

# Metro | Agenda

Meeting: Metro Council  
Date: Thursday, June 16, 2011  
Time: 2 p.m.  
Place: Metro Council Chambers

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## CALL TO ORDER AND ROLL CALL

1. **INTRODUCTIONS**
2. **CITIZEN COMMUNICATIONS**
3. **CONSENT AGENDA**
  - 3.1 Consideration of the Minutes for June 9, 2011
  - 3.2 **Resolution No. 11-4266**, For the Purpose of Amending the 2010-13 Metropolitan Transportation Improvement Program (MTIP) to Add the Going Street Bike/Pedestrian: North Vancouver Avenue – North Channel Avenue Project.
  - 3.3 **Resolution No. 11-4269**, For the Purpose of Adopting the Hearings Officer’s Proposed Order Regarding Metro Contract No. 928937 and Authorizing the Chief Operating Officer to Issue a Final Order.
4. **ORDINANCES – FIRST READING**
  - 4.1 **Ordinance No. 11-1262**, For the Purpose of Amending the FY 2010-11 Budget and Appropriations Schedule and Declaring an Emergency.
5. **ORDINANCES – SECOND READING**
  - 5.1 **Ordinance No. 11-1253A**, For the Purpose of Adopting the Annual Budget For Fiscal Year FY 2011-12, Making Appropriations, Levying Ad Valorem Taxes, Authorizing an Interfund Loan and Declaring Emergency. **Hughes**

*Public Hearing*
  - 5.2 Council Consideration and Vote on Final Proposed Council and Technical Amendments to FY 2011-2012 Budget.
6. **CHIEF OPERATING OFFICER COMMUNICATION**
7. **COUNCILOR COMMUNICATION**
8. **EXECUTIVE SESSION HELD PURSUANT WITH ORS 192.660(2)(e). DELIBERATIONS WITH PERSONS DESIGNATED BY THE GOVERNING BODY TO NEGOTIATE REAL PROPERTY TRANSACTIONS.**

**ADJOURN**

**Television schedule for June 16, 2011 Metro Council meeting**

<p><b>Clackamas, Multnomah and Washington counties, and Vancouver, WA</b>  Channel 11 – Community Access Network  <i>Web site:</i> <a href="http://www.tvctv.org">www.tvctv.org</a>  <i>Ph:</i> 503-629-8534  <i>Date:</i> 2 p.m. Thursday, June 16 (Live)</p>	<p><b>Portland</b>  Channel 11 – Portland Community Media  <i>Web site:</i> <a href="http://www.pcmtv.org">www.pcmtv.org</a>  <i>Ph:</i> 503-288-1515  <i>Date:</i> 8:30 p.m. Sunday, June 19  <i>Date:</i> 2 p.m. Monday, June 20</p>
<p><b>Gresham</b>  Channel 30 - MCTV  <i>Web site:</i> <a href="http://www.metroeast.org">www.metroeast.org</a>  <i>Ph:</i> 503-491-7636  <i>Date:</i> 2 p.m. Monday, June 20</p>	<p><b>Washington County</b>  Channel 30– TVC TV  <i>Web site:</i> <a href="http://www.tvctv.org">www.tvctv.org</a>  <i>Ph:</i> 503-629-8534  <i>Date:</i> 11 p.m. Saturday, June 18  <i>Date:</i> 11 p.m. Sunday, June 19  <i>Date:</i> 6 a.m. Tuesday, June 21  <i>Date:</i> 4 p.m. Wednesday, June 22</p>
<p><b>Oregon City, Gladstone</b>  Channel 28 – Willamette Falls Television  <i>Web site:</i> <a href="http://www.wftvmedia.org/">http://www.wftvmedia.org/</a>  <i>Ph:</i> 503-650-0275  Call or visit web site for program times.</p>	<p><b>West Linn</b>  Channel 30 – Willamette Falls Television  <i>Web site:</i> <a href="http://www.wftvmedia.org/">http://www.wftvmedia.org/</a>  <i>Ph:</i> 503-650-0275  Call or visit web site for program times.</p>

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

Agenda items may not be considered in the exact order. For questions about the agenda, call the Metro 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 Clerk of the Council to be included in the decision record. Documents can be submitted by e-mail, fax or mail or in person to the Clerk of the Council. For additional information about testifying before the Metro Council please go to the Metro web site [www.oregonmetro.gov](http://www.oregonmetro.gov) and click on public comment opportunities. For assistance per the American Disabilities Act (ADA), dial TDD 503-797-1804 or 503-797-1540 (Council Office).

Agenda Item Number 3.1

**Consideration of the Minutes for June 9, 2011**

*Consent Agenda*

Metro Council Meeting  
Thursday, June 16, 2011  
Metro Council Chamber

Agenda Item Number 3.2

**Resolution No. 11-4266**, For the Purpose of Amending the 2010-13 Metropolitan Transportation Improvement Program (MTIP) to Add the Going Street Bike/Pedestrian: North Vancouver Avenue – North Channel Avenue Project.

*Consent Agenda*

Metro Council Meeting  
Thursday, June 16, 2011  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE 2010-	)	RESOLUTION NO. 11-4266
13 METROPOLITAN TRANSPORTATION	)	
IMPROVEMENT PROGRAM (MTIP) TO ADD	)	Introduced by Acting Chief Operating Officer
THE GOING STREET BIKE/PED: N	)	Daniel Cooper with the concurrence of
VANCOUVER AVE - N CHANNEL AVE	)	Council President Tom Hughes
PROJECT	)	

WHEREAS, the Metropolitan Transportation Improvement Program (MTIP) prioritizes projects from the Regional Transportation Plan to receive transportation related funding; and

WHEREAS, the Joint Policy Advisory Committee on Transportation (JPACT) and the Metro Council must approve the MTIP and any subsequent amendments to add new projects to or significantly change the scope to existing projects in the MTIP; and

WHEREAS, the JPACT and the Metro Council approved the 2010-13 MTIP on September 16, 2010; and

WHEREAS, the Oregon Department of Transportation (ODOT) awarded the City of Portland \$2,093,400 of state funding to construct pedestrian, bicycle, transit and demand management improvements along N Going Street between Vancouver Avenue and Channel Avenue; and

WHEREAS, the awarding of these funds is adopted in the 2010-13 MTIP as Programming Table 3.1.1; and

WHEREAS, this project is exempt by federal rules from needing to conduct an air quality conformity analysis; and

WHEREAS, JPACT approved the resolution on June 9, 2011; now therefore

BE IT RESOLVED that the Metro Council hereby adopts the recommendation of JPACT to add the Going Street Ped/Bike: N Vancouver Avenue to N Channel Avenue project and to modify the Programming Table 3.1.1, Section 3.1 of the 2010-13 Metropolitan Transportation Improvement Program as provided in Exhibit A to this resolution.

ADOPTED by the Metro Council this \_\_\_\_ day of June 2011.

\_\_\_\_\_  
Tom Hughes, Council President

Approved as to Form:

\_\_\_\_\_  
Alison Kean Campbell, Acting Metro Attorney

Exhibit A to Resolution No. 11-4266

**Proposed action:** Add new project to 2010-13 MTIP Programming Table 3.1.1

New programming

Project Name	Project Description	ODOT Key #	Lead Agency	Estimated Total Project Cost	Project Phase	Fund Type	Program Year	Federal Funding	Minimum Local Match	Other Funding	Total Funding
Going Street Bike/Ped: N Vancouver Ave To N Channel Avenue	Design and construct bicycle, pedestrian, transit stop and demand management activities in the North Going Street corridor between Vancouver Avenue and Channel Avenue in the Swan Island industrial area.	17740	Portland	N/A	PE	L24R	2011	\$538,380	\$61,620	N/A	\$600,000
				N/A	Cons	L24R	2011	\$1,555,020	\$177,980	N/A	\$1,733,000
<b>Total</b>								\$2,093,400	\$239,600	N/A	\$2,333,000

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 11-4266, FOR THE PURPOSE OF AMENDING THE 2010-13 METROPOLITAN TRANSPORTATION IMPROVEMENT PROGRAM (MTIP) TO ADD THE GOING STREET BIKE/PED: N VANCOUVER AVE TO N CHANNEL AVENUE PROJECT

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Date: May 17, 2011

Prepared by: Amy Rose, 503-797-1776

### BACKGROUND

The Oregon State Department of Transportation (ODOT) made available approximately \$24 million of funding for sustainable, non-highway projects, programs and services that positively impact modal connectivity, the environment, mobility and access, livability, energy use and the overall operation of the transportation system.

The City of Portland applied for \$2,093,400 of funding to design and construct bicycle, pedestrian, transit stop and demand management activities in the North Going Street corridor between Vancouver Avenue and Channel Avenue in the Swan Island industrial area. The Oregon Transportation Commission awarded funding to the project this spring.

Because the award was for a bicycle and pedestrian project of more than \$500,000, it is a significant amount under the MTIP amendment process in section 1.7, and requires a Metro resolution to add the project to the Metropolitan Transportation Improvement Program (MTIP).

These type of facilities and demand management activities are exempt by federal rule from needing to complete any air quality impact analysis prior to adding the project to the MTIP.

### ANALYSIS/INFORMATION

- 1. Known Opposition** None known at this time.
- 2. Legal Antecedents** Section 1.7 of the 2010-2013 Metropolitan Transportation Improvement Program adopted by Metro Council Resolution 10-4186 on September 16, 2010 (For the Purpose of Approving the 2010-13 Metropolitan Transportation Improvement Program for the Portland Metropolitan Area) (“2010-13 MTIP”) requires that bicycle and pedestrian projects with significant funds of \$500,000 or greater have a Metro Resolution to add a project to the MTIP.
- 3. Anticipated Effects** Adoption of this resolution will allow City of Portland to proceed with construction of these facilities and implementation of travel demand activities.
- 4. Budget Impacts** No impact to the Metro budget.

### RECOMMENDED ACTION

Metro staff recommends the approval of Resolution No. 11-4266.

Agenda Item Number 3.3

**Resolution No. 11-4269**, For the Purpose of Adopting the Hearings Officer's Proposed Order Regarding Metro Contract No. 928937 and Authorizing the Chief Operating Officer to Issue a Final Order.

*Consent Agenda*

Metro Council Meeting  
Thursday, June 16, 2011  
Metro Council Chamber



BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING THE	)	RESOLUTION NO. 11-4269
HEARINGS OFFICER’S PROPOSED ORDER	)	
REGARDING METRO CONTRACT NO. 928937	)	
AND AUTHORIZING THE CHIEF OPERATING	)	Introduced by Acting Chief Operating
OFFICER TO ISSUE A FINAL ORDER	)	Officer Daniel B. Cooper, with the
	)	concurrence of Council President Tom
	)	Hughes

WHEREAS, Metro and Waste Connections, Inc., dba Finley Buttes Limited Partnership, dba Finley Buttes Landfill Company (“Finley Buttes”) are parties to a Designated Facility Agreement, Metro Contract No. 928937; and

WHEREAS, on October 21, 2010, Finley Buttes requested a contested case hearing pursuant to the Designated Facility Agreement related to a decision by Metro regarding a refund of Regional System Fee and Excise Tax to Finley Buttes; and

WHEREAS, a hearing on the matter was held on March 14, 2011, before Metro Hearings Officer Joe Turner; and

WHEREAS, on April 26, 2011, the Hearings Officer issued a proposed order (attached as Exhibit A) in which the hearings officer (1) found that Finley Buttes did not satisfy its burden to prove that Metro violated the Designated Facility Agreement; and (2) affirmed the amount of the refund issued by Metro to Finley Buttes; and

WHEREAS, pursuant to Metro Code 2.05.035(a), the Hearings Officer prepared and submitted a proposed order, together with the record compiled in the hearing, to the Metro Council; and

WHEREAS, the parties did not file written exceptions to the Hearings Officer’s proposed order; and

WHEREAS, Metro Code 2.05.045(b) provides that the Metro Council shall (1) adopt the Hearings Officer’s proposed order; (2) revise or replace the findings of fact or conclusions of law in the order; or (3) remand the matter to the Hearings Officer; and

WHEREAS, the Metro Council has considered the proposed order as required by the Metro Code; now therefore

BE IT RESOLVED that the Metro Council adopts the proposed order issued by Hearings Officer Joe Turner and directs the Chief Operating Officer to issue a final order substantially similar to Exhibit B.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

\_\_\_\_\_  
Tom Hughes, Council President

Approved as to Form:

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Alison Kean Campbell, Acting Metro Attorney

**IN THE MATTER OF THE CONTESTED CASE HEARING OF**

**WASTE CONNECTIONS, INC., dba  
FINLEY BUTTES LIMITED  
PARTNERSHIP, dba FINLEY BUTTES  
LANDFILL**

**Metro Contract. No. 928937**

**PROPOSED FINAL ORDER**

**Appellant**

**v.**

**METRO,**

**Respondent**

**I. STATEMENT OF THE CASE**

1. Appellant Waste Connections Inc., dba Finley Buttes Limited Partnership, dba Finley Buttes Landfill (“Finley Buttes” or “Appellant”), requested a hearing to contest the decision by Respondent Metropolitan Service District (“Respondent” or “Metro”) denying a portion of Appellant’s request for a refund of taxes and fees paid for Auto Shredder Residue (“ASR”)<sup>1</sup> received at the Finley Buttes Landfill and used as alternative daily cover (“ADC”) during a trial period required by the Oregon Department of Environmental Quality (“DEQ”).
2. Hearings Officer Joe Turner (the “Hearings Officer”) received testimony at the public hearing about this appeal on March 14, 2011, at approximately 1:00 p.m. at Metro’s offices, located at 600 NE Grand Avenue, Portland, Oregon. Attorney Marc Carlton represented Appellant. Attorney Michelle Bellia represented Respondent. At the beginning of the hearing, the Hearings Officer made a statement describing the hearing procedure and disclaiming any *ex parte* contacts, bias or conflicts of interest. All witnesses testified under oath or affirmation. Metro made an audio recording of the hearing. Metro maintains the record of the proceedings.

**II. EVIDENTIARY MATTERS**

1. Appellant provided a pre-hearing memorandum, (“Appellant’s Pre-Hearing Memorandum”) dated March 9, 2011, a list of witnesses and exhibits, a packet of exhibits (Appellant Exhibits 101 through 108), witness testimony by Mr. Large, sales manager for Finley Buttes and Wasco County landfills, and Ms. Norton, Metro Director of Finance and Regulatory Services, a post-hearing memorandum, (“Appellant’s Post-Hearing Memorandum”) dated March 24, 2011, a post-hearing reply memorandum, (“Appellant’s Post-Hearing Reply Memorandum”) dated

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<sup>1</sup> Also referred to in the record as Scrap Metal Recycling Residue or Sheet Metal Recycling Residue (“SMRR”).

April 4, 2011 and oral argument in support of Appellant's request for refund of all taxes and fees paid to Respondent for ASR received and used as ADC at Finley Buttes Landfill during the DEQ required trial period.

2. Respondent provided a pre-hearing memorandum, ("Respondent Metro's Pre-Hearing Memorandum") dated March 9, 2011, a list of witnesses and exhibits, a packet of exhibits (Metro Exhibits 1 through 24), witness testimony by Ms. Norton and Roy Brower, Solid Waste Compliance and Cleanup Manager, a post-hearing memorandum, ("Respondent Metro's Post-Hearing Memorandum") dated March 24, 2011, a post-hearing reply memorandum, ("Respondent Metro's Response to Appellant's Post-Hearing Memorandum") dated April 4, 2011 and oral argument in support of Respondent's request to uphold Respondent's decision to deny a portion of Appellant's refund request.
3. The parties stipulated to the admissibility of the offered exhibits. Appellant objected to Mr. Brower's testimony, arguing that it was inadmissible hearsay. The Hearings Officer allowed Mr. Brower's testimony, noting that the rules of evidence are inapplicable. MC § 2.05.030(a) allows "Evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs..." The Hearings Officer find that reasonably prudent persons rely on hearsay in the conduct of their serious affairs, although it may be given less weight than direct testimony. Respondent also objected to Mr. Brower's presence in the hearing room during testimony by other witnesses. The Hearings Officer overruled the objection. Mr. Brower was included in Respondent's witness list as a potential witness. At the beginning of the hearing Mr. Carlton and Ms. Bellia agreed that there was no need to exclude witnesses.
4. Respondent requested that the Hearings Officer hold open the record of the proceedings after the hearing to allow submission and consideration of a Post-Hearing Memorandum. Appellant agreed to Respondent's request, provided that the Hearings Officer allow both parties the same opportunity and that both parties be allowed to submit additional briefing in response to the post hearing memoranda. Both parties submitted Post-Hearing Memoranda and Post Hearing Reply Memoranda. The Hearings Officer closed the record in this case at 5:00 p.m., April 4, 2011.

