regular Meeting.

5. RESOLUTIONS

5.1 **Resolution No. 09-4054**, For the Purpose of Authorizing the Chief Harrington
Operating Officer to Enter Into A Property Exchange Agreement in the
Dairy and McKay Creeks Confluence Target Area.

6. CHIEF OPERATING OFFICER COMMUNICATION

7. COUNCILOR COMMUNICATION

ADJOURN

Television schedule for July 30, 2009 Metro Council meeting

<p>Clackamas, Multnomah and Washington counties, and Vancouver, Wash. Channel 11 – Community Access Network www.tvctv.org – (503) 629-8534 2 p.m. Thursday, July 30 (Live)</p>	<p>Portland Channel 30 (CityNet 30) – Portland Community Media www.pcmv.org – (503) 288-1515 8:30 p.m. Sunday, August 2 2 p.m. Monday, August 3</p>
<p>Gresham Channel 30 – MCTV www.mctv.org – (503) 491-7636 2 p.m. Monday, August 3</p>	<p>Washington County Channel 30 – TVC-TV www.tvctv.org – (503) 629-8534 11 p.m. Saturday, August 1 11 p.m. Sunday, August 2 6 a.m. Tuesday, August 4 4 p.m. Wednesday, August 5</p>
<p>Oregon City, Gladstone Channel 28 – Willamette Falls Television www.wftvaccess.com – (503) 650-0275 Call or visit website for program times.</p>	<p>West Linn Channel 30 – Willamette Falls Television www.wftvaccess.com – (503) 650-0275 Call or visit website for program times.</p>

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

Agenda items may not be considered in the exact order in which they are listed. If you have questions about the agenda, please call the Council Office at (503) 797-1540. 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 Council Office to be included in the decision record. Documents may be submitted by e-mail, fax, mail or in person at the Council Office. For additional information about testifying before the Metro Council, and for other public comment opportunities, please go to this section of the Metro website www.oregonmetro.gov/participate. For assistance per the American Disabilities Act (ADA), dial Metro’s TDD line (503) 797-1804 or (503) 797-1540 for the Council Office.

Agenda Item Number 3.0

**CONSTRUCTION EXCISE TAX (CET) ADMINISTRATIVE RULES:
BRIEFING AND OPPORTUNITY FOR PUBLIC COMMENT**

PRESENTED BY COUNCILOR LIBERTY AND ANDY SHAW

Metro Council Meeting
Thursday, July 30, 2009
Metro Council Chamber

 **Metro** | *Memo*

Date: Wednesday, July 22, 2009
To: Metro Council
From: Andy Shaw
Subject: CET Administrative Rules

On June 11, 2009, the Council approved Ordinance 09-1220, extending the construction excise tax (CET) program through September 30, 2014. This ordinance directed the Metro Chief Operating Officer (COO) to return to the Metropolitan Policy Advisory Committee and to the Metro Council for consultation prior to adopting the Administrative Rules. The COO is responsible for issuing administrative rules that establish the procedures governing the CET grant program.

Draft Administrative Rules will come before the Metro Council for the purpose of hearing public testimony. No official action is required of Council on these Rules. After receiving comment from the Metropolitan Policy Advisory Committee (MPAC), the Draft Rules will return to the Council on August 12 for comment and review.

ADMINISTRATIVE RULES: METRO CODE CHAPTER 7.04

Effective July 1, 2006, and extended through September 30, 2014, Metro has established as Metro Code Chapter 7.04 a Construction Excise Tax ("CET"). These Administrative Rules establish the procedures for administering this tax as mandated in Metro Code Section 7.04.050 and Metro Code Section 7.04.060. For ease of reference a copy of Metro Code Chapter 7.04 is attached to these administrative rules.

I. Metro Administrative Matters.

- A. Definitions. These administrative rules incorporate the definitions as set forth in Metro Code Section 7.04.030.
- B. Designated Representatives (Metro Code Section 7.04.060). The Metro Chief Operating Officer ("COO") is responsible for the administration and enforcement of the Metro Code Chapter 7.04 and these administrative rules.
 - 1. The COO may delegate his authority in administration and enforcement of the Code chapter and these administrative rules as he determines and as set forth herein.
 - 2. The COO shall appoint a Hearings Officer(s), which appointment shall be confirmed by the Metro Council. The Hearings Officer(s) shall have the authority to order refunds or rebates of the Construction Excise Tax or waive penalties as a result of the hearings process. Upon appointing a Hearings Officer, the Chief Operating Officer shall delegate authority to the Hearings Officer to administer oaths, certify to all official acts, to subpoena and require attendance of witnesses at hearings to determine compliance with this chapter, rules and regulations, to require production of relevant documents at public hearings, to swear witnesses, to take testimony of any Person by deposition, and perform all other acts necessary to adjudicate appeals of Construction Excise Tax matters.
- C. Internal Flow of Funds. Funds will be accounted for in a Construction Excise Tax account that will be created by the effective date of Metro Code Chapter 7.04.
- D. Rate Stabilization Reserves. Metro Code Chapter 7.04.200 states that the Council will, each year, as part of the Budget process, create reserves from revenues generated by the CET. These reserves are to even out collections thereby stabilizing the funds needed to support the applicable programs despite industry building activity fluctuation. These reserves can only be drawn on to support the specific budgeted activities as discussed in Section I.E. of these administrative rules. Due to their restricted nature, these reserves shall be reported as designations of fund balance in Metro's General Fund.
- E. Dedication of Revenues. Revenues derived from the imposition of this tax, netted after deduction of authorized local jurisdiction costs of collection and administration, will be solely dedicated to grant funding of the regional and local planning that is required to make land ready for development after inclusion in the Urban Growth Boundary.
- F. Rule Amendment. The Chief Operating Officer retains the authority to amend these administrative rules as necessary for the administration of the Construction Excise Tax.

II. Construction Excise Tax Administration.

- A. Imposition of Tax (Metro Code Section 7.04.070).

1. The CET is imposed on every Person who engages in Construction within the Metro jurisdiction, unless an Exemption applies as set forth herein.
 2. The tax shall be due and payable at the time of the issuance of any building permit, or installation permit in the case of a manufactured dwelling, by any building authority, unless an Exemption applies as set forth herein.
 3. The CET shall be calculated and assessed as of the application date for the building permit. Persons obtaining building permits based on applications that were submitted prior to July 1, 2006 shall not be required to pay the CET, unless the building permit issuer normally imposes fees based on the date the building permit is issued.
 4. If no permit is issued, then the CET is due at the time the first activity occurs that would require issuance of a building permit under the State of Oregon Building Code.
- B. Calculation of Tax (Metro Code Section 7.04.080). The CET is calculated by multiplying the Value of New Construction by the tax rate of 0.12%

(0.0012 x Value of New Construction)

- a. In the case of a Manufactured Dwelling for which no Exemption is applicable, and for which there is no building code determination of valuation of the Manufactured Dwelling, the applicant's good faith estimate of the Value of New Construction for the Manufactured Dwelling shall be used.

C. Exemptions (Metro Code Section 7.04.040).

1. Eligibility for Exemption. No obligation to pay the CET is imposed upon any Person who establishes, as set forth below, that one or more of the following Exemptions apply:
 - a. The Value of New Construction is less than or equal to One Hundred Thousand Dollars (\$100,000); or
 - b. The Person who would be liable for the tax is a corporation exempt from federal income taxation pursuant to 42 U.S.C. 501(c)(3), or a limited partnership the sole general partner of which is a corporation exempt from federal income taxation pursuant to 42 U.S.C. 501(c)(3), the Construction is used for residential purposes AND the property is restricted to being occupied by Persons with incomes less than 50 percent (50%) of the median income for a period of 30 years or longer; or
 - c. The Person who would be liable for the tax is exempt from federal income taxation pursuant to 42 U.S.C. 501(c)(3) AND the Construction is dedicated for use for the purpose of providing charitable services to Persons with income less than 50 percent (50%) of the median income.
2. Procedures for Establishing and Obtaining an Exemption; Exemption Certificates:

- a. For exemption (a) above, the exemption will be established at the building permit counter where the Value of New Construction as determined in the building permit is less than or equal to One Hundred Thousand Dollars (\$100,000).
- b. For exemptions (b) and (c) above, prior to applying for a building permit a Person claiming an exemption may apply to Metro for a Metro CET Exemption Certificate, by presenting the appropriate documentation for the exemption as set forth herein, and upon receiving a Metro CET Exemption Certificate the Person may present the certificate to the building permit issuer to receive an exemption from paying the CET; or
- c. For exemptions (b) and (c) above, instead of going to Metro to obtain a Metro CET Exemption Certificate, a Person claiming an exemption from the CET when applying for a building permit may submit to the building permit issuer Metro's CET Exemption Certificate application form. Upon receiving a Person's Metro CET Exemption Certificate application, the building permit issuer shall preliminarily authorize the exemption and shall not collect the CET. The building permit issuer shall forward the Person's Metro CET Exemption Certificate application to Metro along with the quarterly CET report. It shall be Metro's responsibility to determine the validity of the exemption and to institute collection procedures to obtain payment of the CET, as well as any other remedy Metro may have under law, if the Person was not entitled to the exemption;
- d. To receive a Metro CET Exemption Certificate from Metro, or to substantiate to Metro the validity of an exemption received from a local building permit issuer, an applicant must provide the following:
 - i. IRS tax status determination letter evidencing that the Person seeking the building permit is exempt from federal income taxation pursuant to 42 U.S.C. 501(c)(3); and
 - ii. In the case of residential property, proof that the property is to be restricted to low income persons, as defined, for at least 30 years. Proof can be in the form of loan covenants; rental agreements or grant restrictions; a certification from the entity's corporate officer attesting that the exemption is applicable; or any other information that may allow the exemption determination to be made; and
 - iii. In the case of a qualified tax-exempt entity providing services to Persons with incomes less than 50 percent of the median income, the applicant must provide information that will allow such tax exempt status to be verified, and proof that the property will be restricted to such uses. Proof can be in the form of loan covenants; rental agreements or grant restrictions; certification from the entity's corporate officer attesting that the exemption is applicable; or any other information that may allow the exemption determination to be made; and
 - iv. In the case of a limited partnership with a tax-exempt sole general partner corporation, verification from the partnership's attorney of that status is required; and

v. Authorization to audit the records to verify the legal status and compliance with Metro qualifications of all entities claiming exempt status.

e. Partial Applicability of Exemption. If an exemption is applicable to only part of the Construction, then only that portion shall be exempt from the CET, and CET shall be payable for the remainder of the Construction that is not eligible for an exemption, on a pro-rata basis. It shall be the responsibility of the Person seeking the partial exemption to fill out a Metro CET Exemption Certificate application for the partial exemption, declaring on that application the proportion of the Construction qualifies for the exemption. Upon receiving a Person's Metro CET Exemption Certificate application claiming a partial exemption, the building permit issuer shall preliminarily authorize the partial exemption and shall only collect the pro-rata CET as declared by the applicant. The building permit issuer shall forward the Person's Metro CET Exemption Certificate application to Metro along with the quarterly CET report. It shall be Metro's responsibility to determine the validity of the partial exemption and to institute collection procedures to obtain payment of the remainder of the CET, as well as any other remedy Metro may have under law, if the Person was not entitled to the partial exemption.

D. Ceiling (Metro Code Section 7.04.045).

1. If the CET imposed would be greater than \$12,000.00 (Twelve Thousand Dollars) as measured by the Value of New Construction that would generate that amount of tax, then the CET imposed for that Construction is capped at a Ceiling of \$12,000.00 (Twelve Thousand Dollars).
2. The Ceiling applies on a single structure basis, and not necessarily on a single building permit basis. For example:
 - a. If a single building permit is issued where the Value of New Construction is greater than or equal to Ten Million Dollars (\$10,000,000), then the CET for that building permit is capped at Twelve Thousand Dollars (\$12,000.00).
 - b. If Construction in a single structure will require multiple building permits during the pendency of the CET program, and the total CET that would be imposed for those building permits would add up to more than Twelve Thousand Dollars (\$12,000.00), then the total CET for those building permits within the same structure during the pendency of the CET program is capped at Twelve Thousand Dollars (\$12,000.00). Once a total of \$12,000.00 has been paid in CET for a particular structure, then no additional CET will be collected for that structure during the pendency of the CET program.

E. Rebates (Metro Code Section 7.04.120). If a CET has been collected and a CET Exemption or the CET Ceiling was applicable, a rebate for the CET may be obtained from Metro.

1. Procedures for obtaining rebate are:
 - a. Within thirty (30) days of paying the CET, the Person who believes that the CET was not applicable due to a CET exemption or CET Ceiling, shall apply for a rebate in writing to Metro and provide verification that the exemption eligibility provisions of Metro Code Section 7.04.040, or that the CET Ceiling provisions of Metro Code

Section 7.04.045, have been met. Failure to seek a rebate within the thirty (30) day time limit will terminate a Person's right to seek a rebate.

- b. Applicant shall provide proof that the CET was paid, in the form of a paid receipt from the building permit issuer showing the tax was paid. All supporting documentation for the exemption or ceiling shall be submitted at the time of the rebate claim. The rebate will only be made to the name that is listed on the receipt unless the applicant has a written assignment of rebate.
- c. A rebate or a letter of denial shall be issued by Metro within thirty (30) days of receipt of a written request for rebate provided that the request includes all required information. The rebate will be calculated based upon the paid receipt, less the 5% administrative fee already retained by the building permit issuer and the 2.5% Metro administration fee.

F. Refunds (Metro Code Section 7.04.150). If a CET has been collected and the Construction was not commenced and the building permit was cancelled, a refund for the CET may be obtained from Metro.

1. Eligibility is determined by the absence of Construction and cancellation of the building permit.
2. Procedures for obtaining refund:
 - a. Apply in writing to Metro within thirty (30) days of permit cancellation.
 - b. Provide copy of canceled permit.
 - c. Provide proof of payment of the tax in the form of the paid receipt.
 - d. A refund or a letter of denial shall be issued by Metro within thirty (30) days of receipt of the written request for refund provided that the request includes all required information. The refund will be calculated based upon the paid receipt, less the 5% administrative fee already retained by the building permit issuer and the 2.5% Metro administration fee.
 - e. Failure to seek a rebate within the thirty (30) day time limit will terminate a Person's right to receive a refund.