### **III. ISSUES PRESENTED**

Whether Appellant is entitled to a full refund of taxes and fees paid to Respondent for ASR received and used as ADC at the Finley Buttes Landfill during the one-year trial period authorized by DEQ.

#### IV. BACKGROUND

1. Respondent, Metro, is a regional government created by the State of Oregon with voter approval. The Metro Council, a political body elected by voters within the Metro region, governs Metro. Among other things, Respondent regulates the transportation, processing and disposal of waste generated within the Metro region. Respondent has developed and implemented a Regional Solid Waste Management Plan, a management system for regional waste disposal and resource recovery. Pursuant to this authority, Respondent regulates the transportation, transfer, disposal and other processing of all solid waste generated within Metro. MC § 5.05.020(b). Respondent requires that all solid waste generated within the Metro region must be processed or disposed of at a solid waste facility<sup>2</sup> or disposal site<sup>3</sup> with an appropriate license from Respondent. MC § 5.05.025(a).
2. Appellant operates a solid waste disposal site, the Finley Buttes Regional Landfill, located in Morrow County, Oregon (the "Finley Buttes Landfill"). The Finley Buttes Landfill is located outside of the Metro region. Therefore Respondent has no authority over the operation of the Finley Buttes Landfill. DEQ regulates the operation of the landfill.
3. Finley Buttes Landfill may only accept solid waste generated within Metro:
  - (A) As specified in an agreement entered into between Metro and Finley Buttes Landfill Company authorizing receipt of such waste; or
  - (B) Subject to a non-system license issued to a person transporting to the facility solid waste not specified in the agreement.

MC § 5.05.030(a)(8).

Therefore, pursuant to MC § 5.05.030(a)(8)(A) Appellant entered into a Designated Facility Agreement with Respondent, Metro Contract No. 928937 (the "DFA"). (Metro Exhibit 1). The parties signed the DFA in November 2008.

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<sup>2</sup> MC 5.01.010(uu) provides:

"Solid waste facility" means the land and buildings at which Solid Waste is received for Transfer, Resource Recovery, and/or Processing but excludes disposal.

<sup>3</sup> MC 5.05.010(f) provides:

"Disposal site" means the land and facilities determined from time to time by Metro as constituting part of the system, whether owned by Metro or another person and whether or not open to the public, used for the disposal of solid wastes, but does not include transfer stations or processing facilities.

4. Section 3 of the DFA requires that Appellant collect Regional System Fees as set out in MC § 5.02 and Excise Taxes as set out in MC § 7.01 on every ton of Metro area waste received at Appellant's landfill and remit those fees and taxes to Respondent on a monthly basis. ORS 268.507 authorizes Respondent to impose excise taxes by ordinance.
5. The Metro Code exempts certain materials from fees and taxes, including, "useful material"<sup>4</sup> that is (A) intended to be used, and is in fact used, productively in the operation of the Disposal Site such as for roadbeds or alternative daily cover; and (B) is accepted at the Disposal Site at no charge. MC § 5.01.150(b)(3) and 7.01.050(a)(10). However Section 8 of the DFA provides:
  - a. Except as provided below in Section 8b, the Landfill shall not allow a customer to claim a Useful Material exemption from the Regional System Fee under Metro Code Section 5.01.150(b)(3) and from Excise Tax under Metro Code Section 7.01.050(a)(10) until the landfill submits a written request for the exemption, including a Useful Material management plan, to Respondent for review and written approval. The Landfill must receive Respondent's approval before allowing an exemption under Section 8 of this Agreement.
  - b. The Landfill may allow a customer to claim an exemption under Section 8 of this Agreement without Respondent's prior approval, provided that the Landfill accepted and used such Useful Materials before January 1, 2009, and complies with Section 8c below.
  - c. The Landfill shall submit a Useful Material management plan that incorporates the following information:
    - (1) A description of the Useful Material and where it was generated;
    - (2) Documentation demonstrating that the Landfill intends to use and will use the Useful Material productively in the operation of the Landfill;

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<sup>4</sup> MC § 5.01.010(aaa) defines "useful material" as:

"Useful material" means material that still has or retains useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and which, when separated from Solid Waste, is suitable for use in the same or other purpose(s). Types of Useful Materials are: material that can be Reused; Recyclable Material; organic material(s) suitable for controlled biological decomposition such as for making Compost; material used in the preparation of fuel; material intended to be used, and which is in fact used, for construction or land reclamation such as Inert material for fill; and material intended to be used, and which is in fact used, productively in the operation of landfills such as roadbeds or alternative daily cover. For purposes of this Code, Cleanup Material Contaminated By Hazardous Substances are not Useful Materials.

- (3) Documentation demonstrating that the Landfill will accept the Useful Material at no charge;
  - (4) If the Landfill intends to use the Useful Material as Alternative Daily Cover, documentation demonstrating that the DEQ has approved the use of the material as Alternative Daily Cover at the Landfill;
  - (5) A description of how the Landfill will manage the Useful Material, including without limitation an explanation, if applicable, of how the Landfill will store the Useful Material before use; and
  - (6) An estimate of the proposed tons of Useful Material the Landfill expects to accept.
- d. The Landfill's failure to manage Useful Material in compliance with its Useful Material management plan shall constitute a breach of this Agreement.
6. Section 17.e of the DFA provides:

A waiver of any term or condition of this Agreement must be in writing, signed by either the COO, if Metro is making the waiver, or by an authorized representative of the Landfill, if the Landfill is making the waiver. Waiver of a term or condition of this Agreement by either party shall neither waive nor prejudice that other party's right otherwise to require performance of the same term or condition or any other term or condition.

### III. FINDINGS OF FACT

1. DEQ regulates the operation of the Finley Buttes landfill. DEQ regulations require that Appellant apply a suitable cover material over any exposed waste at the end of each operating day to protect the environment and public health. Daily cover must consist of at least six-inches of earthen material or an alternative material, ADC, that provides equivalent performance and has been approved by DEQ. (Metro Exhibit 24). DEQ approves ADC materials on a case-by-case basis. "All request for ADCM<sup>[5]</sup> approval will require a trial period of ADCM use and evaluation to demonstrate the ADCM is as protective as earthen daily cover material... During the trial period, solid waste used as ADCM is subject to all applicable Department fees as described in OAR Chapter 340, Division 097, including the per-ton solid waste disposal fee in OAR 340-097-0120(5)." (p. 2, Metro Exhibit 24).

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<sup>5</sup> "Alternative Daily Cover Material."

2. Schnitzer Steel Industries, Inc. (“Schnitzer”) is a metal recycler that operates a 7,000 horsepower electric “Mega Shredder” at its facility at 12005 N. Burgard Road in Portland, Oregon. Schnitzer’s shredding system recycles automobile bodies, appliances, pipes, metal roofing, motor blocks, and other metal goods. Schnitzer recovers and recycles ferrous and non-ferrous metals from the shredded material. ASR consists of shredded plastic, rubber, wood, upholstery and other non-metal residual materials remaining after the metals have been removed from the shredder output. (Metro Exhibit 4 and Testimony of Mr. Large). Schnitzer sends the ASR to landfills for disposal.
3. Schnitzer ASR has been used, with DEQ approval, as ADC at the Columbia Ridge landfill in Oregon since approximately 1994. Appellant has used Schnitzer ASR as ADC at its Wasco County landfill, with DEQ approval, since 2009. (Metro Exhibit 2 and testimony of Mr. Large). Schnitzer ASR is also used as ADC at the Weyerhaeuser landfill. (Metro Exhibit 2). Schnitzer ASR used as ADC at the Columbia Ridge, Weyerhaeuser, and Wasco County landfills is exempt from Respondent’s taxes and fees. (Metro Exhibit 5).
4. Appellant requested DEQ approval of the use of ASR as ADC at the Finley Buttes Landfill. By letter dated October 1, 2008, DEQ denied Appellant’s request for long-term approval of ASR as ADC and required that Appellant conduct a trial use of ASR as ADC at Finley Buttes. (Metro Exhibit 2).
5. Neither the DFA nor the Metro Code define the phrase “DEQ approval.” DEQ’s “Guidelines for Alternative Daily Cover Material Application” (Metro Exhibit 24) states, “All request for ADCM approval will require a trial period of ADCM use...” DEQ continues to charge fees for ADC materials used during the trial period. DEQ only allows a fee exemption for ADC material after DEQ approves the particular material for long-term use as ADC. The purpose of the trial period is to evaluate the use of ASR as ADC. (p. 14 of Metro Exhibit 7).
6. Respondent waived taxes and fees during a DEQ trial period use of ASR as ADC at the Columbia Ridge landfill in 1995. (Metro Exhibit 3). However Respondent has required payment of taxes and fees for materials used as ADC during DEQ required trial periods since at least 2005, when DEQ changed its procedures for the conduct of performance trials. (Testimony of Ms. Norton).
7. On January 23, 2009, Appellant sent a letter to Respondent requesting waiver of excise taxes and system fees for ASR used as ADC at the Finley Buttes Landfill during the DEQ approved trial period. (Metro Exhibit 3).
8. Appellant’s January 23, 2009 letter included the statement, “As required by Section 8 of the DFA, please find enclosed a copy of materials constituting WCI’s ‘Useful Material management plan’ as submitted to DEQ for the Schnitzer ASR at FBL.” (p. 2 of Metro Exhibit 3). Appellant’s Useful Material management plan is



dated December 10, 2008. (pp. 20-21 of Metro Exhibit 21). Respondent searched for copies of the referenced attachment in its paper and electronic records but did not find a copy of the referenced attachment in its records, other than a copy included with Respondent's July 23, 2009 submittal. (Testimony of Mr. Brower). Respondent did not notify Appellant that the management plan was not included in the January 23, 2009 submittal. (Testimony of Mr. Large and Mr. Brower). By email dated July 22, 2009, Respondent informed Appellant that Respondent had not received a useful material management plan from Appellant. (p. 2 of Metro Exhibit 7).

9. By letter dated February 13, 2009, Schnitzer also submitted a separate request that Respondent grant an exemption from excise taxes and system fees for the disposal of ASR generated by Schnitzer and used as ADC during the DEQ approved trial period at Finley Buttes and at the Coffin Butte landfill near Corvallis, Oregon, operated by Appellant's competitor, Allied Waste Services. (Metro Exhibit 4 and testimony of Mr. Large).
10. Respondent replied to Schnitzer's request for exemption by letter dated April 3, 2009. (Metro Exhibit 5).
  - a. The letter refers to Schnitzer's request to use ASR generated by Schnitzer as ADC at the Coffin Butte and Finley Buttes landfills. (¶1, p.1 of Metro Exhibit 5). The letter noted that the Metro Code exempts useful material from taxes and fees, provided that the useful material is intended to be used and is in fact used productively in the operation of the landfill and the material is accepted at no charge.
  - b. The letter further notes that landfills that are subject to a designated facility agreement with Respondent are required to submit a useful material management plan to Respondent for its approval prior to allowing an exemption from fees and taxes. The letter notes that the Columbia Ridge, Wasco County and Weyerhaeuser landfills received Respondent's approval to use ASR as ADC, exempt from fees and taxes. "All of the other designated landfills must first obtain Respondent's approval prior to allowing such an exemption for [Schnitzer's] ASR." (¶2, p.1 of Metro Exhibit 5).
  - c. The letter notes that since 2005, Respondent has not allowed an exemption from fees and taxes for material used as ADC unless DEQ granted final approval for the landfill to use the material as ADC. Respondent agreed to, "[c]onsider a different approach in this specific instance." (¶3, p.1 of Metro Exhibit 5). Respondent required that Schnitzer continue to pay fees and taxes for ASR delivered to landfills during the DEQ required trial period, but Respondent agreed to refund fees and taxes paid:

[W]hen all of the following conditions are met:

1. The landfill must submit to Metro a written request for an exemption and a useful material management plan in accordance with the terms provided in its designated facility agreement;
2. The landfill must accept at no disposal charge and use the ASR material as ADC in accordance with the performance trial criteria approved by the DEQ;
3. The landfill must complete its performance trial and obtain DEQ approval to use ASR as ADC by no later than June 30, 2010; and
4. SSI<sup>[6]</sup> Must submit to Metro a written request for a refund of the Fees and Taxes that it paid for the ASR that was used during the ADC performance trials no later than September 1, 2010.

The landfill is solely responsible for submitting an acceptable plan and for conducting its ADC performance trials in accordance with applicable DEQ requirements. The landfill's plan must include an acceptable method for recording the material received and the material used. The landfill's records will be the exclusive source by which Metro determines any eligible refund.

(p.2 of Metro Exhibit 5).

- d. Respondent sent courtesy copies (“cc”) of the letter to 13 persons, including Appellant, Allied Waste, Waste Management and DEQ.
11. Appellant submitted an application to DEQ on December 12, 2008, to perform a 12-month trial for the use of ASR as ADC at Finley Buttes landfill. (p. 16 of Metro Exhibit 7). DEQ staff recommended approval of the trial on April 21, 2009. (*Id.*). By letter dated May 20, 2009, DEQ accepted Appellant's application to conduct the trial use of ASR generated by Schnitzer as ADC during a 12-month trial period at Finley Buttes landfill.<sup>7</sup> (p. 14 of Metro Exhibit 7). On June 16, 2009, Appellant began receiving ASR and using it as ADC at Finley Buttes landfill. (p. 2 of Metro Exhibit 7 and Metro Exhibit 14). Appellant reported to Respondent that it received 1,475.34 tons of ASR at Finley Buttes Landfill between June 16 and 30, 2009. (Appellant Exhibit 109 and p. 2 of Metro Exhibit 7).

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<sup>6</sup> Schnitzer Steel Industries

<sup>7</sup> The January 23, 2009 letter from David Wiley to Steve Kraten (Metro Exhibit 3) states “WCI received notice from DEQ on January 13, 2009 that the ASR trial period at FBL may commence immediately.” However there is no further evidence to that effect. The statement in Metro Exhibit 3 conflicts with the April 21 and May 20, 2009 DEQ letters. (pp 14 and 18 of Metro Exhibit 7).

12. Respondent was aware that Appellant intended to pay taxes and fees on behalf of Schnitzer for ASR received at Finley Buttes during the trial period. (Testimony of Ms. Norton). On June 24, 2009 Appellant entered in to an agreement with Schnitzer, whereby Appellant agreed to pay to Respondent all fees and taxes for ASR received and used as ADC during the DEQ required trial period and Schnitzer assigned to Appellant Schnitzer's rights to receive a refund of taxes and fees paid to Respondent. (Metro Exhibit 6 and Appellant Exhibit 102). Respondent required evidence of such an agreement before it would allow Respondent to request a refund of taxes and fees paid for Schnitzer's ASR delivered to Finley Buttes Landfill during the trial period. (p. 2 of Metro Exhibit 10 and testimony of Ms. Norton). Respondent was aware that Appellant expected a full refund of all taxes and fees paid during the DEQ trial period. (p.2 of Metro Exhibit 7).
13. By letter dated July 23, 2009, Appellant provided Respondent with some of the information required by Section 8 of the DFA. (Metro Exhibit 7). The information submitted by Appellant did not include an estimate of the amount of ASR Appellant intended to receive at Finley Buttes landfill, as required by Section 8.c(6) of the DFA. (Metro Exhibit 8). By email dated August 12, 2009, Respondent requested Appellant provide such an estimate as required by Section 8.c(6) of the DFA. (*Id.*). On August 13, 2009 Appellant responded that it expected to send "[a]pproximately 300 tons per week..." of ASR to Finley Buttes landfill. (Metro Exhibit 9). Appellant stated that the amount of ASR generated at Schnitzer's Portland facility "[i]s down significantly in 2009 and is not expected to rebound to prior levels until 2010 or later." (*Id.*). By letter dated September 23, 2009, Appellant stated that, "There is currently no excess amount of ASR available to begin our test..." (p. 18 of Metro Exhibit 7). Appellant diverted a portion of the ASR Schnitzer shipped to Wasco County landfill to Finley Buttes Landfill in order to ensure a sufficient supply of ASR to complete the DEQ trial. (p. 18 of Metro Exhibit 7, Metro Exhibit 11 and testimony of Mr. Large). Finley Buttes Landfill expected to receive all of the ASR generated at Schnitzer's Portland operation after the DEQ trial period. (Metro Exhibit 9).
14. Appellant reported to Respondent that it received an average of 4,100 tons of ASR per month at its Wasco County landfill between December 2008 and June 2009. (Appellant Exhibit 101). Beginning in July 2009, Appellant submitted monthly reports to Respondent identifying the total tons of solid waste and ASR received at Finley Buttes landfill.
15. On August 25, 2009, Respondent approved Appellant's useful material management plan, based on the packet of information dated July 23, 2009 and the "supplemental tonnage estimate, dated August 13, 2009..." (Metro Exhibit 10). Respondent agreed to refund up to a maximum \$420,000 of the fees and taxes paid to Respondent for Schnitzer's ASR that was received and used as ADC during the trial period. The \$420,000 maximum was based on Appellant's August