G. Appeals. The Hearings Officer shall conduct hearings related to enforcement or appeals of the CET. The appeal to the Hearings Officer must be:

1. In writing;
2. Made within ten (10) calendar days of denial of a refund, rebate, or exemption request. Notice of denial to the party denied, is deemed to have occurred three days after the mailing of the certified denial letter from Metro;
3. Tax must be paid prior to appeal;

4. Directed to the Office of Metro Attorney, who will contact the Hearings Officer to schedule a hearing upon receipt of a written appeal. The Hearings Officer will at that time provide further information as to what documentation to bring to the hearing.
- H. Review. Review of any action of the Chief Operating Officer or Hearings Officer, taken pursuant to the Construction Excise Tax Ordinance, or the rules and regulations adopted by the Chief Operating Officer, shall be taken solely and exclusively by writ of review in the manner set forth in ORS 34.010 through 34.100, provided, however, that any aggrieved Person may demand such relief by writ of review.
- I. CET Sunset (Metro Code Section 7.04.230).
1. The CET shall not be imposed on and no person shall be liable to pay any tax for any Construction activity that is commenced pursuant to a building permit issued on or after September 30, 2014.
 2. Local governments collecting CETs shall remit the CETs to Metro on a quarterly or monthly basis, based on the jurisdiction's CET Collection IGAs with Metro. Each quarter, within thirty days of receiving CET remittances from all collecting local jurisdictions, Metro will issue a written statement of the total CET that Metro has received that quarter and cumulatively.
 3. CET remittance to Metro shall be net of the local government's administrative expenses in collecting the CET, up to 5% of the CET collected by the local government as set forth in the Metro CET Collection IGA. This net amount of CET remitted to Metro shall be the basis for Metro's calculations of CET cumulative totals and for the calculation of when the \$6.3 million CET has been reached.
 4. The CET shall cease to be imposed by local governments on September 30, 2014, and shall be remitted by the local governments to Metro as soon thereafter as possible.

III. CET Collection Procedures.

- A. Local Government CET Collection and Remittance Via Intergovernmental Agreements (Metro Code Section 7.04.110). For those local governments collecting the CET pursuant to Intergovernmental Agreements with Metro, the following procedures shall apply:
1. CET Report; Information Required. Each quarter (unless a local government prefers to report monthly), along with its CET remittance to Metro, the local government shall prepare and submit to the Metro Chief Operating Officer a report of the CETs and building permits issued for the previous quarter's construction activities. The report shall include: the number of building permits issued that quarter; the aggregate value of construction; the number of building permits for which CET exemptions were given; the aggregate value of construction for the exempted construction; the aggregate amount of CET paid; and the amount of CET administrative fee retained by the local government pursuant to this CET Collection IGA.
 2. CET Remittance to Metro. Local governments collecting CET via IGAs with Metro shall remit the collected CET to Metro. Remittance shall be quarterly, unless a jurisdiction prefers to remit the CET monthly, by the 30th of the month following the quarter (or month) ending. Quarters end on September 30, December 31, March 31 and June 30 of each year.

CET remittance and the CET Report shall be sent to Metro, attn Construction Excise Tax Accounting Specialist, 600 NE Grand, Portland, Oregon 97232.

3. Remuneration to Local Government for Collecting CET. As consideration for collecting the CET, each local government collecting the CET shall retain no more than five percent (5%) of the tax collected by that local government. This payment is intended to be a reimbursement of costs incurred. Prior to submitting the CET to Metro, the local government shall deduct the remuneration agreed upon directly from the collected tax, and the amounts deducted and retained shall be identified on the report submitted to Metro.
 4. Metro Administrative Fee. To partially reimburse Metro for its costs in implementing and administering the CET program, Metro will retain 2.5% of the net CET funds remitted by local governments to Metro.
 5. Audit and Control Features. Each local government shall allow the Chief Operating Officer, or any person authorized in writing by the Chief Operating Officer, to examine the books, papers, building permits, and accounting records relating to any collection and payment of the tax, during normal business hours, and may investigate the accuracy of reporting to ascertain and determine the amount of CET required to be paid.
 6. Failure to Pay. Upon a Person's refusal to or failure to pay the CET when due, the local government administering that Person's building permit shall notify Metro in writing within five (5) business days of such failure, with information adequate for Metro to begin collection procedures against that Person, including the Person's name, address, phone numbers, Value of New Construction, Construction Project, and building permit number. Upon a Person's refusal or failure to pay the CET, it shall be Metro's responsibility to institute collection procedures to obtain payment of the CET as well as any other remedy Metro may have under law.
- B. Metro Collection Procedures in Event of Non-payment. The CET is due and payable upon issuance of a building permit. It is unlawful for any Person to whom the CET is applicable to fail to pay all or any portion of the CET. If the tax is not paid when due, Metro will send a letter notifying the non-payer of his obligation to pay the CET along with the following information:
1. Penalty. In addition to any other fine or penalty provided by Chapter 7.04 of the Metro Code, penalty for non- payment will be added to the original tax outstanding. That penalty is equal to \$50.00 or the amount of the tax owed, whichever is greater.
 2. Misdemeanor. In addition to any other civil enforcement, non- payment of the CET is a misdemeanor and shall be punishable, upon conviction, by a fine of not more than five hundred dollars (\$500.00). This fine shall be charged to any officer, director, partner or other Person having direction or control over any Person not paying the tax as due.
 3. Enforcement by Civil Action. If the tax is not paid, Metro will proceed with collection procedures allowable by law to collect the unpaid tax, penalties assessed and fines due, including attorney fees.

IV. Revenue Distribution (Metro Code Section 7.04.220).

A. Grant Cycles. After allocation of the initial \$6.3 million, additional CET funds shall be allocated as grants in two new application assessment cycles, for funds anticipated to be received by the CET through September 2014:

1. The first shall be an allocation cycle in FY 2009-2010, which shall allocate up to \$3.5 million in grants. The second new allocation cycle shall begin in approximately December 2011, which shall allocate the remainder of the CET collections expected to be collected by September 30, 2014.

2. The second allocation cycle shall earmark 50% of projected second-cycle CET revenues for New Urban Areas and Urban Reserves, contingent upon receipt of Grant Requests for New Urban Areas and Urban Reserves that equal or exceed the earmarked funds. If Grant Requests are not submitted for New Urban Areas and Urban Reserves that equal or exceed the earmarked funds, the excess earmarked funds shall be used for other CET Grant Requests.

3. Metro may delay these cycles if the actual CET receipts remitted by the local governments are not as high as projected, or if CET revenue projections are modified due to market conditions.

B. CET Grant Screening Committee (“Committee”).

1. Role. A CET Grant Screening Committee (“the Committee”) shall be created, which Committee shall review Grant Requests submitted by local governments. The Committee shall advise and recommend to the Metro Chief Operating Officer (“COO”) the ranking and recommended grant amounts, in accordance with the CET Grant Evaluation Criteria set forth below. The COO shall review the Committee’s recommendations and shall forward his own grant recommendations, along with the recommendations of the CET Grant Screening Committee, to the Metro Council. The Metro Council shall make final grant decisions in a public hearing.

2. CET Grant Screening Committee Members. The Committee, including the Committee Chair, will be selected by the Metro COO. The Committee will be comprised of nine individuals representing a variety of expertise from public and private interests, plus one non-voting Metro Councilor to serve as a Metro Council liaison. The Committee shall be comprised of:

- One member with expertise in economic development;
- One member with expertise in urban planning;
- At least one member with expertise in real estate and finance;
- One member representing local government
- One member with expertise in urban renewal and redevelopment
- One member representing business interests
- One member from a Neighborhood Association or Community Planning Commission with an understanding of community livability issues
- One member with expertise in environmental sustainability.

C. Metro Council Grant Approval. The Metro Chief Operating Officer (“Metro COO”) shall review the Committee’s recommendations and shall forward his own grant recommendations, along with the recommendations of the CET Grant Screening Committee, to the Metro Council. The Metro Council shall make final grant decisions in a public hearing.

D. Procedures for Distribution.

1. **Step One: Pre-Grant-Letter of Intent.** Prior to making a written request to Metro for CET grant funds, each local government that anticipates requesting CET grant funds in the initial cycle shall submit a Letter of Intent to Metro within three (3) months of the effective date of the extension to the CET program, i.e., by December 9th, 2009, unless a different date is mutually agreed upon by Metro and the local government. The Letter of Intent shall set forth the local government's proposed planning project, the requested grant amount, how the project will address the CET Grant Evaluation Criteria, and proposed milestones for grant payments. Grant requests to reimburse local governments for planning work already completed shall not be considered. Metro staff shall review the Letter of Intent and work with the proposer, if necessary, to revise the proposal if additional information is needed for the Grant Request.

2. **Step Two: Grant Request.** After submitting the Letter of Intent, and after working with Metro staff, if necessary, to revise the proposal, local governments seeking distribution of CET expected revenues shall submit a written Grant Request to the Metro Chief Operating Officer, with a copy for each member of the CET Grant Screening Committee.

A. Grant Evaluation Criteria. The Grant Request shall specifically address how the proposed grant satisfies the following criteria ("CET Grant Evaluation Criteria"), which are proxies for compliance with the Urban Growth Management Functional Plan:

- 1) **Expected Development Outcomes:** Explain how the proposed planning grant will increase ability to achieve on-the-ground development/redevelopment outcomes, and state the expected probability that due to this planning grant, development permits will be able to be pulled within two years, and within five years. Considerations include:
 - a) Development sites of adequate scale to generate critical mass of activity;
 - b) Existing and proposed transportation infrastructure to support future development;
 - c) Existing urban form provides strong redevelopment opportunities;
 - d) Sound relationship to adjacent residential and employment areas;
 - e) Compelling vision and long-term prospects;
 - f) Community readiness and local commitment.
- 2) **Regionally Significant:** Clearly identify how the proposed planning grant will benefit the region in achieving established regional development goals and outcomes, expressed in the 2040 Growth Concept and the six Desired Outcomes adopted by the region to guide future planning, which include:
 - a) People live and work in vibrant communities where they can choose to walk for pleasure and to meet their everyday needs.
 - b) Current and future residents benefit from the region's sustained economic competitiveness and prosperity.
 - c) People have safe and reliable transportation choices that enhance their quality of life.
 - d) The region is a leader in minimizing contributions to global warming.
 - e) Current and future generations enjoy clean air, clean water and healthy ecosystems.
 - f) The benefits and burdens of growth and change are distributed equitably.
- 3) **Location:** Discuss whether and how the proposed planning grant facilitates planning for development in:
 - a) Centers;
 - b) Corridors/Main Streets;
 - c) Station Centers; and/or
 - d) Employment & Industrial Areas
 - e) Consideration will also be given to applications that can be easily replicated in other locations and demonstrate best practices.

- 4) Leverage/Matching Potential: Discuss whether and how the proposed planning grant will leverage outcomes across jurisdictions and service providers, and that have opportunities for additional private/public investment.
- 5) Equity: Discuss whether and how the proposed planning grant will further the equitable distribution of funds, based on collections of revenues, past funding, and planning resource needs.

B. Proposed Scope of Work, Milestones, and Budget. The Grant Request shall include a proposed scope of work and budget, setting forth the expected completion dates and costs for achieving the Urban Growth Management Functional Plan milestones proposed in the Grant Request. Milestones and grant payment allocations should follow the following general guidelines:

- 1) Execution of the CET Grant IGA;
- 2) Local government staff's draft or proposed plan, report, code change, zoning change, redevelopment plan, Urban Growth Diagram, Concept Plan, urban services delivery plan, or other plan or agreement consistent with the CET Grant;
- 3) Local government staff's final recommended plan, report, code change, redevelopment plan, zoning change, Comprehensive Plan or Comprehensive Plan amendment, urban services delivery plan, or other plan or agreement consistent with the CET Grant, addressing compliance with the Urban Growth Management Functional Plan, the applicable conditions of the CET Grant, and applicable state laws and regulations; and
- 4) Local government's adoption of final plan, report, code change, redevelopment plan, zoning change, Comprehensive Plan or Comprehensive Plan amendment, urban services delivery plan, or other plan or agreement consistent with the CET Grant, consistent with the Functional Plan, the applicable conditions of the CET Grant, and applicable state law.

C. Grant Screening Committee Review of Grant Request.

- 1) Metro staff shall forward the Grant Request to the members of the Grant Screening Committee, and will provide staff assistance and a staff recommendation to the Committee.
- 2) The CET Grant Screening Committee shall then review the Grant Requests and evaluate them based on the CET Grant Evaluation Criteria set forth above. The Committee may consult with the proponent of the Grant Request or any others in reviewing the request.
- 3) After analyzing the Grant Requests, the Committee shall forward to the Metro COO the Committee's recommended ranking and grant amounts for each of the Grant Requests.
- 4) The Metro COO shall review the Committee's recommendations and shall forward his own grant recommendations, along with the recommendations of the CET Grant Screening Committee, to the Metro Council. The Metro Council shall decide, in a public hearing, whether or not to approve funding of any grants, and the amount of each grant.

3. **Step Three: Grant Agreement ("Grant IGA")**. Metro and the local government shall enter into a Grant Agreement ("Grant IGA") or, at the local government's request, the Metro Chief Operating Officer shall issue a Grant Letter, for the grant amount determined by the Metro Council.

The IGA shall set forth an agreed-upon scope of work and budget, expected milestone completion dates, and Grant payment dates.

A. Grant Payment Dates. Grant payments shall be made upon the completion of those milestones set forth in the Grant Agreements, as determined by Metro in accordance with the requirements of the Metro Code and the Grant Agreement. In general, a portion of the Grant funds shall be distributed upon execution of a Grant Agreement with Metro, with the remainder of the Grant being paid out as progress payments upon completion of the milestones set forth above and in the Grant Agreement.