- 13, 2009 estimate of the tonnage of ASR Appellant expected to receive at Finley Buttes during the trial period. (*Id.*)
16. By letter dated September 23, 2009, Appellant objected to the \$420,000 cap on the refund amount established by Respondent. (Metro Exhibit 11). Appellant stated that the tonnage estimate in the August 13, 2009 letter was the minimum amount of ASR that DEQ required Finley Buttes receive in order to conduct the ADC trial. Appellant informed Respondent that Schnitzer expects the amount of ASR produced to increase throughout the remainder of 2009 and 2010 and Appellant intends “[t]o receive as much [ADC] as Schnitzer can tender at [Finley Buttes landfill], but again, at least 300 tons per week.” *Id.* Appellant requested that Respondent confirm that Respondent will refund 100-percent of the fees and taxes paid for ASR received and used as ADC during the 12-month trial period. *Id.* The federal “Cash for Clunkers” program substantially increased the number of cars that were sent to Schnitzer for recycling, increasing the amount of ASR generated by Schnitzer. (Testimony of Mr. Large).
  17. On October 23, 2009, Respondent informed Appellant that it would agree to a limited increase in the refund cap established in Respondent’s August 25, 2009 letter. Respondent agreed to refund taxes and fees paid for ASR used as ADC, up to 15-percent of the total waste tonnage disposed at Finley Buttes Landfill during the trial period, less all other ADC materials received and used at the landfill during the trial period. (Metro Exhibit 12). Respondent applied the 15-percent cap over the entire 12-month trial period. (Testimony of Ms. Norton). By email dated October 28, 2009, Appellant acknowledged receipt of Respondent’s letter and stated that Appellant “[u]nderstand[s] the position Metro is taking on the [ASR] trial at Finley.” (Metro Exhibit 13).
  18. On February 18, 2010, Respondent informed Appellant that 9,121.17 tons of the 15,812.41 tons of ASR received at Finley Buttes Landfill between June 22, 2009 and October 21, 2009, was eligible for a refund, based on the conditional refund approved in Respondent’s October 23, 2009 letter to Appellant. (Metro Exhibit 15).
  19. By letter dated February 25, 2010, Appellant objected to Respondent’s limited refund calculation, arguing that a full refund of all taxes and fees paid for ASR received and used as ADC during the trial period at Finley Buttes Landfill is appropriate. (Metro Exhibit 16). Respondent denied Appellant’s objection to the limited refund and reiterated the refund limitation set out in Respondent’s October 23, 2009 letter. (Metro Exhibit 17). By letter dated March 18, 2010, Respondent noted that the 15-percent limit “[w]as based on the internal guidance used by the Oregon Department of Environmental Quality (“DEQ”) for reviewing ADC usage at landfills.” (p. 1 of Metro Exhibit 17). DEQ applies the 15-percent calculation as a trigger for investigation rather than an absolute enforcement standard. Respondent’s use of the 15-percent limit is independent from DEQ’s regulation. *Id.* On June 10, 2010, Respondent notified Appellant of the steps necessary to

claim a refund at the end of the trial period, repeating Respondent's prior determination that the refund amount is limited to 15-percent of the total waste disposed at Finley Buttes Landfill during the trial period. (Metro Exhibit 18).

20. Appellant completed the trial period on June 16, 2010. DEQ approved the use of ASR generated by Schnitzer as SDC at Finley Buttes on June 23, 2010. (p 4-5 of Metro Exhibit 19 and Appellant Exhibit 104). On July 2, 2010, Appellant requested a refund of all taxes and fees paid for ASR used as ADC during the 12-month trial period at Finley Buttes landfill. Appellant calculated a refund amount of \$819,022.73, based on Appellant's receipt and use of 30,164.62 tons of ASR as ADC during the trial period. (Metro Exhibit 19). Appellant used all ASR received at Finley Buttes as ADC on the day it was received. (Appellant Exhibit 103).
21. Respondent refunded \$676,427.62 to Appellant for taxes and fees paid for ASR received and used as ADC during the trial period. (Metro Exhibit 20). Respondent calculated the refund based on the formula set out in Respondent's October 23, 2009 letter:
  - a. 15-percent of 525,741.22 tons of waste received during the trial period = 78,861.18 tons
  - b. 78,861.18 tons – 53,908.27 tons of other ADC used during the trial = 24,952.91 tons of the 30,164.72 tons of ASR received and used during the trial period that is available for refund.
  - c.  $24,952.91 \times$  the tax and fee rates in effect during relevant portions of the trial period<sup>8</sup> = \$676,427.62.(Metro Exhibit 20).
22. Appellant objected to the refund amount and argued that all ASR received and used as ADC during the trial period should be subject to refund. (Metro Exhibit 21). Respondent denied Appellant's objection and referred Appellant to the dispute resolution procedures set out in Section 14 of the DFA. (Metro Exhibit 22). On October 21, 2010 Appellant filed a request for contested case hearing. (Metro Exhibit 23).
23. Respondent subsequently approved conditional refunds of fees and taxes paid for other types of materials used as ADC during DEQ approved trial periods at Finley Buttes and other landfills in the region. Respondent imposed the same 15-percent

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<sup>8</sup> Between June 16, 2009 and August 5, 2009 Respondent's Fee rate was \$16.04 per ton and Respondent's tax rate for \$8.97 per ton. Between August 6, 2009 and the end of the trial, Respondent's Fee rate was \$17.53 per ton and Respondent's tax rate for \$9.83 per ton.

limit and required deduction of other ADC materials as it applied in this case. (Appellant Exhibits 105, 106 and 107). In two letters Respondent said:

Metro will consider the Landfill's 15-percent limit to be controlling. For example, if the Landfill has reported other material as accepted and used as ADC during the same period, the Landfill may choose to apply these tons to its 15 percent limitation, which may reduce the amount of the refund available to Greenway. The Landfill's records will be the exclusive source by which Metro will determine any eligible refund.

(p. 2 of Appellant Exhibit 105 and p. 2 of Appellant Exhibit 106). In the third letter, Respondent said, "In addition, the amount of potential refund will be limited to a maximum of 15 percent of the total waste tonnage disposed at the landfill during the trial less all other ADC materials received and used at the landfill during the same period." (Underline in original. Appellant Exhibit 107).

#### **IV. CONCLUSIONS OF LAW**

1. Appellant failed to meet its burden of proof that it is entitled to a full refund of all taxes and fees paid for ASR received and used as ADC at Finley Buttes Landfill during the one-year DEQ approved trial period.
2. Section 8.c(4) of the DFA prohibits Appellant from allowing a useful material exemption from payment of fees and taxes until the DEQ has approved use of the material as ADC. Trial period approval is not sufficient to comply with Section 8.c(4) of the DFA. Therefore Respondent is not required to waive or refund taxes and fees paid during the DEQ trial period.
3. However Respondent agreed to a limited waiver of Section 8.c(4) of the DFA in this case. Respondent agreed to refund fees and taxes for ASR used as ADC during the trial period, up to a maximum 15-percent of the total tons of solid waste received at Finley Buttes landfill, minus the all other material received and used as ADC during the trial period.
4. The \$676,427.62 in taxes and fees refunded to Appellant is consistent with the limited waiver approved by Respondent.

## V. OPINION

1. The Hearings Officer finds that Respondent was not required to refund fees and taxes paid for ASR received and used as ADC during the 12-month trial period required by DEQ at the Finley Buttes landfill. Section 8.a of the DFA prohibits Appellant from allowing a useful material exemption from payment of fees and taxes without Respondent's written approval of a Useful Material management plan. Section 8.c(4) of the DFA requires that Appellant demonstrate that DEQ has approved use of the material as ADC at the landfill. The Hearings Officer finds that the term "DEQ approval" in Section 8.c(4) of the DFA requires long term DEQ approval. Trial period approval is not sufficient to comply with Section 8.c(4) of the DFA. Therefore, absent modification of the DFA, Respondent is not required to waive or refund taxes and fees paid during the DEQ trial period. DEQ did not "approve" the use of ASR as ADC at Finley Buttes until June 23, 2010, after Appellant completed the 12-month trial period.
  - a. Neither the DFA nor the Metro Code define the phrase "DEQ approval." However Respondent has consistently construed the phrase to only apply to long term DEQ approval of ADC material. Respondent has not allowed an exemption from fees and taxes for ADC material during a DEQ required trial period since at least 2005, when DEQ changed its procedures for the conduct of performance trials. It appears, based on Appellant's actions, that Appellant agreed with Respondent's interpretation of the phrase "DEQ approval," as Appellant continued to seek Respondent's approval of a waiver of taxes and fees during the trial period, rather than pursuing the argument set out in Metro Exhibit 3, that, "[A]DC is not to be treated differently on the basis of pre- or post-trial period status." (p. 1 of Metro Exhibit 3).
  - b. DEQ regulations clearly distinguish between "trial period" and "long term" approval of the use of ADC materials at landfills. DEQ's "Guidelines for Alternative Daily Cover Material Application" (Metro Exhibit 24) states that, "All requests for ADCM approval will require a trial period of ADCM use..." In addition, DEQ continues to charge fees for ADC materials used during the trial period. DEQ only allows a fee exemption for ADC material after DEQ approves the particular material for long-term use as ADC. The purpose of the trial period is to evaluate the use of ASR as ADC. The Hearings Officer finds that DEQ approval required by Section 8.c(4) of the DFA requires long-term approval, after a trial period, consistent with DEQ requirements.
  - c. In this case, DEQ did not "approve" the use of ASR as ADC at Finley Buttes until June 23, 2010, after Appellant completed the 12-month trial period. DEQ expressly denied long-term use of ASR as ADC at Finley Buttes without a trial period. (p 2 of Metro Exhibit 2). In its May 20, 2009

letter DEQ stated that it, “[a]ccepts the application to conduct the trial use of SMRR waste at the Finley Buttes Landfill...”

- d. Therefore, absent Respondent’s approval of a modification of the DFA, Appellant could not comply with Section 8.c(4) of the DFA and Respondent was not required to refund or waive taxes and fees for ASM received and used as ADC at Finley Buttes Landfill during the trial period.
  - e. If the term “approved” in Section 8.c(4) of the DFA includes DEQ approval of a trial period, as Appellant alleges, then Respondent would be prohibited from collecting taxes and fees during any DEQ required trial period at any landfill. However, as noted above, Respondent has been collecting such taxes and fees since at least 2005.
2. As noted above, Section 8.a of the DFA prohibits Appellant from allowing a useful material exemption from payment of fees and taxes without Respondent’s written approval of a Useful Material management plan. Appellant began receiving ASR and using it as ADC at the Finley Buttes Landfill on a trial basis beginning on June 16, 2009. However Appellant did not submit a complete useful material management plan, as required by Section 8.c of the DFA, until August 13, 2009.
- a. Although Appellant’s January 23, 2009 letter stated that it included a Useful Material management plan and Appellant’s plan is dated December 10, 2008, Respondent did not find a copy of the Useful Material management plan in its records. There is no substantial evidence in the record that Appellant actually included a copy of the plan in its January 23, 2009 submittal to Respondent.
    - i. Even if Appellant had submitted a Useful Material management plan in January 2009, Respondent could not approve it, because it did not include an estimate of the tons of ASR Appellant expected to receive as required by Section 8.c(6) of the DFA.
  - b. Appellant submitted a Useful Material management plan that included the information required by Section 8.c(1) through (5) of the DFA on July 23, 2009. (Metro Exhibit 7). However the submittal did not include “An estimate of the proposed tons of Useful Material the Landfill expects to accept” as required by Section 8.c(6) of the DFA.
  - c. On August 13, 2009, Appellant provided the estimate required by Section 8.c(6) of the DFA, notifying Respondent that it expected to receive approximately 300 tons of ASR per week at the Finley Buttes Landfill during the 12-month trial period.



3. Based on its review of Appellant's Useful Material management plan, Respondent agreed to a limited waiver of compliance with Section 8 of the DFA during the DEQ trial period at Finley Buttes landfill. Respondent agreed to refund Schnitzer up to a maximum \$420,000 in fees and taxes at the end of the trial period, if DEQ approved the long-term use of ASR as ADC. The \$420,000 refund cap was based on Appellant's estimate that it would receive approximately 300 tons of ASR per week at the Finley Buttes landfill. Although Respondent knew that Appellant desired a full refund of all taxes and fees paid on ASR received and used as ADC at Finley Buttes Landfill during the trial period, Respondent never agreed to provide a full refund.
4. Appellant subsequently increased its estimate of the amount of ASR it expected to receive at Finley Buttes landfill, stating that the 300 tons per week stated in its August 13, 2009 letter is a minimum and Finley Buttes intends to receive as much ASR as Schnitzer can deliver during the trial period. Appellant's September 23, 2009 letter was the first time Appellant conveyed an intent to receive large amounts of ASR during the trial period at Finley Buttes, which would result in a large refund at the end of the trial period. All of Appellant's prior correspondence referred to the limited supply of ASR, with the majority going to Wasco County landfill. Appellant had to "divert" ASR loads from Wasco County to Finley Buttes in order to ensure sufficient supply of ASR to conduct the DEQ trial.
5. Respondent had no reason to believe that Appellant's initial estimate of 300 tons of ASR was inaccurate, or was only intended as a minimum amount.
  - a. Appellant's August 13, 2009 letter was submitted in response to Respondent's August 12, 2009 request for "[a]n estimate of the proposed tons of Useful Material that the Landfill expects to accept." (Metro Exhibit 8). Appellant's letter states that, "During the 12-month trial, Schnitzer Steel Industries plans to ship approximately 300 tons per week to Finley Buttes." (Metro Exhibit 9). Appellant's letter did not indicate that this was a "minimum" amount of ASR.
  - b. Prior to and during the initial portion of the trial period, Schnitzer's ASR production was significantly lower than in prior years and was not expected to increase until 2010 or later. Although Appellant's Wasco County landfill was receiving an average of 4,100 tons of ASR per month, there was "[n]o excess amount of ASR available to begin [the DEQ trial period at Finley Buttes landfill]." (p. 18 of Metro Exhibit 21). Appellant was diverting loads of ASR from its Wasco County landfill to Finley Buttes Landfill in order to ensure that a sufficient supply of ASR was available to conduct the DEQ trial at Finley Buttes landfill. "Without diverting [ASR] from Wasco County to Finley Buttes, the DEQ ADC test would have experienced little or no [ASR] for utilization." (Metro Exhibit 11).

- c. Appellant reported to Respondent that it received 1,475.34 tons of ASR at Finley Buttes Landfill during the two week period between June 16 and June 30, 2009. Although this is more than the Appellant's estimate of 300 tons per week, it is not sufficient to cause Respondent to question Appellant's estimate. Appellant was only reporting on ASR received during the initial two-week period of the DEQ trial. Appellant's estimate was submitted in mid-August, after more than two months of experience with receiving ASR at Finley Buttes.
6. In response to Appellant's notice that it intended to receive potentially unlimited amounts of ASR during the trial period, Respondent agreed to modify its limited waiver of compliance with Section 8 of the DFA during the DEQ trial period. However Respondent was unwilling to allow an unlimited refund in this case, because this was an unusual case, the first time Respondent allowed a refund of fees and taxes during a DEQ trial. Respondent wanted to maintain some control over the amount of the refund in order to ensure fairness and equity for ratepayers.<sup>9</sup> Therefore Respondent imposed a cap on the amount of the refund it would allow during the trial period. Respondent agreed to refund taxes and fees paid on ASR received at Finley Buttes up to a maximum 15-percent of the total solid waste tonnage disposed at the landfill during the trial period, minus all other ADC material received and used at the landfill during the trial period.
    - a. Respondent chose the 15-percent limit as a convenient and readily identifiable standard by which to limit the amount of the refund that would be allowed for this unique variance from Respondent's standard practice of collecting taxes and fees during DEQ trials. The 15-percent limit was a standard the parties were familiar with. Although not codified in DEQ's regulations, it is DEQ's general practice to limit ADC to 15-percent of the total amount of solid waste disposed of at a landfill. The fact that DEQ does not rely on the 15-percent standard as an absolute limit is irrelevant. Respondent could have chosen some other method for imposing a cap on the maximum amount of refund it would allow during the trial period. Respondent relied on the 15-percent standard because it was familiar to the parties.
    - b. Whether Respondent approved different limits for other waste generators in Appellant Exhibits 105 and 106 is irrelevant. In this case Respondent limited its waiver to 15-percent of the total amount of solid waste disposed of at the landfill, minus all other materials received and used as ADC at

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<sup>9</sup> In her pre-hearing brief, Ms. Bellia argued that the 15% refund cap was for "budgeting purposes." However this statement by Respondent's attorney is not evidence or testimony of a party. Ms. Bellia is Respondent's attorney. There is no evidence that Ms. Bellia has any superior knowledge about the basis for Respondent's actions. Ms. Norton clearly testified that the purpose of the cap was "to maintain some control over the amount of the refund and to ensure fairness and equity for ratepayers." Ms. Bellia's statement in her brief is an error.

the landfill during the trial period. Respondent applied an identical refund cap in at least one other DEQ ADC trial, Appellant Exhibit 107.