B. Eligible Expenses.

1. The following expenses shall be considered Eligible Expenses for CET Grant consideration:

- a. Materials directly related to project;
- b. Consultants' work on project;
- c. Local government staff support directly related to project; and
- d. Overhead directly attributable to project;

2. If the total Grant Requests from participating local governments exceed the total CET actual revenues, Metro shall first consider awarding funds for eligible direct costs, which will have priority for funding over indirect costs.

Agenda Item Number 4.1

Consideration of Minutes for the July 9, 2009 Metro Council Regular Meeting.

Consent Agenda

Metro Council Meeting
Thursday, July 30, 2009
Metro Council Chamber

MINUTES OF THE METRO COUNCIL MEETING

Thursday, July 9, 2009
Metro Council Chamber

Councilors Present: David Bragdon (Council President), Robert Liberty, Rex Burkholder, Rod Park, Carlotta Collette

Councilors Absent: Carl Hosticka (excused), Kathryn Harrington (excused)

Council President Bragdon convened the Regular Council Meeting at 2:00 p.m.

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

Dave Sweeney, Sherwood resident, provided testimony on the Brookman Road concept plan and related issues in Sherwood.

Neil Shannon, Sherwood resident, provided testimony on the Brookman Road concept plan and related issues in Sherwood.

Art Lewellan, Portland resident, discussed issues related to the Columbia River Crossing (CRC) including topics related to MAX lines and sidewalks.

Sharon Nasset, Portland, discussed CRC related issues.

3. CONSENT AGENDA

3.1 Consideration of minutes of the June 25, 2009, Regular Council Meeting.

Motion:

Councilor Collette moved to adopt the meeting minutes of the June 25, 2009 Regular Metro Council.

Vote:

Councilors Burkholder, Liberty, Park, Collette, and Council President Bragdon voted in support of the motion. The vote was 5 aye, the motion passed.
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4. RESOLUTIONS

4.1 **Resolution No. 09-4052**, For the Purpose of Accepting the Regional High Capacity Transit System Tiers and Corridors, System Expansion Policy Framework and Policy Amendments for Addition to the 2035 Regional Transportation Plan, State Component.

Motion:	Councilor Collette moved to adopt Resolution No. 09-4052
Seconded:	Councilor Liberty seconded the motion

Councilor Collette introduced agenda item 4.1 regarding Resolution No. 09-4052. She talked about history and processes involved and subsequent outcomes. Councilor Collette thanked staff and citizen participants. Ross Roberts, Deputy Planning Director, and Tony Mendoza, HCT Project Manager, presented a Powerpoint presentation and background information (see attachments).

Fred Nussbaum, Portland resident, provided testimony regarding HCT issues. Councilor Liberty asked about differences in outcomes.

Councilor Burkholder talked about future issues. Councilor Liberty discussed values inherent in the project. Councilor Park thanked Councilor Collette for her leadership. He discussed the history of light-rail. President Bragdon discussed history of high capacity transit in the region. He discussed regional support surrounding light-rail. He discussed implementation steps.

Vote:

Councilors Park, Burkholder, Collette, Liberty, and Council President Bragdon voted in support of the motion. The vote was 5 aye, the motion passed.
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4.2 **Resolution No. 09-4061**, For the Purpose of Amending the Key Milestone Schedule that Guides Metro’s Participation in the Designation of Urban and Rural Reserves.

Motion:	Councilor Park moved to adopt Resolution No. 09-4061
Seconded:	Councilor Burkholder seconded the motion

President Bragdon discussed revisions to prior timelines. He noted new dates on the timeline. He said advantages included more time.

Vote:

Councilors Park, Burkholder, Collette, Liberty, and Council President Bragdon voted in support of the motion. The vote was 5 aye, the motion passed.
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4.3 **Resolution No. 09-4062**, For the Purpose of Confirming the Council President’s Appointment of Cynthia J. Haruyama to the Metropolitan Exposition-Recreation Commission.

Motion:	Councilor Park moved to adopt Resolution No. 09-4062,
Seconded:	Councilor Collette seconded the motion

President Bragdon introduced Cynthia J. Haruyama.

Vote:

Councilors Park, Burkholder, Collette, Liberty, and Council President Bragdon voted in support of the motion. The vote was 5 aye, the motion passed.
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4.4 **Resolution No. 09-4063**, For the Purpose of Confirming the Council President’s Appointment of Judie Hammerstad to the Metropolitan Exposition-Recreation Commission.

Motion:	Councilor Collette moved to adopt Resolution No. 09-4063
Seconded:	Councilor Park seconded the motion

President Bragdon introduced Judie Hammerstad and noted her credentials.

Vote:	Councilors Park, Burkholder, Collette, Liberty, and Council President Bragdon voted in support of the motion. The vote was 5 aye, the motion passed.
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4.5 **Resolution No. 09-4065**, For the Purpose of Directing Metro Chief Operating Officer to Explore Future Management of Regional Facilities.

Motion:	Councilor Park moved to adopt Resolution No. 09-4065
Seconded:	Councilor Burkholder seconded the motion

Councilor Park described specifics of the resolution.

President Bragdon opened a public hearing on Resolution No. 09-4065.

Jeff Miller, Travel Oregon, provided testimony on Resolution No. 09-4065. Councilor Liberty asked about the ideal role of an independent commission. President Bragdon discussed the issue of hospitality tax.

Ray Leary, MERC Commissioner, provided testimony on Resolution No. 09-4065.

President Bragdon closed the public hearing.

Councilor Park closed discussion on Resolution No. 09-4065.

Vote:	Councilors Park, Burkholder, Collette, Liberty, and Council President Bragdon voted in support of the motion. The vote was 5 aye, the motion passed.
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5. ORDINANCES - SECOND READING

5.1 Ordinance No. 09-1221A, For the Purpose of Amending Metro Code Chapter 6.01 Regarding the MERC General Manager and Declaring an Emergency.

Motion:	Councilor Park motioned to amend Ordinance No. 09-1221A to Ordinance No. 09-1221B and moved to continue to August 13 th , 2009.
Seconded:	Councilor Burkholder seconded the motion and did not object continuance.

There were no objections. Ordinance No. 09-1221B (see attachments) was moved to the regular Council meeting on August 13, 2009.

6. CHIEF OPERATING OFFICER COMMUNICATION

Scott Robinson, Deputy COO, discussed agency operations improvement. He discussed regional events hosted by Metro.

7. COUNCILOR COMMUNICATION

Councilors discussed events and meetings they had attended.

8. ADJOURN

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 4:05 p.m.

Prepared by

A handwritten signature in black ink, appearing to read 'Tony Andersen', written in a cursive style.

Tony Andersen
Clerk of the Council

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF
July 9, 2009**

Item	Topic	Doc. Date	Document Description	Doc. Number
4.5	Resolution	7/9/09	Resolution No. 09-4065 , For the Purpose of Directing Metro Chief Operating Officer to Explore Future Management of Regional Facilities	070909c-1
5.1	Ordinance	7/9/09	Ordinance No. 09-1221B , For the Purpose of Amending Metro Code Chapter 6.01 Regarding the MERC General Manager and Declaring an Emergency	070909c-2
4.1	Testimony	7/9/09	Fred Nussbaum testimony re: HCT	070909c-3
2.0	Testimony	7/9/09	Neil Shannon testimony re: Brookman Road Concept Plan	070909c-4
4.1	Powerpoint	7/9/09	Regional HCT System Plan, Powerpoint presentation	070909c-5
4.1	Map	7/9/09	Regional High Capacity System Plan	070909c-6
4.4	Letter	7/8/09	To: President David Bragdon From: Lynn Peterson, Clackamas County Board Chair Re: Nomination of Judie Hammerstad to the MER-Commission Date: July 8, 2009	070909c-7

Agenda Item Number 5.1

Resolution No. 09-4054, For the Purpose of Authorizing the Chief Operating Officer to Enter Into a Property Exchange Agreement in the Dairy and McKay Creeks Confluence Target Area.

COUNCILOR HARRINGTON

Metro Council Meeting
Thursday, July 30, 2009
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 09-4054
CHIEF OPERATING OFFICER TO ENTER INTO)
A PROPERTY EXCHANGE AGREEMENT IN) Introduced by Chief Operating Officer
THE DAIRY AND MCKAY CREEKS) Michael J. Jordan, with the concurrence of
CONFLUENCE TARGET AREA) Council President David Bragdon

WHEREAS, at the general election held on November 7, 2006, the voters of the Metro region approved the 2006 Natural Areas Bond Measure, authorizing Metro to sell \$227.4 million in general obligation bonds to fund natural area acquisition and water quality protection; and

WHEREAS, the Dairy and McKay Creeks Confluence Target Area was identified in the Bond Measure as one of 27 regional target areas for land acquisition; and

WHEREAS, on September 20, 2007, the Metro Council adopted Resolution No. 07-3855 "Approving the Natural Areas Acquisition Refinement Plan for the Dairy and McKay Creeks Confluence Target Area" which resolution approved the acquisition of the properties within the target area, subject to all terms of the transaction complying with the 2006 Natural Areas Acquisition Parameters and Due Diligence Guidelines, set forth in Metro Council Resolution No. 07-3766A "Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan," (the "Acquisition Parameters and Due Diligence Guidelines") adopted on March 1, 2007; and

WHEREAS, the goal of the Dairy and McKay Creeks Confluence Target Area refinement plan is to "[p]rotect the riparian areas and associated wetlands in the Dairy and McKay Creeks confluence area to contribute significantly to improved water quality..."; and

WHEREAS, Metro currently owns certain real property within the Dairy and McKay Creeks Confluence Target Area, which property is approximately 93 acres in size (the "Metro Larger Parcel"); and

WHEREAS, McKay Creek Properties ("MCP") is the owner of certain real property approximately 63 acres in size, located directly adjacent to the Metro Larger Parcel (the "MCP Larger Parcel"). The MCP Larger Parcel currently operates as a golf course and has been identified as a Tier 1 acquisition priority in the Dairy and McKay Creeks Confluence Target Area; and

WHEREAS, Metro desires to acquire an approximate 6.4 acre portion of the MCP Larger Parcel (the "MCP Exchange Property") which has significant wetland restoration potential, in exchange for an approximate 4.9 acre portion of the Metro Larger Parcel (the "Metro Exchange Property") that does not have significant wetland restoration potential. Both the MCP Exchange Property and the Metro Exchange Property are depicted on the attached Exhibit A; and

WHEREAS, in order to facilitate the transaction and resolve a current property line encroachment and boundary issue, MCP has requested an easement over an approximate 0.3 acre portion of the Metro Larger Parcel (the "Easement Area") to document MCP's right to continue to use the Easement Area as part of MCP's golf course operations. The Easement Area is depicted on the attached Exhibit A; and

WHEREAS, because such easement is necessary to facilitate the larger exchange transaction designed specifically to benefit a Metro natural area (i.e. the Metro Larger Parcel), the easement is not subject to the easement review criteria set forth in Metro Resolution No. 97-2539B "For The Purpose Of Approving General Policies Related To The Review of Easements, Right-Of-Ways, And Leases For Non-Park Uses Through Properties Managed By The Regional Parks And Greenspaces Department," adopted November 6, 1997; and

WHEREAS, the Acquisition Parameters and Due Diligence Guidelines require, among other things, that prior to closing a real estate transaction related to the 2006 Natural Areas Bond Measure (1) an initial appraisal and a review appraisal of the property be obtained and (2) the purchase price for the property be equal to or less than the fair market value as established by such appraisal and appraisal review processes; and

WHEREAS, because the MCP Exchange Property and the Metro Exchange Property are both located in the floodplain, are adjacent to one another, and are of similar size, it is in the best interest of the 2006 Natural Areas Bond Measure program to acquire the MCP Exchange Property without having to incur the cost associated with obtaining appraisals and appraisal reviews; now therefore,

BE IT RESOLVED that the Metro Council finds that, for the reasons stated and as provided herein, it is in the public interest to complete the above described real property exchange transaction, and therefore authorizes the Chief Operating Officer to:

1. Enter into an agreement with MCP whereunder (a) Metro transfers and conveys fee title to the Metro Exchange Property to MCP in return for (b) MCP transferring and conveying fee title to the MCP Exchange Property to Metro, provided that such agreement, and any other documents necessary to effect the exchange transaction (including without limitation any required land use applications), are in forms acceptable to the Metro Attorney;

2. Acquire the MCP Exchange Property without first obtaining an appraisal and an appraisal review, provided the acquisition of the MCP Exchange Property is otherwise in accord with the Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan; and