7. Appellant may have disagreed with the limited waiver allowed by Respondent, but Appellant clearly understood it.
8. Respondent did not modify the waiver after October 23, 2009. All subsequent correspondence from Respondent merely reiterates and provides examples of the 15-percent cap on the amount of refund that Respondent agreed to allow as a modification of the DFA in this case.
9. Appellant could have modified its practices to comply with the limited refund approved by Respondent, thereby ensuring the receipt of a full refund of all taxes and fees paid during the trial period. Appellant could have limited the amount of ASR shipped to Finley Buttes Landfill to comply with the cap imposed by Respondent, shipping the remainder to its Wasco County landfill. DEQ had already approved the long term use of ASR as ADC at the Wasco County landfill. Therefore all ASR received and used as ADC at Wasco County would have been exempt from fees and taxes. Appellant exceeded the 15-percent cap during the initial portion of the trial period. However Respondent agreed to apply the 15-percent cap over the entire 12-month trial period. Therefore Appellant could have ensured a full refund by reducing the amounts of ASR shipped to Finley Buttes during the remainder of the trial period, ensuring that the total amount of ASR received at Finley Buttes was less than 15-percent of the total amount of solid waste and other ADC received during the entire 12-month trial. Instead, Appellant chose to continue shipping large volumes of ASR to Finley Buttes throughout the entire trial period.
10. During the 12-month trial period Appellant received 30,164.62 tons of ASR, 53,908.27 tons of other ADC and 525,741.22 tons of solid waste at Finley Buttes Landfill during the 12-month trial period. Appellant utilized 100-percent of the ASR and other ADC material as ADC. Appellant requested a refund of \$819,022.73 for 100-percent of the ASR material received and used as ADC during the trial period.
11. Respondent refunded \$676,427.62 to Appellant for taxes and fees paid for ASR received and used as ADC during the trial period. Respondent calculated the refund based on the formula set out in Respondent's October 23, 2009 letter:
  - a. 15-percent of 525,741.22 tons of waste received during the trial period = 78,861.18 tons.
  - b. 78,861.18 tons – 53,908.27 tons of other ADC used during the trial = 24,952.91 tons. Therefore 24,952.91 tons of the 30,164.72 tons of ASR received and used during the trial period is eligible for refund.

- c.  $24,952.91 \times$  the tax and fee rates in effect during relevant portions of the trial period<sup>10</sup> = \$676,427.62.
12. The Hearings Officer finds that the refund amount is reasonable and consistent with Respondent's conditional waiver of the requirements of Section 8 of the DFA during the DEQ trial period.
  13. The Hearings Officer finds that the only relationship between Appellant and Respondent is contractual, as set out in the DFA. Appellant's Finley Buttes Landfill is located outside of the Metro region. Therefore it is exempt from compliance with the Metro Code. With one exception that is not relevant to this case,<sup>11</sup> the Finley Buttes Landfill may only accept solid waste generated within Metro in accordance with the DFA. (MC § 5.05.030(8)(A)). Therefore this dispute is bounded by the terms of the DFA. The Metro Code is inapplicable.
  14. The DFA does not incorporate by reference the Metro Code. To the contrary, Section 8 of the DFA creates an express exception to the Useful Material exemption otherwise allowed by MC § 5.01.150(b)(3) and § 7.01.050(a)(10).<sup>12</sup> Section 8 of the DFA prohibits Appellant from allowing customers to claim a Useful Material exemption until Appellant receives written approval from

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<sup>10</sup> Between June 16, 2009 and August 5, 2009, Respondent's Fee rate was \$16.04 per ton and Respondent's tax rate for \$8.97 per ton. Between August 6, 2009 and the end of the trial, Respondent's Fee rate was \$17.53 per ton and Respondent's tax rate for \$9.83 per ton.

<sup>11</sup> MC 5.05.030(8)(B) provides that the Finley Buttes Landfill may accept solid waste generated within Metro "subject to a non-system license issued to a person transporting to the facility solid waste not specified in the [DFA] agreement."

<sup>12</sup> MC § 5.01.150(b) provides, in relevant part:

(b) User fees shall not apply to:

...

- (3) Useful Material that is accepted at a Disposal Site that is listed as a Metro Designated Facility in Chapter 5.05 or accepted at a Disposal Site under authority of a Metro Non-System License issued pursuant to Chapter 5.05, provided that the Useful Material: (A) is intended to be used, and is in fact used, productively in the operation of the Disposal Site such as for roadbeds or alternative daily cover; and (B) is accepted at the Disposal Site at no charge.

MC § 7.01.050(a) provides, in relevant part:

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

...

- (10) Persons who deliver useful material to disposal sites, provided that such sites are listed as a Metro Designated Facility under Metro Code Chapter 5.05 or are named in a Metro Non-System License and provided further that the Useful Material: (A) is intended to be used, and is in fact used, productively in the operation of such site for purposes including roadbeds and alternative daily cover; and (B) is accepted at such site at no charge.

Respondent allowing the exemption.<sup>13</sup> In order to obtain the required approval, Appellant must submit a Useful Material management plan that includes certain information, including, “If the Landfill intends to use the Useful Material as Alternative Daily Cover, documentation demonstrating that DEQ has approved use of the material as Alternative Daily Cover at the Landfill.” Section 8.c(4) of the DFA.

15. The DFA is consistent with the authority granted to Respondent by ORS 268.507, which authorizes Respondent to, “[b]y ordinance impose excise taxes on any person using the facilities, equipment, systems, functions, services or improvements owned, operated, franchised or provided by the district.” Respondent adopted an ordinance, the Metro Code, that establishes excise taxes, and exemptions therefrom. MC § 7.01.020 establishes excise taxes on the use of Metro facilities, equipment and services. MC § 7.01.050(a)(10) provides an exemption from excise taxes for Useful Material that is delivered to a site, “[I]isted as a Metro Designated Facility under Metro Code Chapter 5.05...” and used as alternative daily cover.”
16. The same ordinance, the Metro Code, authorizes disposal of waste generated in the Metro area at Appellant’s Finley Buttes landfill. However MC § 5.05.030(a)(8)(A) provides that Finley Buttes Landfill may only accept solid waste generated within Metro, “as specified in an agreement entered into between Metro and Finley Buttes Landfill Company authorizing receipt of such waste.” The DFA is the “agreement” referred to in MC § 5.05.030(a)(8)(A). The DFA, which is required by the Metro Code, creates an exception to the excise tax exemption established by MC § 7.01.050(a)(10). The excise tax exemption in the DFA is consistent with ORS 268.507, because the Metro Code expressly requires the DFA before Finley Buttes Landfill may accept any solid waste generated within the Metro region.
17. ORS 268.507 only regulates Respondent’s authority to impose excise taxes. It does not regulate the user fees authorized by MC § 5.01.150. ORS 268.317(5) appears to allow Respondent to impose user fees without limitation.<sup>14</sup>

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<sup>13</sup> Section 8.a of the DFA provides:

Except as provided below in Section 8b, the Landfill shall not allow a customer to claim a Useful Material exemption from the Regional System Fee under Metro Code Section 5.01.150(b)(3) and from Excise Tax under Metro Code Section 7.01.050(a)(10) until the landfill submits a written request for the exemption, including a Useful Material management plan, to Metro for review and written approval. The Landfill must receive Metro approval before allowing an exemption under Section 8 of this Agreement.

<sup>14</sup> ORS 268.317(5) authorizes Metro to:

Regulate, license, franchise and certify disposal, transfer and resource recovery sites or facilities; establish, maintain and amend rates charged by disposal, transfer and resource recovery sites or facilities; establish and collect license or franchise fees; and otherwise control and regulate the

18. Appellant had no right to rely on Respondent's April 3, 2009 letter to Schnitzer (Metro Exhibit 5). Appellant requested that Respondent allow a Useful Material exemption from fees and excise taxes for Schnitzer ASR used as ADC during the trial period. (Metro Exhibit 3). Schnitzer, in a separate letter, also requested a Useful Material exemption. (Metro Exhibit 4). Respondent replied to Schnitzer's exemption request on April 3, 2009. (Metro Exhibit 5). Respondent noted that it has not allowed an exemption from fees and taxes during a DEQ approved trial period since at least 2005. However Respondent agreed to, "[c]onsider a different approach in this specific instance." Respondent agreed that if DEQ approved the long term use of ASR as ADC, Respondent would refund fees and taxes paid during the trial period, subject to certain conditions, including a condition that, "the landfill must submit to Metro a written request for an exemption and a useful material management plan in accordance with the terms provided in its designated facility agreement." (p. 2 of Metro Exhibit 5). Respondent expressly noted that ASR received at the Columbia Ridge, Wasco County and Weyerhaeuser Regional landfills is already exempt from Metro taxes and fees. "All of the other designated landfills must first obtain Metro's approval prior to allowing such an exemption for [Schnitzer's] ASR." (p. 1 of Metro Exhibit 5).
19. Metro Exhibit 5 is not a contract or agreement between Appellant and Respondent and it was not intended to, and did not, modify the DFA, the existing agreement between Respondent and Appellant.
  - a. Metro Exhibit 5 was addressed to Schnitzer Steel, not to Appellant. Appellant was sent a courtesy copy, as were 13 other persons, including Appellant's direct competitors: Allied Waste, operator of the Coffin Butte landfill, and Waste Management, operator of the Columbia Ridge landfill, both of which were mentioned in the letter to Schnitzer.
  - b. The letter is not specific to Appellant's Finley Buttes landfill. The letter addresses Schnitzer's request to use ASR as ADC at two different, competing, landfills: the Finley Buttes Landfill owned by Appellant and the Coffin Butte landfill operated by Appellant's competitor, Allied Waste.
  - c. The letter requires further action by the operators of the Finley Buttes and Coffin Butte landfills and approval by Respondent before Respondent will allow a refund of fees and taxes paid during the trial period. The letter states that, "[l]andfills that have designated facility agreements with Metro

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establishment and operation of all public or private disposal, transfer and resource recovery sites or facilities located within the district. Licenses or franchises granted by the district may be exclusive. Existing landfills authorized to accept food wastes which, on March 1, 1979, are either franchised by a county or owned by a city are exempt from the district's franchising and rate regulation.

are required to submit a useful material management plan to Metro for its approval prior to allowing an exemption from Fees and Taxes.” (p 1 of Metro Exhibit 5). As mentioned in the letter, ASR shipped to the Columbia Ridge, Wasco County and Weyerhaeuser landfills was already exempt from Metro fees and taxes.

- d. The letter makes no mention of, let alone modifies, the DFA between Respondent and Appellant.
20. Respondent could have been clearer in its correspondence. Respondent’s letter to Schnitzer appears to imply that Respondent will allow a full refund of all taxes and fees paid during the DEQ trial subject to the specific conditions set out in the letter. The letter makes no mention of a cap or other limit on the amount of refund that Respondent will allow. But Appellant had no right to rely on that letter, since it was not addressed to Appellant, it addresses the use of ASR as ADC at two different landfills, and it conflicts with express terms of the DFA. Schnitzer did not assign its refund rights to Appellant until June 24, 2009, two months after Respondent issued its letter to Schnitzer. Appellant did not comply with the conditions in the Schnitzer letter until August 13, 2009, when Appellant submitted its useful material management plan and tonnage estimate.

## **VI. PROPOSED ORDER**

1. Appellant failed to bear the burden of proving that Respondent violated the DFA or that Appellant is otherwise entitled to a full refund of all taxes and fees paid for ASR received at Finley Buttes Landfill during the DEQ trial period.
2. Respondent’s refund of \$676,427.62 to Appellant for taxes and fees paid for ASR received and used as ADC during the trial period is affirmed.

Respectfully Submitted:

DATED: April 26, 2011

\_\_\_\_\_  
Joe Turner, AICP, Esq.  
Metro Hearings Officer

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## **CERTIFICATE OF SERVICE**

I, Joe Turner, certify that on this day I submitted the original PROPOSD FINAL ORDER to the Metro Council, Attention Michelle Bellia, and sent an original copy of the

*Hearings Officer’s Proposed Final Order  
(Finley Buttes Landfill)*

*Page 21*

foregoing PROPOSD FINAL ORDER to Respondent, Attention Marc Carlton. I sent both documents by US Mail, first class postage pre-paid, in properly addressed and sealed envelopes, to at the address(es) shown, and via electronic transmission to the at the email addresses shown:

Metro  
Michelle Bellia  
600 Northeast Grand Avenue  
Portland, Oregon 97232-2736  
[Michelle.Bellia@oregonmetro.gov](mailto:Michelle.Bellia@oregonmetro.gov)

Waste Connections, Inc.  
c/o Marc Carlton  
Williams, Kastner & Gibbs PLLC  
888 SW Fifth Avenue, Suite 600  
Portland, OR 97204-2025  
[mcarlton@williamskastner.com](mailto:mcarlton@williamskastner.com)

DATED: April 26, 2011

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Joe Turner, AICP, Esq.  
Metro Hearings Officer





**BEFORE THE METRO REGIONAL GOVERNMENT**

**WASTE CONNECTIONS, INC., dba  
FINLEY BUTTES LIMITED  
PARTNERSHIP, dba FINLEY BUTTES  
LANDFILL**

**Metro Contract. No. 928937**

**FINAL ORDER**

**Appellant**

**v.**

**METRO,**

**Respondent**

**I. STATEMENT OF THE CASE**

1. Appellant Waste Connections Inc., dba Finley Buttes Limited Partnership, dba Finley Buttes Landfill (“Finley Buttes” or “Appellant”), requested a hearing to contest the decision by Respondent Metropolitan Service District (“Respondent” or “Metro”) denying a portion of Appellant’s request for a refund of taxes and fees paid for Auto Shredder Residue (“ASR”)<sup>1</sup> received at the Finley Buttes Landfill and used as alternative daily cover (“ADC”) during a trial period required by the Oregon Department of Environmental Quality (“DEQ”).
2. Hearings Officer Joe Turner (the “Hearings Officer”) received testimony at the public hearing about this appeal on March 14, 2011, at approximately 1:00 p.m. at Metro’s offices, located at 600 NE Grand Avenue, Portland, Oregon. Attorney Marc Carlton represented Appellant. Attorney Michelle Bellia represented Respondent. At the beginning of the hearing, the Hearings Officer made a statement describing the hearing procedure and disclaiming any *ex parte* contacts, bias or conflicts of interest. All witnesses testified under oath or affirmation. Metro made an audio recording of the hearing. Metro maintains the record of the proceedings.

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<sup>1</sup> Also referred to in the record as Scrap Metal Recycling Residue or Sheet Metal Recycling Residue (“SMRR”).

## II. EVIDENTIARY MATTERS

1. Appellant provided a pre-hearing memorandum, (“Appellant’s Pre-Hearing Memorandum”) dated March 9, 2011, a list of witnesses and exhibits, a packet of exhibits (Appellant Exhibits 101 through 108), witness testimony by Mr. Large, sales manager for Finley Buttes and Wasco County landfills, and Ms. Norton, Metro Director of Finance and Regulatory Services, a post-hearing memorandum, (“Appellant’s Post-Hearing Memorandum”) dated March 24, 2011, a post-hearing reply memorandum, (“Appellant’s Post-Hearing Reply Memorandum”) dated April 4, 2011 and oral argument in support of Appellant’s request for refund of all taxes and fees paid to Respondent for ASR received and used as ADC at Finley Buttes Landfill during the DEQ required trial period.
2. Respondent provided a pre-hearing memorandum, (“Respondent Metro’s Pre-Hearing Memorandum”) dated March 9, 2011, a list of witnesses and exhibits, a packet of exhibits (Metro Exhibits 1 through 24), witness testimony by Ms. Norton and Roy Brower, Solid Waste Compliance and Cleanup Manager, a post-hearing memorandum, (“Respondent Metro’s Post-Hearing Memorandum”) dated March 24, 2011, a post-hearing reply memorandum, (“Respondent Metro’s Response to Appellant’s Post-Hearing Memorandum”) dated April 4, 2011 and oral argument in support of Respondent’s request to uphold Respondent’s decision to deny a portion of Appellant’s refund request.
3. The parties stipulated to the admissibility of the offered exhibits. Appellant objected to Mr. Brower’s testimony, arguing that it was inadmissible hearsay. The Hearings Officer allowed Mr. Brower’s testimony, noting that the rules of evidence are inapplicable. MC § 2.05.030(a) allows “Evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs...” The Hearings Officer finds that reasonably prudent persons rely on hearsay in the conduct of their serious affairs, although it may be given less weight than direct testimony. Respondent also objected to Mr. Brower’s presence in the hearing room during testimony by other witnesses. The Hearings Officer overruled the objection. Mr. Brower was included in Respondent’s witness list as a potential witness. At the beginning of the hearing Mr. Carlton and Ms. Bellia agreed that there was no need to exclude witnesses.
4. Respondent requested that the Hearings Officer hold open the record of the proceedings after the hearing to allow submission and consideration of a Post-Hearing Memorandum. Appellant agreed to Respondent’s request, provided that the Hearings Officer allow both parties the same opportunity and that both parties be allowed to submit additional briefing in response to the post hearing memoranda. Both parties submitted Post-Hearing Memoranda and Post Hearing Reply Memoranda. The Hearings Officer closed the record in this case at 5:00 p.m., April 4, 2011.

### III. ISSUES PRESENTED

Whether Appellant is entitled to a full refund of taxes and fees paid to Respondent for ASR received and used as ADC at the Finley Buttes Landfill during the one-year trial period authorized by DEQ.

### IV. BACKGROUND

1. Respondent, Metro, is a regional government created by the State of Oregon with voter approval. The Metro Council, a political body elected by voters within the Metro region, governs Metro. Among other things, Respondent regulates the transportation, processing and disposal of waste generated within the Metro region. Respondent has developed and implemented a Regional Solid Waste Management Plan, a management system for regional waste disposal and resource recovery. Pursuant to this authority, Respondent regulates the transportation, transfer, disposal and other processing of all solid waste generated within Metro. MC § 5.05.020(b). Respondent requires that all solid waste generated within the Metro region must be processed or disposed of at a solid waste facility<sup>2</sup> or disposal site<sup>3</sup> with an appropriate license from Respondent. MC § 5.05.025(a).
2. Appellant operates a solid waste disposal site, the Finley Buttes Regional Landfill, located in Morrow County, Oregon (the "Finley Buttes Landfill"). The Finley Buttes Landfill is located outside of the Metro region. Therefore Respondent has no authority over the operation of the Finley Buttes Landfill. DEQ regulates the operation of the landfill.
3. Finley Buttes Landfill may only accept solid waste generated within Metro:
  - (A) As specified in an agreement entered into between Metro and Finley Buttes Landfill Company authorizing receipt of such waste; or
  - (B) Subject to a non-system license issued to a person transporting to the facility solid waste not specified in the agreement.

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<sup>2</sup> MC 5.01.010(uu) provides:

"Solid waste facility" means the land and buildings at which Solid Waste is received for Transfer, Resource Recovery, and/or Processing but excludes disposal.

<sup>3</sup> MC 5.05.010(f) provides:

"Disposal site" means the land and facilities determined from time to time by Metro as constituting part of the system, whether owned by Metro or another person and whether or not open to the public, used for the disposal of solid wastes, but does not include transfer stations or processing facilities.

MC § 5.05.030(a)(8).

Therefore, pursuant to MC § 5.05.030(a)(8)(A) Appellant entered into a Designated Facility Agreement with Respondent, Metro Contract No. 928937 (the “DFA”). (Metro Exhibit 1). The parties signed the DFA in November 2008.

4. Section 3 of the DFA requires that Appellant collect Regional System Fees as set out in MC § 5.02 and Excise Taxes as set out in MC § 7.01 on every ton of Metro area waste received at Appellant’s landfill and remit those fees and taxes to Respondent on a monthly basis. ORS 268.507 authorizes Respondent to impose excise taxes by ordinance.
5. The Metro Code exempts certain materials from fees and taxes, including, “useful material”<sup>4</sup> that is (A) intended to be used, and is in fact used, productively in the operation of the Disposal Site such as for roadbeds or alternative daily cover; and (B) is accepted at the Disposal Site at no charge. MC § 5.01.150(b)(3) and 7.01.050(a)(10). However Section 8 of the DFA provides:
  - a. Except as provided below in Section 8b, the Landfill shall not allow a customer to claim a Useful Material exemption from the Regional System Fee under Metro Code Section 5.01.150(b)(3) and from Excise Tax under Metro Code Section 7.01.050(a)(10) until the landfill submits a written request for the exemption, including a Useful Material management plan, to Respondent for review and written approval. The Landfill must receive Respondent’s approval before allowing an exemption under Section 8 of this Agreement.
  - b. The Landfill may allow a customer to claim an exemption under Section 8 of this Agreement without Respondent's prior approval, provided that the Landfill accepted and used such Useful Materials before January 1, 2009, and complies with Section 8c below.
  - c. The Landfill shall submit a Useful Material management plan that incorporates the following information:

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<sup>4</sup> MC § 5.01.010(aaa) defines “useful material” as:

"Useful material" means material that still has or retains useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and which, when separated from Solid Waste, is suitable for use in the same or other purpose(s). Types of Useful Materials are: material that can be Reused; Recyclable Material; organic material(s) suitable for controlled biological decomposition such as for making Compost; material used in the preparation of fuel; material intended to be used, and which is in fact used, for construction or land reclamation such as Inert material for fill; and material intended to be used, and which is in fact used, productively in the operation of landfills such as roadbeds or alternative daily cover. For purposes of this Code, Cleanup Material Contaminated By Hazardous Substances are not Useful Materials.

- (1) A description of the Useful Material and where it was generated;
- (2) Documentation demonstrating that the Landfill intends to use and will use the Useful Material productively in the operation of the Landfill;
- (3) Documentation demonstrating that the Landfill will accept the Useful Material at no charge;
- (4) If the Landfill intends to use the Useful Material as Alternative Daily Cover, documentation demonstrating that the DEQ has approved the use of the material as Alternative Daily Cover at the Landfill;
- (5) A description of how the Landfill will manage the Useful Material, including without limitation an explanation, if applicable, of how the Landfill will store the Useful Material before use; and
- (6) An estimate of the proposed tons of Useful Material the Landfill expects to accept.

d. The Landfill's failure to manage Useful Material in compliance with its Useful Material management plan shall constitute a breach of this Agreement.

6. Section 17.e of the DFA provides:

A waiver of any term or condition of this Agreement must be in writing, signed by either the COO, if Metro is making the waiver, or by an authorized representative of the Landfill, if the Landfill is making the waiver. Waiver of a term or condition of this Agreement by either party shall neither waive nor prejudice that other party's right otherwise to require performance of the same term or condition or any other term or condition.

### **III. FINDINGS OF FACT**

1. DEQ regulates the operation of the Finley Buttes landfill. DEQ regulations require that Appellant apply a suitable cover material over any exposed waste at the end of each operating day to protect the environment and public health. Daily cover must consist of at least six-inches of earthen material or an alternative material, ADC, that provides equivalent performance and has been approved by DEQ. (Metro Exhibit 24). DEQ approves ADC materials on a case-by-case basis. "All request for ADCM<sup>[5]</sup> approval will require a trial period of ADCM use and

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<sup>5</sup> "Alternative Daily Cover Material."

- evaluation to demonstrate the ADCM is as protective as earthen daily cover material... During the trial period, solid waste used as ADCM is subject to all applicable Department fees as described in OAR Chapter 340, Division 097, including the per-ton solid waste disposal fee in OAR 340-097-0120(5).” (p. 2, Metro Exhibit 24).
2. Schnitzer Steel Industries, Inc. (“Schnitzer”) is a metal recycler that operates a 7,000 horsepower electric “Mega Shredder” at its facility at 12005 N. Burgard Road in Portland, Oregon. Schnitzer’s shredding system recycles automobile bodies, appliances, pipes, metal roofing, motor blocks, and other metal goods. Schnitzer recovers and recycles ferrous and non-ferrous metals from the shredded material. ASR consists of shredded plastic, rubber, wood, upholstery and other non-metal residual materials remaining after the metals have been removed from the shredder output. (Metro Exhibit 4 and Testimony of Mr. Large). Schnitzer sends the ASR to landfills for disposal.
  3. Schnitzer ASR has been used, with DEQ approval, as ADC at the Columbia Ridge landfill in Oregon since approximately 1994. Appellant has used Schnitzer ASR as ADC at its Wasco County landfill, with DEQ approval, since 2009. (Metro Exhibit 2 and testimony of Mr. Large). Schnitzer ASR is also used as ADC at the Weyerhaeuser landfill. (Metro Exhibit 2). Schnitzer ASR used as ADC at the Columbia Ridge, Weyerhaeuser, and Wasco County landfills is exempt from Respondent’s taxes and fees. (Metro Exhibit 5).
  4. Appellant requested DEQ approval of the use of ASR as ADC at the Finley Buttes Landfill. By letter dated October 1, 2008, DEQ denied Appellant’s request for long-term approval of ASR as ADC and required that Appellant conduct a trial use of ASR as ADC at Finley Buttes. (Metro Exhibit 2).
  5. Neither the DFA nor the Metro Code define the phrase “DEQ approval.” DEQ’s “Guidelines for Alternative Daily Cover Material Application” (Metro Exhibit 24) states, “All request for ADCM approval will require a trial period of ADCM use...” DEQ continues to charge fees for ADC materials used during the trial period. DEQ only allows a fee exemption for ADC material after DEQ approves the particular material for long-term use as ADC. The purpose of the trial period is to evaluate the use of ASR as ADC. (p. 14 of Metro Exhibit 7).
  6. Respondent waived taxes and fees during a DEQ trial period use of ASR as ADC at the Columbia Ridge landfill in 1995. (Metro Exhibit 3). However Respondent has required payment of taxes and fees for materials used as ADC during DEQ required trial periods since at least 2005, when DEQ changed its procedures for the conduct of performance trials. (Testimony of Ms. Norton).

7. On January 23, 2009, Appellant sent a letter to Respondent requesting waiver of excise taxes and system fees for ASR used as ADC at the Finley Buttes Landfill during the DEQ approved trial period. (Metro Exhibit 3).
8. Appellant's January 23, 2009 letter included the statement, "As required by Section 8 of the DFA, please find enclosed a copy of materials constituting WCI's 'Useful Material management plan' as submitted to DEQ for the Schnitzer ASR at FBL." (p. 2 of Metro Exhibit 3). Appellant's Useful Material management plan is dated December 10, 2008. (pp. 20-21 of Metro Exhibit 21). Respondent searched for copies of the referenced attachment in its paper and electronic records but did not find a copy of the referenced attachment in its records, other than a copy included with Respondent's July 23, 2009 submittal. (Testimony of Mr. Brower). Respondent did not notify Appellant that the management plan was not included in the January 23, 2009 submittal. (Testimony of Mr. Large and Mr. Brower). By email dated July 22, 2009, Respondent informed Appellant that Respondent had not received a useful material management plan from Appellant. (p. 2 of Metro Exhibit 7).
9. By letter dated February 13, 2009, Schnitzer also submitted a separate request that Respondent grant an exemption from excise taxes and system fees for the disposal of ASR generated by Schnitzer and used as ADC during the DEQ approved trial period at Finley Buttes and at the Coffin Butte landfill near Corvallis, Oregon, operated by Appellant's competitor, Allied Waste Services. (Metro Exhibit 4 and testimony of Mr. Large).
10. Respondent replied to Schnitzer's request for exemption by letter dated April 3, 2009. (Metro Exhibit 5).
  - a. The letter refers to Schnitzer's request to use ASR generated by Schnitzer as ADC at the Coffin Butte and Finley Buttes landfills. (¶1, p.1 of Metro Exhibit 5). The letter noted that the Metro Code exempts useful material from taxes and fees, provided that the useful material is intended to be used and is in fact used productively in the operation of the landfill and the material is accepted at no charge.
  - b. The letter further notes that landfills that are subject to a designated facility agreement with Respondent are required to submit a useful material management plan to Respondent for its approval prior to allowing an exemption from fees and taxes. The letter notes that the Columbia Ridge, Wasco County and Weyerhaeuser landfills received Respondent's approval to use ASR as ADC, exempt from fees and taxes. "All of the other designated landfills must first obtain Respondent's approval prior to allowing such an exemption for [Schnitzer's] ASR." (¶2, p.1 of Metro Exhibit 5).

- c. The letter notes that since 2005, Respondent has not allowed an exemption from fees and taxes for material used as ADC unless DEQ granted final approval for the landfill to use the material as ADC. Respondent agreed to, “[c]onsider a different approach in this specific instance.” (¶3, p.1 of Metro Exhibit 5). Respondent required that Schnitzer continue to pay fees and taxes for ASR delivered to landfills during the DEQ required trial period, but Respondent agreed to refund fees and taxes paid:

[W]hen all of the following conditions are met:

1. The landfill must submit to Metro a written request for an exemption and a useful material management plan in accordance with the terms provided in its designated facility agreement;
2. The landfill must accept at no disposal charge and use the ASR material as ADC in accordance with the performance trial criteria approved by the DEQ;
3. The landfill must complete its performance trial and obtain DEQ approval to use ASR as ADC by no later than June 30, 2010; and
4. SSI<sup>6</sup> Must submit to Metro a written request for a refund of the Fees and Taxes that it paid for the ASR that was used during the ADC performance trials no later than September 1, 2010.

The landfill is solely responsible for submitting an acceptable plan and for conducting its ADC performance trials in accordance with applicable DEQ requirements. The landfill’s plan must include an acceptable method for recording the material received and the material used. The landfill’s records will be the exclusive source by which Metro determines any eligible refund.

(p.2 of Metro Exhibit 5).

- d. Respondent sent courtesy copies (“cc”) of the letter to 13 persons, including Appellant, Allied Waste, Waste Management and DEQ.
11. Appellant submitted an application to DEQ on December 12, 2008, to perform a 12-month trial for the use of ASR as ADC at Finley Buttes landfill. (p. 16 of Metro Exhibit 7). DEQ staff recommended approval of the trial on April 21, 2009. (*Id.*) By letter dated May 20, 2009, DEQ accepted Appellant’s application to conduct the trial use of ASR generated by Schnitzer as ADC during a 12-month

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<sup>6</sup> Schnitzer Steel Industries



- trial period at Finley Buttes landfill.<sup>7</sup> (p. 14 of Metro Exhibit 7). On June 16, 2009, Appellant began receiving ASR and using it as ADC at Finley Buttes landfill. (p. 2 of Metro Exhibit 7 and Metro Exhibit 14). Appellant reported to Respondent that it received 1,475.34 tons of ASR at Finley Buttes Landfill between June 16 and 30, 2009. (Appellant Exhibit 109 and p. 2 of Metro Exhibit 7).
12. Respondent was aware that Appellant intended to pay taxes and fees on behalf of Schnitzer for ASR received at Finley Buttes during the trial period. (Testimony of Ms. Norton). On June 24, 2009 Appellant entered in to an agreement with Schnitzer, whereby Appellant agreed to pay to Respondent all fees and taxes for ASR received and used as ADC during the DEQ required trial period and Schnitzer assigned to Appellant Schnitzer's rights to receive a refund of taxes and fees paid to Respondent. (Metro Exhibit 6 and Appellant Exhibit 102). Respondent required evidence of such an agreement before it would allow Respondent to request a refund of taxes and fees paid for Schnitzer's ASR delivered to Finley Buttes Landfill during the trial period. (p. 2 of Metro Exhibit 10 and testimony of Ms. Norton). Respondent was aware that Appellant expected a full refund of all taxes and fees paid during the DEQ trial period. (p.2 of Metro Exhibit 7).
  13. By letter dated July 23, 2009, Appellant provided Respondent with some of the information required by Section 8 of the DFA. (Metro Exhibit 7). The information submitted by Appellant did not include an estimate of the amount of ASR Appellant intended to receive at Finley Buttes landfill, as required by Section 8.c(6) of the DFA. (Metro Exhibit 8). By email dated August 12, 2009, Respondent requested Appellant provide such an estimate as required by Section 8.c(6) of the DFA. (*Id.*). On August 13, 2009 Appellant responded that it expected to send "[a]pproximately 300 tons per week..." of ASR to Finley Buttes landfill. (Metro Exhibit 9). Appellant stated that the amount of ASR generated at Schnitzer's Portland facility "[i]s down significantly in 2009 and is not expected to rebound to prior levels until 2010 or later." (*Id.*). By letter dated September 23, 2009, Appellant stated that, "There is currently no excess amount of ASR available to begin our test..." (p. 18 of Metro Exhibit 7). Appellant diverted a portion of the ASR Schnitzer shipped to Wasco County landfill to Finley Buttes Landfill in order to ensure a sufficient supply of ASR to complete the DEQ trial. (p. 18 of Metro Exhibit 7, Metro Exhibit 11 and testimony of Mr. Large). Finley Buttes Landfill expected to receive all of the ASR generated at Schnitzer's Portland operation after the DEQ trial period. (Metro Exhibit 9).