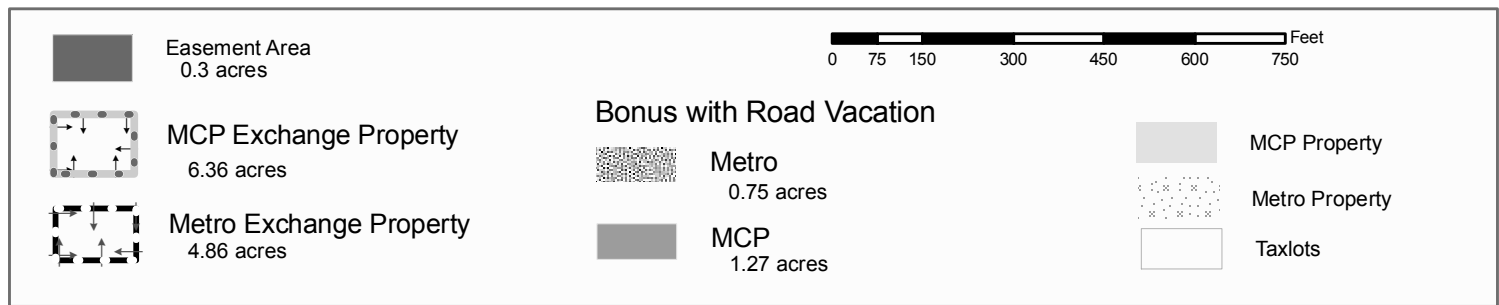
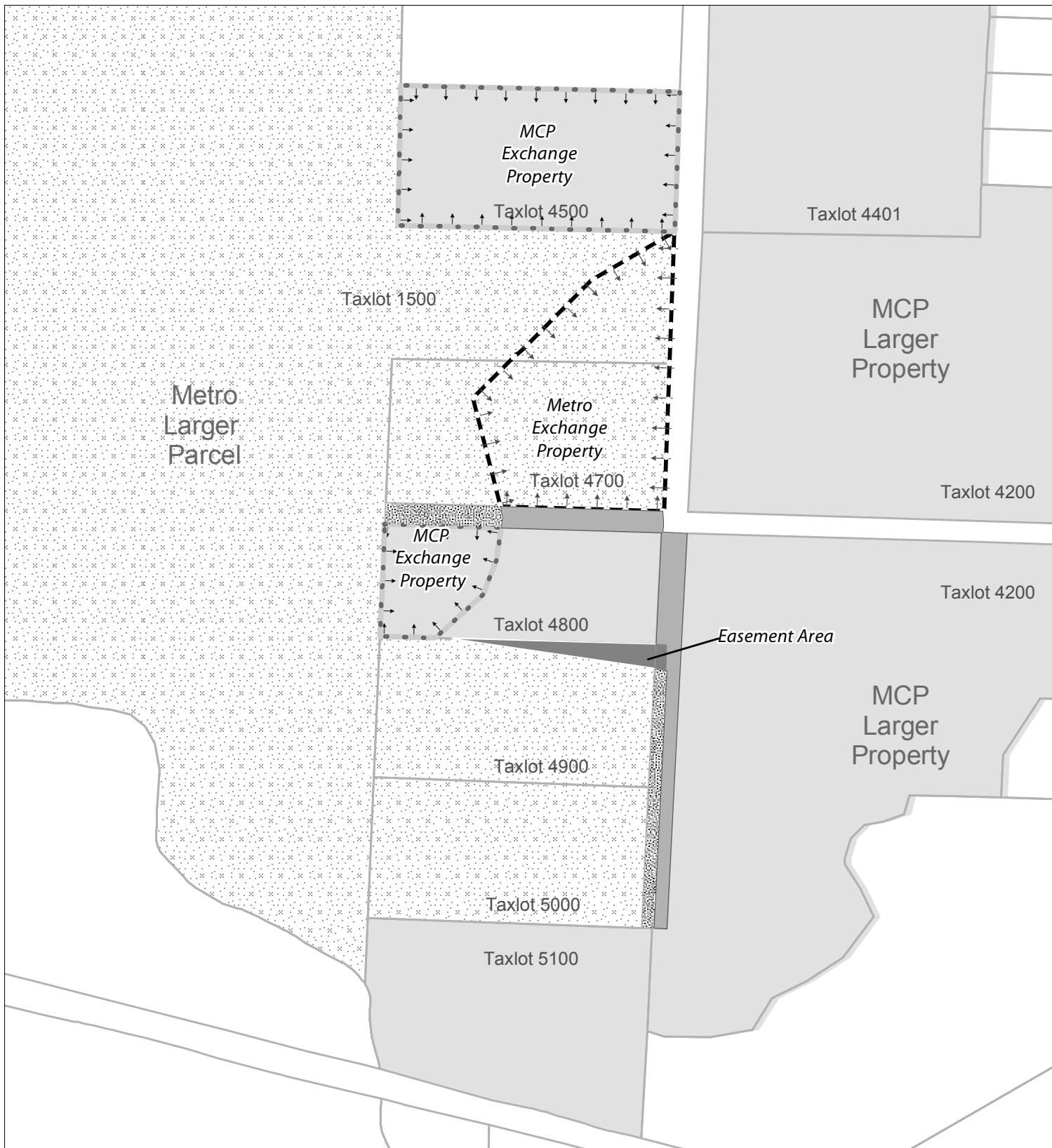
3. Grant to MCP an easement over an approximately 0.3 acre portion of the Metro Larger Parcel, as part of and in order to complete the property exchange transaction described in this Resolution, provided that such easement (a) terminates in the event that the easement area is ever used for a purpose other than golf course or open space purposes and (b) is in a form acceptable to the Metro Attorney.

ADOPTED by the Metro Council this _____ day of _____, 2009.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney



STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 09-4054 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO CONVEY CERTAIN REAL PROPERTY IN EXCHANGE FOR OTHER REAL PROPERTY IN THE DAIRY AND MCKAY CREEKS CONFLUENCE TARGET AREA

Date: July 30, 2009

Prepared by: Kathleen Brennan-Hunter
(503) 797-1948

BACKGROUND

Resolution No. 09-4054 requests authorization to exchange approximately 4.9 acres of Metro owned real property (the "Metro Exchange Property") for an adjacent 6.4 acres of real property owned by McKay Creek Properties (the "MCP Exchange Property"). The purpose of this Resolution is to authorize the Chief Operating Officer to (1) convey the Metro Exchange Property to McKay Creek Properties and (2) acquire the MCP Exchange Property without obtaining an appraisal and an appraisal review as required under the 2006 Bond Measure Natural Areas Implementation Work Plan.

The Metro Exchange Property and the MCP Exchange Property are located within the Dairy and McKay Creeks Confluence target area, immediately north of the confluence of those streams. The Metro Exchange Property is a portion of a larger 93-acre property (referred to herein as the "Larger Metro Parcel") purchased in April 2007 with funds from the 2006 Natural Areas Bond Measure. The MCP Exchange Property consists of the entire approximately 5-acre tax lot 4500 and a 1.4-acre portion of tax lot 4800. The MCP Exchange Property is a portion of a larger 63-acre property that contains the nine-hole McKay Creek Golf Course. A depiction of the parcels is attached to the proposed Resolution as Exhibit A.

Dairy and McKay creeks are located west of Hillsboro and east of Cornelius and drain a largely agricultural watershed within Washington County. McKay Creek forms the western boundary of the City of Hillsboro and flows into Dairy Creek north of Tualatin Valley Highway. The combined creeks flow south converging with the Tualatin River at Jackson Bottom. Broad wetlands at the confluence of Dairy and McKay creeks and upstream riparian areas provide excellent opportunities for restoration of riparian and wetland habitats, as well as flood storage and water quality protection. The overarching goal of the Dairy and McKay Creeks Confluence target area for the 2006 Natural Areas Bond Measure is to "protect the riparian areas and associated wetlands in the Dairy and McKay Creeks confluence area to contribute significantly to improved water quality in these major tributaries of the Tualatin River." The Tier I acquisition objective in the target area is to "protect important riparian lowland areas around the confluence of ... Dairy and McKay Creeks..."

In the proposed land exchange, McKay Creek Properties would convey fee title to the MCP Exchange Property to Metro. The MCP Exchange Property is similar in elevation to lower portions of the Metro Larger Parcel and therefore has significant wetland restoration potential. In exchange for the MCP Exchange Property, Metro would convey fee title to the Metro Exchange Property to McKay Creek Properties. The Metro Exchange Property, while still located within the Federal Emergency Management Agency (FEMA) floodplain, is upland forest and pasture that is not as regularly inundated with water as the Metro Larger Parcel and thus does not have comparable wetland restoration potential to that of the MCP Exchange Property.