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<sup>7</sup> The January 23, 2009 letter from David Wiley to Steve Kraten (Metro Exhibit 3) states "WCI received notice from DEQ on January 13, 2009 that the ASR trial period at FBL may commence immediately." However there is no further evidence to that effect. The statement in Metro Exhibit 3 conflicts with the April 21 and May 20, 2009 DEQ letters. (pp 14 and 18 of Metro Exhibit 7).

14. Appellant reported to Respondent that it received an average of 4,100 tons of ASR per month at its Wasco County landfill between December 2008 and June 2009. (Appellant Exhibit 101). Beginning in July 2009, Appellant submitted monthly reports to Respondent identifying the total tons of solid waste and ASR received at Finley Buttes landfill.
15. On August 25, 2009, Respondent approved Appellant's useful material management plan, based on the packet of information dated July 23, 2009 and the "supplemental tonnage estimate, dated August 13, 2009..." (Metro Exhibit 10). Respondent agreed to refund up to a maximum \$420,000 of the fees and taxes paid to Respondent for Schnitzer's ASR that was received and used as ADC during the trial period. The \$420,000 maximum was based on Appellant's August 13, 2009 estimate of the tonnage of ASR Appellant expected to receive at Finley Buttes during the trial period. (*Id.*)
16. By letter dated September 23, 2009, Appellant objected to the \$420,000 cap on the refund amount established by Respondent. (Metro Exhibit 11). Appellant stated that the tonnage estimate in the August 13, 2009 letter was the minimum amount of ASR that DEQ required Finley Buttes receive in order to conduct the ADC trial. Appellant informed Respondent that Schnitzer expects the amount of ASR produced to increase throughout the remainder of 2009 and 2010 and Appellant intends "[t]o receive as much [ADC] as Schnitzer can tender at [Finley Buttes landfill], but again, at least 300 tons per week." *Id.* Appellant requested that Respondent confirm that Respondent will refund 100-percent of the fees and taxes paid for ASR received and used as ADC during the 12-month trial period. *Id.* The federal "Cash for Clunkers" program substantially increased the number of cars that were sent to Schnitzer for recycling, increasing the amount of ASR generated by Schnitzer. (Testimony of Mr. Large).
17. On October 23, 2009, Respondent informed Appellant that it would agree to a limited increase in the refund cap established in Respondent's August 25, 2009 letter. Respondent agreed to refund taxes and fees paid for ASR used as ADC, up to 15-percent of the total waste tonnage disposed at Finley Buttes Landfill during the trial period, less all other ADC materials received and used at the landfill during the trial period. (Metro Exhibit 12). Respondent applied the 15-percent cap over the entire 12-month trial period. (Testimony of Ms. Norton). By email dated October 28, 2009, Appellant acknowledged receipt of Respondent's letter and stated that Appellant "[u]nderstand[s] the position Metro is taking on the [ASR] trial at Finley." (Metro Exhibit 13).
18. On February 18, 2010, Respondent informed Appellant that 9,121.17 tons of the 15,812.41 tons of ASR received at Finley Buttes Landfill between June 22, 2009 and October 21, 2009, was eligible for a refund, based on the conditional refund approved in Respondent's October 23, 2009 letter to Appellant. (Metro Exhibit 15).

19. By letter dated February 25, 2010, Appellant objected to Respondent's limited refund calculation, arguing that a full refund of all taxes and fees paid for ASR received and used as ADC during the trial period at Finley Buttes Landfill is appropriate. (Metro Exhibit 16). Respondent denied Appellant's objection to the limited refund and reiterated the refund limitation set out in Respondent's October 23, 2009 letter. (Metro Exhibit 17). By letter dated March 18, 2010, Respondent noted that the 15-percent limit "[w]as based on the internal guidance used by the Oregon Department of Environmental Quality ("DEQ") for reviewing ADC usage at landfills." (p. 1 of Metro Exhibit 17). DEQ applies the 15-percent calculation as a trigger for investigation rather than an absolute enforcement standard. Respondent's use of the 15-percent limit is independent from DEQ's regulation. *Id.* On June 10, 2010, Respondent notified Appellant of the steps necessary to claim a refund at the end of the trial period, repeating Respondent's prior determination that the refund amount is limited to 15-percent of the total waste disposed at Finley Buttes Landfill during the trial period. (Metro Exhibit 18).
20. Appellant completed the trial period on June 16, 2010. DEQ approved the use of ASR generated by Schnitzer as SDC at Finley Buttes on June 23, 2010. (p 4-5 of Metro Exhibit 19 and Appellant Exhibit 104). On July 2, 2010, Appellant requested a refund of all taxes and fees paid for ASR used as ADC during the 12-month trial period at Finley Buttes landfill. Appellant calculated a refund amount of \$819,022.73, based on Appellant's receipt and use of 30,164.62 tons of ASR as ADC during the trial period. (Metro Exhibit 19). Appellant used all ASR received at Finley Buttes as ADC on the day it was received. (Appellant Exhibit 103).
21. Respondent refunded \$676,427.62 to Appellant for taxes and fees paid for ASR received and used as ADC during the trial period. (Metro Exhibit 20). Respondent calculated the refund based on the formula set out in Respondent's October 23, 2009 letter:
- a. 15-percent of 525,741.22 tons of waste received during the trial period = 78,861.18 tons
  - b. 78,861.18 tons – 53,908.27 tons of other ADC used during the trial = 24,952.91 tons of the 30,164.72 tons of ASR received and used during the trial period that is available for refund.
  - c.  $24,952.91 \times$  the tax and fee rates in effect during relevant portions of the trial period<sup>8</sup> = \$676,427.62.

(Metro Exhibit 20).

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<sup>8</sup> Between June 16, 2009 and August 5, 2009 Respondent's Fee rate was \$16.04 per ton and Respondent's tax rate for \$8.97 per ton. Between August 6, 2009 and the end of the trial, Respondent's Fee rate was \$17.53 per ton and Respondent's tax rate for \$9.83 per ton.

22. Appellant objected to the refund amount and argued that all ASR received and used as ADC during the trial period should be subject to refund. (Metro Exhibit 21). Respondent denied Appellant's objection and referred Appellant to the dispute resolution procedures set out in Section 14 of the DFA. (Metro Exhibit 22). On October 21, 2010 Appellant filed a request for contested case hearing. (Metro Exhibit 23).
23. Respondent subsequently approved conditional refunds of fees and taxes paid for other types of materials used as ADC during DEQ approved trial periods at Finley Buttes and other landfills in the region. Respondent imposed the same 15-percent limit and required deduction of other ADC materials as it applied in this case. (Appellant Exhibits 105, 106 and 107). In two letters Respondent said:

Metro will consider the Landfill's 15-percent limit to be controlling. For example, if the Landfill has reported other material as accepted and used as ADC during the same period, the Landfill may choose to apply these tons to its 15 percent limitation, which may reduce the amount of the refund available to Greenway. The Landfill's records will be the exclusive source by which Metro will determine any eligible refund.

(p. 2 of Appellant Exhibit 105 and p. 2 of Appellant Exhibit 106). In the third letter, Respondent said, "In addition, the amount of potential refund will be limited to a maximum of 15 percent of the total waste tonnage disposed at the landfill during the trial less all other ADC materials received and used at the landfill during the same period." (Underline in original. Appellant Exhibit 107).

#### **IV. CONCLUSIONS OF LAW**

1. Appellant failed to meet its burden of proof that it is entitled to a full refund of all taxes and fees paid for ASR received and used as ADC at Finley Buttes Landfill during the one-year DEQ approved trial period.
2. Section 8.c(4) of the DFA prohibits Appellant from allowing a useful material exemption from payment of fees and taxes until the DEQ has approved use of the material as ADC. Trial period approval is not sufficient to comply with Section 8.c(4) of the DFA. Therefore Respondent is not required to waive or refund taxes and fees paid during the DEQ trial period.
3. However Respondent agreed to a limited waiver of Section 8.c(4) of the DFA in this case. Respondent agreed to refund fees and taxes for ASR used as ADC during the trial period, up to a maximum 15-percent of the total tons of solid waste received at Finley Buttes landfill, minus the all other material received and used as ADC during the trial period.

4. The \$676,427.62 in taxes and fees refunded to Appellant is consistent with the limited waiver approved by Respondent.

## **V. OPINION**

1. The Hearings Officer finds that Respondent was not required to refund fees and taxes paid for ASR received and used as ADC during the 12-month trial period required by DEQ at the Finley Buttes landfill. Section 8.a of the DFA prohibits Appellant from allowing a useful material exemption from payment of fees and taxes without Respondent's written approval of a Useful Material management plan. Section 8.c(4) of the DFA requires that Appellant demonstrate that DEQ has approved use of the material as ADC at the landfill. The Hearings Officer finds that the term "DEQ approval" in Section 8.c(4) of the DFA requires long term DEQ approval. Trial period approval is not sufficient to comply with Section 8.c(4) of the DFA. Therefore, absent modification of the DFA, Respondent is not required to waive or refund taxes and fees paid during the DEQ trial period. DEQ did not "approve" the use of ASR as ADC at Finley Buttes until June 23, 2010, after Appellant completed the 12-month trial period.
  - a. Neither the DFA nor the Metro Code define the phrase "DEQ approval." However Respondent has consistently construed the phrase to only apply to long term DEQ approval of ADC material. Respondent has not allowed an exemption from fees and taxes for ADC material during a DEQ required trial period since at least 2005, when DEQ changed its procedures for the conduct of performance trials. It appears, based on Appellant's actions, that Appellant agreed with Respondent's interpretation of the phrase "DEQ approval," as Appellant continued to seek Respondent's approval of a waiver of taxes and fees during the trial period, rather than pursuing the argument set out in Metro Exhibit 3, that, "[A]DC is not to be treated differently on the basis of pre- or post-trial period status." (p. 1 of Metro Exhibit 3).
  - b. DEQ regulations clearly distinguish between "trial period" and "long term" approval of the use of ADC materials at landfills. DEQ's "Guidelines for Alternative Daily Cover Material Application" (Metro Exhibit 24) states that, "All requests for ADCM approval will require a trial period of ADCM use..." In addition, DEQ continues to charge fees for ADC materials used during the trial period. DEQ only allows a fee exemption for ADC material after DEQ approves the particular material for long-term use as ADC. The purpose of the trial period is to evaluate the use of ASR as ADC. The Hearings Officer finds that DEQ approval required by Section 8.c(4) of the DFA requires long-term approval, after a trial period, consistent with DEQ requirements.
  - c. In this case, DEQ did not "approve" the use of ASR as ADC at Finley Buttes until June 23, 2010, after Appellant completed the 12-month trial

period. DEQ expressly denied long-term use of ASR as ADC at Finley Buttes without a trial period. (p 2 of Metro Exhibit 2). In its May 20, 2009 letter DEQ stated that it, “[a]ccepts the application to conduct the trial use of SMRR waste at the Finley Buttes Landfill...”

- d. Therefore, absent Respondent’s approval of a modification of the DFA, Appellant could not comply with Section 8.c(4) of the DFA and Respondent was not required to refund or waive taxes and fees for ASM received and used as ADC at Finley Buttes Landfill during the trial period.
  - e. If the term “approved” in Section 8.c(4) of the DFA includes DEQ approval of a trial period, as Appellant alleges, then Respondent would be prohibited from collecting taxes and fees during any DEQ required trial period at any landfill. However, as noted above, Respondent has been collecting such taxes and fees since at least 2005.
2. As noted above, Section 8.a of the DFA prohibits Appellant from allowing a useful material exemption from payment of fees and taxes without Respondent’s written approval of a Useful Material management plan. Appellant began receiving ASR and using it as ADC at the Finley Buttes Landfill on a trial basis beginning on June 16, 2009. However Appellant did not submit a complete useful material management plan, as required by Section 8.c of the DFA, until August 13, 2009.
- a. Although Appellant’s January 23, 2009 letter stated that it included a Useful Material management plan and Appellant’s plan is dated December 10, 2008, Respondent did not find a copy of the Useful Material management plan in its records. There is no substantial evidence in the record that Appellant actually included a copy of the plan in its January 23, 2009 submittal to Respondent.
    - i. Even if Appellant had submitted a Useful Material management plan in January 2009, Respondent could not approve it, because it did not include an estimate of the tons of ASR Appellant expected to receive as required by Section 8.c(6) of the DFA.
  - b. Appellant submitted a Useful Material management plan that included the information required by Section 8.c(1) through (5) of the DFA on July 23, 2009. (Metro Exhibit 7). However the submittal did not include “An estimate of the proposed tons of Useful Material the Landfill expects to accept” as required by Section 8.c(6) of the DFA.
  - c. On August 13, 2009, Appellant provided the estimate required by Section 8.c(6) of the DFA, notifying Respondent that it expected to receive approximately 300 tons of ASR per week at the Finley Buttes Landfill during the 12-month trial period.

3. Based on its review of Appellant's Useful Material management plan, Respondent agreed to a limited waiver of compliance with Section 8 of the DFA during the DEQ trial period at Finley Buttes landfill. Respondent agreed to refund Schnitzer up to a maximum \$420,000 in fees and taxes at the end of the trial period, if DEQ approved the long-term use of ASR as ADC. The \$420,000 refund cap was based on Appellant's estimate that it would receive approximately 300 tons of ASR per week at the Finley Buttes landfill. Although Respondent knew that Appellant desired a full refund of all taxes and fees paid on ASR received and used as ADC at Finley Buttes Landfill during the trial period, Respondent never agreed to provide a full refund.
4. Appellant subsequently increased its estimate of the amount of ASR it expected to receive at Finley Buttes landfill, stating that the 300 tons per week stated in its August 13, 2009 letter is a minimum and Finley Buttes intends to receive as much ASR as Schnitzer can deliver during the trial period. Appellant's September 23, 2009 letter was the first time Appellant conveyed an intent to receive large amounts of ASR during the trial period at Finley Buttes, which would result in a large refund at the end of the trial period. All of Appellant's prior correspondence referred to the limited supply of ASR, with the majority going to Wasco County landfill. Appellant had to "divert" ASR loads from Wasco County to Finley Buttes in order to ensure sufficient supply of ASR to conduct the DEQ trial.
5. Respondent had no reason to believe that Appellant's initial estimate of 300 tons of ASR was inaccurate, or was only intended as a minimum amount.
  - a. Appellant's August 13, 2009 letter was submitted in response to Respondent's August 12, 2009 request for "[a]n estimate of the proposed tons of Useful Material that the Landfill expects to accept." (Metro Exhibit 8). Appellant's letter states that, "During the 12-month trial, Schnitzer Steel Industries plans to ship approximately 300 tons per week to Finley Buttes." (Metro Exhibit 9). Appellant's letter did not indicate that this was a "minimum" amount of ASR.
  - b. Prior to and during the initial portion of the trial period, Schnitzer's ASR production was significantly lower than in prior years and was not expected to increase until 2010 or later. Although Appellant's Wasco County landfill was receiving an average of 4,100 tons of ASR per month, there was "[n]o excess amount of ASR available to begin [the DEQ trial period at Finley Buttes landfill]." (p. 18 of Metro Exhibit 21). Appellant was diverting loads of ASR from its Wasco County landfill to Finley Buttes Landfill in order to ensure that a sufficient supply of ASR was available to conduct the DEQ trial at Finley Buttes landfill. "Without diverting [ASR] from Wasco County to Finley Buttes, the DEQ ADC test would have experienced little or no [ASR] for utilization." (Metro Exhibit 11).

- c. Appellant reported to Respondent that it received 1,475.34 tons of ASR at Finley Buttes Landfill during the two week period between June 16 and June 30, 2009. Although this is more than the Appellant's estimate of 300 tons per week, it is not sufficient to cause Respondent to question Appellant's estimate. Appellant was only reporting on ASR received during the initial two-week period of the DEQ trial. Appellant's estimate was submitted in mid-August, after more than two months of experience with receiving ASR at Finley Buttes.
6. In response to Appellant's notice that it intended to receive potentially unlimited amounts of ASR during the trial period, Respondent agreed to modify its limited waiver of compliance with Section 8 of the DFA during the DEQ trial period. However Respondent was unwilling to allow an unlimited refund in this case, because this was an unusual case, the first time Respondent allowed a refund of fees and taxes during a DEQ trial. Respondent wanted to maintain some control over the amount of the refund in order to ensure fairness and equity for ratepayers.<sup>9</sup> Therefore Respondent imposed a cap on the amount of the refund it would allow during the trial period. Respondent agreed to refund taxes and fees paid on ASR received at Finley Buttes up to a maximum 15-percent of the total solid waste tonnage disposed at the landfill during the trial period, minus all other ADC material received and used at the landfill during the trial period.
  - a. Respondent chose the 15-percent limit as a convenient and readily identifiable standard by which to limit the amount of the refund that would be allowed for this unique variance from Respondent's standard practice of collecting taxes and fees during DEQ trials. The 15-percent limit was a standard the parties were familiar with. Although not codified in DEQ's regulations, it is DEQ's general practice to limit ADC to 15-percent of the total amount of solid waste disposed of at a landfill. The fact that DEQ does not rely on the 15-percent standard as an absolute limit is irrelevant. Respondent could have chosen some other method for imposing a cap on the maximum amount of refund it would allow during the trial period. Respondent relied on the 15-percent standard because it was familiar to the parties.
  - b. Whether Respondent approved different limits for other waste generators in Appellant Exhibits 105 and 106 is irrelevant. In this case Respondent limited its waiver to 15-percent of the total amount of solid waste disposed of at the landfill, minus all other materials received and used as ADC at

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<sup>9</sup> In her pre-hearing brief, Ms. Bellia argued that the 15% refund cap was for "budgeting purposes." However this statement by Respondent's attorney is not evidence or testimony of a party. Ms. Bellia is Respondent's attorney. There is no evidence that Ms. Bellia has any superior knowledge about the basis for Respondent's actions. Ms. Norton clearly testified that the purpose of the cap was "to maintain some control over the amount of the refund and to ensure fairness and equity for ratepayers." Ms. Bellia's statement in her brief is an error.



the landfill during the trial period. Respondent applied an identical refund cap in at least one other DEQ ADC trial, Appellant Exhibit 107.

7. Appellant may have disagreed with the limited waiver allowed by Respondent, but Appellant clearly understood it.
8. Respondent did not modify the waiver after October 23, 2009. All subsequent correspondence from Respondent merely reiterates and provides examples of the 15-percent cap on the amount of refund that Respondent agreed to allow as a modification of the DFA in this case.
9. Appellant could have modified its practices to comply with the limited refund approved by Respondent, thereby ensuring the receipt of a full refund of all taxes and fees paid during the trial period. Appellant could have limited the amount of ASR shipped to Finley Buttes Landfill to comply with the cap imposed by Respondent, shipping the remainder to its Wasco County landfill. DEQ had already approved the long term use of ASR as ADC at the Wasco County landfill. Therefore all ASR received and used as ADC at Wasco County would have been exempt from fees and taxes. Appellant exceeded the 15-percent cap during the initial portion of the trial period. However Respondent agreed to apply the 15-percent cap over the entire 12-month trial period. Therefore Appellant could have ensured a full refund by reducing the amounts of ASR shipped to Finley Buttes during the remainder of the trial period, ensuring that the total amount of ASR received at Finley Buttes was less than 15-percent of the total amount of solid waste and other ADC received during the entire 12-month trial. Instead, Appellant chose to continue shipping large volumes of ASR to Finley Buttes throughout the entire trial period.
10. During the 12-month trial period Appellant received 30,164.62 tons of ASR, 53,908.27 tons of other ADC and 525,741.22 tons of solid waste at Finley Buttes Landfill during the 12-month trial period. Appellant utilized 100-percent of the ASR and other ADC material as ADC. Appellant requested a refund of \$819,022.73 for 100-percent of the ASR material received and used as ADC during the trial period.
11. Respondent refunded \$676,427.62 to Appellant for taxes and fees paid for ASR received and used as ADC during the trial period. Respondent calculated the refund based on the formula set out in Respondent's October 23, 2009 letter:
  - a. 15-percent of 525,741.22 tons of waste received during the trial period = 78,861.18 tons.
  - b. 78,861.18 tons – 53,908.27 tons of other ADC used during the trial = 24,952.91 tons. Therefore 24,952.91 tons of the 30,164.72 tons of ASR received and used during the trial period is eligible for refund.

- c.  $24,952.91 \times$  the tax and fee rates in effect during relevant portions of the trial period<sup>10</sup> = \$676,427.62.
12. The Hearings Officer finds that the refund amount is reasonable and consistent with Respondent's conditional waiver of the requirements of Section 8 of the DFA during the DEQ trial period.
  13. The Hearings Officer finds that the only relationship between Appellant and Respondent is contractual, as set out in the DFA. Appellant's Finley Buttes Landfill is located outside of the Metro region. Therefore it is exempt from compliance with the Metro Code. With one exception that is not relevant to this case,<sup>11</sup> the Finley Buttes Landfill may only accept solid waste generated within Metro in accordance with the DFA. (MC § 5.05.030(8)(A)). Therefore this dispute is bounded by the terms of the DFA. The Metro Code is inapplicable.
  14. The DFA does not incorporate by reference the Metro Code. To the contrary, Section 8 of the DFA creates an express exception to the Useful Material exemption otherwise allowed by MC § 5.01.150(b)(3) and § 7.01.050(a)(10).<sup>12</sup> Section 8 of the DFA prohibits Appellant from allowing customers to claim a Useful Material exemption until Appellant receives written approval from

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<sup>10</sup> Between June 16, 2009 and August 5, 2009, Respondent's Fee rate was \$16.04 per ton and Respondent's tax rate for \$8.97 per ton. Between August 6, 2009 and the end of the trial, Respondent's Fee rate was \$17.53 per ton and Respondent's tax rate for \$9.83 per ton.

<sup>11</sup> MC 5.05.030(8)(B) provides that the Finley Buttes Landfill may accept solid waste generated within Metro "subject to a non-system license issued to a person transporting to the facility solid waste not specified in the [DFA] agreement."

<sup>12</sup> MC § 5.01.150(b) provides, in relevant part:

(b) User fees shall not apply to:

...

- (3) Useful Material that is accepted at a Disposal Site that is listed as a Metro Designated Facility in Chapter 5.05 or accepted at a Disposal Site under authority of a Metro Non-System License issued pursuant to Chapter 5.05, provided that the Useful Material: (A) is intended to be used, and is in fact used, productively in the operation of the Disposal Site such as for roadbeds or alternative daily cover; and (B) is accepted at the Disposal Site at no charge.

MC § 7.01.050(a) provides, in relevant part:

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

...

- (10) Persons who deliver useful material to disposal sites, provided that such sites are listed as a Metro Designated Facility under Metro Code Chapter 5.05 or are named in a Metro Non-System License and provided further that the Useful Material: (A) is intended to be used, and is in fact used, productively in the operation of such site for purposes including roadbeds and alternative daily cover; and (B) is accepted at such site at no charge.

- Respondent allowing the exemption.<sup>13</sup> In order to obtain the required approval, Appellant must submit a Useful Material management plan that includes certain information, including, “If the Landfill intends to use the Useful Material as Alternative Daily Cover, documentation demonstrating that DEQ has approved use of the material as Alternative Daily Cover at the Landfill.” Section 8.c(4) of the DFA.
15. The DFA is consistent with the authority granted to Respondent by ORS 268.507, which authorizes Respondent to, “[b]y ordinance impose excise taxes on any person using the facilities, equipment, systems, functions, services or improvements owned, operated, franchised or provided by the district.” Respondent adopted an ordinance, the Metro Code, that establishes excise taxes, and exemptions there from. MC § 7.01.020 establishes excise taxes on the use of Metro facilities, equipment and services. MC § 7.01.050(a)(10) provides an exemption from excise taxes for Useful Material that is delivered to a site, “[I]isted as a Metro Designated Facility under Metro Code Chapter 5.05...” and used as alternative daily cover.”
  16. The same ordinance, the Metro Code, authorizes disposal of waste generated in the Metro area at Appellant’s Finley Buttes landfill. However MC § 5.05.030(a)(8)(A) provides that Finley Buttes Landfill may only accept solid waste generated within Metro, “as specified in an agreement entered into between Metro and Finley Buttes Landfill Company authorizing receipt of such waste.” The DFA is the “agreement” referred to in MC § 5.05.030(a)(8)(A). The DFA, which is required by the Metro Code, creates an exception to the excise tax exemption established by MC § 7.01.050(a)(10). The excise tax exemption in the DFA is consistent with ORS 268.507, because the Metro Code expressly requires the DFA before Finley Buttes Landfill may accept any solid waste generated within the Metro region.
  17. ORS 268.507 only regulates Respondent’s authority to impose excise taxes. It does not regulate the user fees authorized by MC § 5.01.150. ORS 268.317(5) appears to allow Respondent to impose user fees without limitation.<sup>14</sup>

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<sup>13</sup> Section 8.a of the DFA provides:

Except as provided below in Section 8b, the Landfill shall not allow a customer to claim a Useful Material exemption from the Regional System Fee under Metro Code Section 5.01.150(b)(3) and from Excise Tax under Metro Code Section 7.01.050(a)(10) until the landfill submits a written request for the exemption, including a Useful Material management plan, to Metro for review and written approval. The Landfill must receive Metro approval before allowing an exemption under Section 8 of this Agreement.

<sup>14</sup> ORS 268.317(5) authorizes Metro to:

Regulate, license, franchise and certify disposal, transfer and resource recovery sites or facilities; establish, maintain and amend rates charged by disposal, transfer and resource recovery sites or facilities; establish and collect license or franchise fees; and otherwise control and regulate the

18. Appellant had no right to rely on Respondent's April 3, 2009 letter to Schnitzer (Metro Exhibit 5). Appellant requested that Respondent allow a Useful Material exemption from fees and excise taxes for Schnitzer ASR used as ADC during the trial period. (Metro Exhibit 3). Schnitzer, in a separate letter, also requested a Useful Material exemption. (Metro Exhibit 4). Respondent replied to Schnitzer's exemption request on April 3, 2009. (Metro Exhibit 5). Respondent noted that it has not allowed an exemption from fees and taxes during a DEQ approved trial period since at least 2005. However Respondent agreed to, "[c]onsider a different approach in this specific instance." Respondent agreed that if DEQ approved the long term use of ASR as ADC, Respondent would refund fees and taxes paid during the trial period, subject to certain conditions, including a condition that, "the landfill must submit to Metro a written request for an exemption and a useful material management plan in accordance with the terms provided in its designated facility agreement." (p. 2 of Metro Exhibit 5). Respondent expressly noted that ASR received at the Columbia Ridge, Wasco County and Weyerhaeuser Regional landfills is already exempt from Metro taxes and fees. "All of the other designated landfills must first obtain Metro's approval prior to allowing such an exemption for [Schnitzer's] ASR." (p. 1 of Metro Exhibit 5).
19. Metro Exhibit 5 is not a contract or agreement between Appellant and Respondent and it was not intended to, and did not, modify the DFA, the existing agreement between Respondent and Appellant.
  - a. Metro Exhibit 5 was addressed to Schnitzer Steel, not to Appellant. Appellant was sent a courtesy copy, as were 13 other persons, including Appellant's direct competitors: Allied Waste, operator of the Coffin Butte landfill, and Waste Management, operator of the Columbia Ridge landfill, both of which were mentioned in the letter to Schnitzer.
  - b. The letter is not specific to Appellant's Finley Buttes landfill. The letter addresses Schnitzer's request to use ASR as ADC at two different, competing, landfills: the Finley Buttes Landfill owned by Appellant and the Coffin Butte landfill operated by Appellant's competitor, Allied Waste.
  - c. The letter requires further action by the operators of the Finley Buttes and Coffin Butte landfills and approval by Respondent before Respondent will allow a refund of fees and taxes paid during the trial period. The letter states that, "[l]andfills that have designated facility agreements with

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establishment and operation of all public or private disposal, transfer and resource recovery sites or facilities located within the district. Licenses or franchises granted by the district may be exclusive. Existing landfills authorized to accept food wastes which, on March 1, 1979, are either franchised by a county or owned by a city are exempt from the district's franchising and rate regulation.

Metro are required to submit a useful material management plan to Metro for its approval prior to allowing an exemption from Fees and Taxes.” (p 1 of Metro Exhibit 5). As mentioned in the letter, ASR shipped to the Columbia Ridge, Wasco County and Weyerhaeuser landfills was already exempt from Metro fees and taxes.

- d. The letter makes no mention of, let alone modifies, the DFA between Respondent and Appellant.
20. Respondent could have been clearer in its correspondence. Respondent’s letter to Schnitzer appears to imply that Respondent will allow a full refund of all taxes and fees paid during the DEQ trial subject to the specific conditions set out in the letter. The letter makes no mention of a cap or other limit on the amount of refund that Respondent will allow. But Appellant had no right to rely on that letter, since it was not addressed to Appellant, it addresses the use of ASR as ADC at two different landfills, and it conflicts with express terms of the DFA. Schnitzer did not assign its refund rights to Appellant until June 24, 2009, two months after Respondent issued its letter to Schnitzer. Appellant did not comply with the conditions in the Schnitzer letter until August 13, 2009, when Appellant submitted its useful material management plan and tonnage estimate.

## **VI. FINAL ORDER**

1. Appellant failed to bear the burden of proving that Respondent violated the DFA or that Appellant is otherwise entitled to a full refund of all taxes and fees paid for ASR received at Finley Buttes Landfill during the DEQ trial period.
2. Respondent’s refund of \$676,427.62 to Appellant for taxes and fees paid for ASR received and used as ADC during the trial period is affirmed.
3. Pursuant to ORS 34.010 to 34.102, appeal of the Final Order may be initiated by filing a petition for writ of review with the Circuit Court of the State of Oregon for Multnomah County within 60 days of the date of this Final Order.

METRO REGIONAL GOVERNMENT

Dated: June \_\_\_\_\_, 2011

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Daniel B. Cooper  
Acting Chief Operating Officer

Agenda Item Number 4.1

**Ordinance No. 11-1262**, For the Purpose of Amending the FY  
2010-11 Budget and Appropriations Schedule and Declaring an  
Emergency.