In addition to the fee conveyance, Metro would also grant to McKay Creek Properties an easement across approximately 0.3 acres of the Metro Larger Parcel. The purpose of the easement is to address a current, existing encroachment by McKay Creek Golf Course. The easement would be perpetual but would terminate in the event that the area is no longer used for open space or golf course purposes. Because the proposed easement is part of the larger exchange transaction designed specifically to benefit a Metro natural area, the proposed easement is not subject to the easement review criteria set forth in Resolution No. 97-2539B, "For the Purpose of Approving General Policies Related to the Review of Easements, Right of Ways, and Leases For Non-Park Uses Through Properties Managed by the Regional Parks and Greenspaces Department."

Portions of the Metro Exchange Property and the MCP Exchange Property are not legal lots of record, so a property line adjustment will be necessary to complete the land exchange. In order to achieve the property line adjustment, some or all of NW Jackson Street and NW 322nd Avenue may need to be vacated. The street vacation would potentially result in an additional 0.8 acres to Metro and an additional 1.3 acres to McKay Creek Properties. McKay Creek Properties will be responsible for paying all surveying costs and any other expenses associated with obtaining a property line adjustment from Washington County. The parties would split all ordinary closing costs. In accordance with the 2006 Bond Measure Natural Areas Implementation Work Plan, Metro would conduct, and pay for, a Phase I Environmental Site Assessment of the MCP Exchange Property.

Because both the Metro Exchange Property and the MCP Exchange Property are entirely within and surrounded by the FEMA designated floodplain, neither parcel has any current development potential. Because the MCP Exchange Property and the Metro Exchange Property are of roughly equal value, Metro will not obtain an appraisal or an appraisal review of the MCP Exchange Property. Council approval is necessary to authorize the Chief Operating Officer to acquire the MCP Exchange Property without first obtaining an appraisal and appraisal review of the property.

Acquiring the MCP Exchange Property, supports the Tier I acquisition objective in the Dairy and McKay Creeks Confluence target area. However, McKay Creek Properties is only willing to convey the MCP Exchange Property to Metro in exchange for the Metro Exchange Property and the easement described above. Pursuant to the Refinement Plan for the Dairy and McKay Creeks Confluence Target Area, Council has given the Chief Operating Officer authority to acquire the MCP Exchange Property. Both the conveyance of Metro Exchange Property and the granting of the 0.3 acre easement require Council approval.

The proposed land exchange furthers the public interest because the exchange produces a net positive benefit in fulfilling wildlife habitat and water quality protection goals of the target area refinement plan. As confirmed in the biological assessment prepared by Pacific Habitat Services, Inc. for the target area refinement plan, the Metro Larger Parcel has great potential to be restored to high value wetland habitat with improved floodplain function. However, in order to effectively restore such wetland habitat, Metro needs to acquire more land in the surrounding floodplain. The floodplain elevations on the Metro Larger Parcel extend into a few surrounding parcels of land, in particular the MCP Exchange Property. By acquiring the MCP Exchange Property, Metro will gain control of more floodplain and will be able to consider restoration methods such as increased depth and duration of flooding to improve wetland function and support native plant communities and associated wildlife.

Although the upland area on the Metro Exchange Property does have habitat values, such values are only of average quality. Because the MCP Exchange Property contains wetland habitat, Metro staff believes the value of owning such property significantly outweighs the value of owning the upland habitat on the Metro Exchange Property. Furthermore, owning the MCP Exchange Property will help realize the full

restoration potential of the Metro Larger Parcel. Following the exchange, it is likely that some upland forest on the Metro Exchange Property would be cut as McKay Creek Properties intends to remove some of the existing trees to accommodate the design of its golf course. However, McKay Creek Properties has indicated that trees along the property boundary will likely remain to frame the hole and create buffer between the golf course and the neighboring property owned by Metro. Metro will maintain a relationship with McKay Creek Properties to encourage the maximum retention of trees and vegetation in the buffer area between the golf course and the Metro Larger Parcel.

Both the Metro Larger Parcel and the MCP Exchange Property are currently leased for agricultural use and, at present, the site has little existing native habitat. Following the proposed land exchange, Metro would continue the farm lease on the Metro Larger Parcel and the MCP Exchange Property until funds are available to restore the wetlands on those properties.

ANALYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

ORS 271.310(1) authorizes the governing body of any political subdivision within Oregon to sell real property owned by the political subdivision that is “not needed for public use, or whenever the public interest may be furthered.”

Metro Code Section 2.04.026(a)(2) requires that the Chief Operating Office obtain the authorization of the Metro Council prior to executing any contract for the sale of real property owned by Metro.

Resolution No. 97-2539B "For The Purpose Of Approving General Policies Related To The Review of Easements, Right-Of-Ways, And Leases For Non-Park Uses Through Properties Managed By The Regional Parks And Greenspaces Department" was adopted November 6, 1997.

Resolution No. 06-3672B “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisitions and Water Quality Protection” was adopted on March 9, 2006.

The voters approved Metro’s 2006 Natural Areas Bond Measure at the general election held on November 7, 2006.

Resolution No. 07-3766A “Authorizing the Chief Operating Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan” was adopted by the Metro Council on March 1, 2007, and established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

Resolution No. 07-3848 “Approving The Natural Areas Acquisition Refinement Plan For The Dairy and McKay Creeks Confluence Target Area” was adopted by the Metro Council on September 20, 2007, and established the Acquisition priorities for Dairy and McKay Creek Confluence Target Area.

Resolution No. 06-3727 “For the Purpose of Establishing Metro Council Policy Regarding the Acquisition of Rural Agricultural Land Pursuant to the 2006 Natural Areas Acquisition and Water Quality Protection Bond Measure” was adopted on September 7, 2006.

3. Anticipated Effects

McKay Creek Properties will convey to Metro approximately 6.4 acres of real property and in exchange Metro will transfer to McKay Creek Properties (1) fee title to approximately 4.9 acres of real property and (2) an easement approximately 0.3 acres in size. In order to complete the transaction, the parties will need to obtain a property line adjustment from Washington County. Including the road vacation acreage, ultimately, the transaction will result in Metro receiving a net gain of approximately 2 acres of property in a Tier I acquisition area. In addition, the land exchange will result in Metro having more control of the wetland portions of the properties for future habitat restoration.

4. Budget Impacts

The conveyance by Metro of the Metro Exchange Property to MCP, and the conveyance by MCP of the MCP Exchange Property to Metro, shall be an even, non-cash exchange. All costs associated with the property line adjustment will be paid for by McKay Creek Properties. Metro will, however, pay for ordinary due diligence expenses and closing costs, including the costs incurred to obtain a Phase I Environmental Assessment, a title policy, and one-half of the escrow fees. Such costs will be paid for with 2006 Natural Area Bond proceeds. Stabilization costs will also be paid with 2006 Natural Area Bond funds.

RECOMMENDED ACTION

Staff recommends the adoption of Resolution No. 09-4054.