*Ordinances – First Reading*

Metro Council Meeting  
Thursday, June 16, 2011  
Metro Council Chamber

BEFORE THE METRO COUNCIL

AMENDING THE FY 2010-11 BUDGET AND ) ORDINANCE NO. 11-1262  
APPROPRIATIONS SCHEDULE AND THE FY )  
2010-11 THROUGH 2014-15 CAPITAL ) Introduced by Dan Cooper, Acting Chief  
IMPROVEMENT PLAN, AND DECLARING AN ) Operating Officer, with the concurrence of  
EMERGENCY ) Council President Tom Hughes

WHEREAS, the Metro Council has reviewed and considered the need to increase appropriations within the FY 2010-11 Budget; and

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

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

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. That the FY 2010-11 Budget and Schedule of Appropriations are hereby amended as shown in the column entitled "Revision" of Exhibits A and B to this Ordinance for the purpose of recognizing new government contributions and transferring appropriations to provide for a change in operations.
2. That the FY 2010-11 through FY 2014-15 Capital Improvement Plan is hereby amended to include the projects shown in Exhibit C to this Ordinance.
3. This Ordinance being necessary for the immediate preservation of the public health, safety or welfare of the Metro area in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

\_\_\_\_\_  
Tom Hughes, Council President

Attest:

Approved as to Form:

\_\_\_\_\_  
Kelsey Newell, Recording Secretary

\_\_\_\_\_  
Alison Kean Campbell, Acting Metro Attorney

**Exhibit A**  
**Ordinance No. 11-1262**

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>General Fund</b>							
<b>Total Resources</b>							
<b><u>Resources</u></b>							
<i>BEGBAL</i>	<i>Beginning Fund Balance</i>						
3500	Beginning Fund Balance						
	* Undesignated		5,706,490		0		5,706,490
	* Prior period adjustment: TOD		4,758,727		0		4,758,727
	* Project Carryover		1,299,085		0		1,299,085
	* Reserved for Local Gov't Grants (CET)		2,840,000		0		2,840,000
	* Reserve for Future Debt Service		2,846,099		0		2,846,099
	* Tibbets Flower Account		212		0		212
	* Reserved for Climate Change Project		47,500		0		47,500
	* Reserved for Regional Investment Strategy		2,821,907		0		2,821,907
	* Restricted Parks Reserve (Multnomah County)		44,000		0		44,000
	* Reserved for Future Planning Needs		565,306		0		565,306
	* Reserved for Future Election Costs		183,411		0		183,411
	* Reserved for Nature in Neighborhood Grants		501,660		0		501,660
	* Reserved for Active Transportation Partnersh		176,100		0		176,100
	* Reserve for Future Natural Areas Operations		804,460		0		804,460
	* Prior year PERS Reserve		3,759,384		0		3,759,384
	<i>Subtotal Beginning Fund Balance</i>		26,354,341		0		26,354,341
<b><u>General Revenues</u></b>							
<i>EXCISE</i>	<i>Excise Tax</i>						
4050	Excise Taxes		14,903,937		0		14,903,937
4055	Construction Excise Tax		1,300,000		0		1,300,000
<i>RPTAX</i>	<i>Real Property Taxes</i>						
4010	Real Property Taxes-Current Yr		11,040,190		0		11,040,190
4015	Real Property Taxes-Prior Yrs		254,000		0		254,000
<i>INTRST</i>	<i>Interest Earnings</i>						
4700	Interest on Investments		235,000		0		235,000
	<i>Subtotal General Revenues</i>		27,733,127		0		27,733,127
<b><u>Department Revenues</u></b>							
<i>GRANTS</i>	<i>Grants</i>						
4100	Federal Grants - Direct		2,409,736		0		2,409,736
4105	Federal Grants - Indirect		8,665,816		0		8,665,816
4110	State Grants - Direct		278,582		0		278,582
4120	Local Grants - Direct		351,580		0		351,580
<i>LGSHRE</i>	<i>Local Gov't Share Revenues</i>						
4135	Marine Board Fuel Tax		114,000		0		114,000
4139	Other Local Govt Shared Rev.		457,000		0		457,000
<i>GVCNTB</i>	<i>Contributions from Governments</i>						
4145	Government Contributions		1,790,327		0		1,790,327
<i>LICPER</i>	<i>Licenses and Permits</i>						
4150	Contractor's Business License		406,000		0		406,000
<i>CHGSVC</i>	<i>Charges for Service</i>						
4165	Boat Launch Fees		154,272		0		154,272
4180	Contract & Professional Service		374,733		0		374,733
4230	Product Sales		81,664		0		81,664
4280	Grave Openings		175,000		0		175,000
4285	Grave Sales		134,000		0		134,000



**Exhibit A**  
**Ordinance No. 11-1262**

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>General Fund</b>							
<b>Total Resources</b>							
4500	Admission Fees		8,590,338		0		8,590,338
4501	Conservation Surcharge		146,726		0		146,726
4510	Rentals		815,000		0		815,000
4550	Food Service Revenue		5,459,700		0		5,459,700
4560	Retail Sales		2,272,300		0		2,272,300
4580	Utility Services		2,000		0		2,000
4610	Contract Revenue		902,163		0		902,163
4620	Parking Fees		879,000		0		879,000
4630	Tuition and Lectures		1,111,955		0		1,111,955
4635	Exhibit Shows		636,400		0		636,400
4640	Railroad Rides		960,000		0		960,000
4645	Reimbursed Services		198,000		0		198,000
4650	Miscellaneous Charges for Service		14,662		0		14,662
4760	Sponsorships		10,000		0		10,000
<i>DONAT</i>	<i>Contributions from Private Sources</i>						
4750	Donations and Bequests		1,054,600		0		1,054,600
<i>MISCRV</i>	<i>Miscellaneous Revenue</i>						
4170	Fines and Forfeits		25,000		0		25,000
4890	Miscellaneous Revenue		113,500		0		113,500
4891	Reimbursements		1,414,472		0		1,414,472
<i>EQTREV</i>	<i>Fund Equity Transfers</i>						
4970	Transfer of Resources						
	* from MERC Operating Fund		0		120,000		120,000
	* from Solid Waste Revenue Fund		0		26,347		26,347
	* from Renewal & Replacement Fund		128,000		0		128,000
<i>INDTRV</i>	<i>Interfund Reimbursements</i>						
4975	Transfer for Indirect Costs						
	* from MERC Operating Fund		1,993,186		0		1,993,186
	* from Zoo Bond Fund		188,084		0		188,084
	* from Natural Areas Fund		877,851		0		877,851
	* from Solid Waste Revenue Fund		4,212,029		0		4,212,029
<i>INTSRV</i>	<i>Internal Service Transfers</i>						
4980	Transfer for Direct Costs						
	* from Zoo Bond Fund		104,637		0		104,637
	* from Natural Areas Fund		618,595		0		618,595
	* from Smith & Bybee Lakes Fund		111,379		0		111,379
	* from Solid Waste Revenue Fund		2,194,243		0		2,194,243
<i>Subtotal Department Revenues</i>			<i>50,426,530</i>		<i>146,347</i>		<i>50,572,877</i>
<b>TOTAL CURRENT YEAR REVENUES</b>			<b>\$78,159,657</b>		<b>\$146,347</b>		<b>\$78,306,004</b>
<b>TOTAL RESOURCES</b>			<b>\$104,513,998</b>		<b>\$146,347</b>		<b>\$104,660,345</b>

**Exhibit A  
Ordinance No. 11-1262**

ACCT	DESCRIPTION	<u>Current Budget</u>		<u>Revision</u>		<u>Amended Budget</u>	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>General Fund</b>							
<b>Parks &amp; Environmental Services</b>							
<b>Total Personal Services</b>		<b>40.60</b>	<b>\$3,957,472</b>	<b>0.00</b>	<b>\$0</b>	<b>40.60</b>	<b>\$3,957,472</b>
<b>Total Materials &amp; Services</b>			<b>\$2,841,942</b>		<b>\$0</b>		<b>\$2,841,942</b>
<b><u>Capital Outlay</u></b>							
<i>CAPCIP Capital Outlay (CIP Projects)</i>							
5720 Buildings & Related			0		120,000		120,000
<b>Total Capital Outlay</b>			<b>\$0</b>		<b>\$120,000</b>		<b>\$120,000</b>
<b>TOTAL REQUIREMENTS</b>		<b>40.60</b>	<b>\$6,799,414</b>	<b>0.00</b>	<b>\$120,000</b>	<b>40.60</b>	<b>\$6,919,414</b>

**Exhibit A  
Ordinance No. 11-1262**

ACCT	DESCRIPTION	Current		Revision		Amended	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>General Fund</b>							
<b>Sustainability Center</b>							
<b>Total Personal Services</b>		<b>33.30</b>	<b>\$3,330,106</b>	<b>0.00</b>	<b>\$0</b>	<b>33.30</b>	<b>\$3,330,106</b>
<b><i>Materials &amp; Services</i></b>							
<i>GOODS Goods</i>							
	5201 Office Supplies		53,527		0		53,527
	5205 Operating Supplies		37,186		0		37,186
	5210 Subscriptions and Dues		5,492		0		5,492
	5214 Fuels and Lubricants		200		0		200
	5215 Maintenance & Repairs Supplies		18,748		0		18,748
<i>SVCS Services</i>							
	5240 Contracted Professional Svcs		980,931		0		980,931
	5246 Sponsorships		10,500		0		10,500
	5250 Contracted Property Services		680,219		0		680,219
	5251 Utility Services		11,816		0		11,816
	5260 Maintenance & Repair Services		2,247		0		2,247
	5265 Rentals		1,853		0		1,853
	5280 Other Purchased Services		52,404		0		52,404
<i>IGEXP Intergov't Expenditures</i>							
	5300 Payments to Other Agencies		95,734		0		95,734
	5315 Grants to Other Governments		95,000		(95,000)		0
<i>OTHEXP Other Expenditures</i>							
	5450 Travel		8,037		0		8,037
	5455 Staff Development		23,017		0		23,017
<b>Total Materials &amp; Services</b>			<b>\$2,079,142</b>		<b>(\$95,000)</b>		<b>\$1,984,142</b>
<b>TOTAL REQUIREMENTS</b>		<b>33.30</b>	<b>\$5,409,248</b>	<b>0.00</b>	<b>(\$95,000)</b>	<b>33.30</b>	<b>\$5,314,248</b>

**Exhibit A**  
**Ordinance No. 11-1262**

ACCT	DESCRIPTION	Current		Revision		Amended	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>General Fund</b>							
<b>General Expenses</b>							
<i><b>Interfund Transfers</b></i>							
INDTEX	<i>Interfund Reimbursements</i>						
5800	Transfer for Indirect Costs						
	* to Risk Mgmt Fund-Liability		227,194		0		227,194
	* to Risk Mgmt Fund-Worker Comp		249,025		0		249,025
EQTCHG	<i>Fund Equity Transfers</i>						
5810	Transfer of Resources						
	* to General Revenue Bond Fund-Zoo		404,670		0		404,670
	* to Gen'l Revenue Bond Fund-Debt Serv Acct		1,504,945		0		1,504,945
	* to MERC Fund (Tourism Opp. & Compt. Accoun		475,000		0		475,000
	* to Renewal & Replacement Fund-General R&R		537,233		25,000		562,233
	* to Renewal & Replacement Fund-IT Renewal & R		250,000		0		250,000
	* to Renewal & Replacement Fund-Regional Cente		277,000		0		277,000
	* to Renewal & Replacement Fund-Parks R&R		200,000		0		200,000
	* to Solid Waste Revenue Fund		188,487		0		188,487
<b>Total Interfund Transfers</b>			<b>\$4,313,554</b>		<b>\$25,000</b>		<b>\$4,338,554</b>
<i><b>Contingency &amp; Unappropriated Balance</b></i>							
CONT	<i>Contingency</i>						
5999	Contingency						
	* Contingency		3,048,875		0		3,048,875
	* Reserved for Nature in Neigh Grants		326,660		0		326,660
	* Reserved for Active Transportation Partnersh		65,725		0		65,725
UNAPP	<i>Unappropriated Fund Balance</i>						
5990	Unappropriated Fund Balance						
	* Stabilization Reserve		2,400,000		0		2,400,000
	* Reserved for Future Years		0		96,347		96,347
	* PERS Reserve		4,738,650		0		4,738,650
	* Tibbets Flower Account		62		0		62
	* Recovery Rate Stabilization reserve		802,918		0		802,918
	* Reserved for Regional Investment Strategy		1,846,000		0		1,846,000
	* Reserved for Future Natural Areas Operations		504,460		0		504,460
	* Reserved for Future Planning Needs		22,761		0		22,761
	* Reserve for Future Debt Service		2,787,099		0		2,787,099
<b>Total Contingency &amp; Unappropriated Balance</b>			<b>\$16,633,210</b>		<b>\$96,347</b>		<b>\$16,729,557</b>
<b>TOTAL REQUIREMENTS</b>		<b>450.15</b>	<b>\$104,513,998</b>	<b>0.00</b>	<b>\$146,347</b>	<b>450.15</b>	<b>\$104,660,345</b>

**Exhibit A**  
**Ordinance No. 11-1262**

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>General Renewal &amp; Replacement Fund</b>							
<b><i>Resources</i></b>							
BEGBAL	Beginning Fund Balance						
3500	* Prior year ending balance		6,876,878		0		6,876,878
INTRST	Interest Earnings						
4700	Interest on Investments		58,777		0		58,777
MISCRV	Miscellaneous Revenue						
4891	Reimbursements		500,000		0		500,000
EQTREV	Fund Equity Transfers						
4970	Transfer of Resources						
	* from Solid Waste Revenue Fund		18,402		0		18,402
	* from General Fund		0		25,000		25,000
	* from General Fund (Regional Parks)		200,000		0		200,000
	* from General Fund-IT R&R		250,000		0		250,000
	* from General Fund-MRC R&R		277,000		0		277,000
	* from General Fund-Gen'l R&R		537,233		0		537,233
<b>TOTAL RESOURCES</b>			<b>\$8,718,290</b>		<b>\$25,000</b>		<b>\$8,743,290</b>
<b>Total Materials &amp; Services</b>			<b>\$881,657</b>		<b>\$0</b>		<b>\$881,657</b>
<b>Total Capital Outlay</b>			<b>\$2,537,849</b>		<b>\$0</b>		<b>\$2,537,849</b>
<b>Total Interfund Transfers</b>			<b>\$128,000</b>		<b>\$0</b>		<b>\$128,000</b>
<b><i>Contingency &amp; Unappropriated Balance</i></b>							
CONT	Contingency						
5999	Contingency						
	* General contingency		4,870,784		0		4,870,784
UNAPP	Unappropriated Fund Balance						
5990	Unappropriated Fund Balance						
	* Renewal & Replacement - Gen'l		300,000		25,000		325,000
<b>Total Contingency &amp; Unappropriated Balance</b>			<b>\$5,170,784</b>		<b>\$25,000</b>		<b>\$5,195,784</b>
<b>TOTAL REQUIREMENTS</b>		<b>0.00</b>	<b>\$8,718,290</b>	<b>0.00</b>	<b>\$25,000</b>	<b>0.00</b>	<b>\$8,743,290</b>

**Exhibit A  
Ordinance No. 11-1262**

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>Metro Exposition Recreation Commission Fund</b>							
<b><i>Resources</i></b>							
<i>BEGBAL</i>	<i>Beginning Fund Balance</i>						
	* Undesignated		17,513,857		0		17,513,857
	* Renewal & Replacement Reserve		2,255,000		0		2,255,000
	* Transient Lodging Tax Capital Reserve		640,310		0		640,310
	* Aramark Contract Capital Investment Reserve		1,625,000		0		1,625,000
	* PERS Reserve		1,631,545		0		1,631,545
	* Expo Phase 3 Reserve		1,185,232		0		1,185,232
<i>GRANTS</i>	<i>Grants</i>						
4105	Federal Grants - Indirect		235,063		0		235,063
4110	State Grant - Direct		259,500		0		259,500
4115	State Grant - Indirect		158,029		0		158,029
4120	Local Grant - Direct		26,925		0		26,925
<i>LGSHRE</i>	<i>Local Gov't Share Revenues</i>						
4130	Hotel/Motel Tax		10,558,553		0		10,558,553
4142	Intergovernment Misc. Revenue		43,955		0		43,955
<i>GVCNTB</i>	<i>Contributions from Governments</i>						
4145	Government Contributions		756,907		0		756,907
<i>CHGSVC</i>	<i>Charges for Service</i>						
4500	Admission Fees		1,700,500		0		1,700,500
4510	Rentals		7,420,586		0		7,420,586
4550	Food Service Revenue		11,813,716		1,217,000		13,030,716
4560	Retail Sales		5,000		0		5,000
4570	Merchandising		13,000		0		13,000
4575	Advertising		15,000		0		15,000
4580	Utility Services		1,598,360		0		1,598,360
4590	Commissions		1,135,000		0		1,135,000
4620	Parking Fees		2,838,899		0		2,838,899
4645	Reimbursed Services		2,688,825		0		2,688,825
4647	Reimbursed Services - Contract		486,142		0		486,142
4650	Miscellaneous Charges for Svc		302,230		0		302,230
<i>INTRST</i>	<i>Interest Earnings</i>						
4700	Interest on Investments		235,523		0		235,523
<i>DONAT</i>	<i>Contributions from Private Sources</i>						
4750	Donations and Bequests		442,000		0		442,000
4760	Sponsorship Revenue		143,500		0		143,500
<i>MISCRV</i>	<i>Miscellaneous Revenue</i>						
4170	Fine & Forfeitures		2,000		0		2,000
4805	Financing Transaction		82,372		0		82,372
4890	Miscellaneous Revenue		34,825		0		34,825
4891	Refunds and Reimbursements		4,000		0		4,000
<i>EQTREV</i>	<i>Fund Equity Transfers</i>						
4970	Transfer of Resources						
	* from General Fund		475,000		0		475,000
<b>TOTAL RESOURCES</b>			<b>\$68,326,354</b>		<b>\$1,217,000</b>		<b>\$69,543,354</b>
<b>Total Personal Services</b>		<b>190.00</b>	<b>\$17,989,676</b>	<b>0.00</b>	<b>\$0</b>	<b>190.00</b>	<b>\$17,989,676</b>

**Exhibit A**  
**Ordinance No. 11-1262**

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>Metro Exposition Recreation Commission Fund</b>							
<b><i>Materials &amp; Services</i></b>							
<i>GOODS</i>	<i>Goods</i>						
5201	Office Supplies		232,402		0		232,402
5205	Operating Supplies		265,947		0		265,947
5210	Subscriptions and Dues		63,005		0		63,005
5214	Fuels and Lubricants		16,820		0		16,820
5215	Maintenance & Repairs Supplies		544,340		0		544,340
5225	Retail		10,000		0		10,000
<i>SVCS</i>	<i>Services</i>						
5240	Contracted Professional Svcs		1,033,284		0		1,033,284
5245	Marketing Expense		2,619,362		0		2,619,362
5246	Sponsorship Expenditures		59,050		0		59,050
5247	Visitor Development Marketing		417,728		0		417,728
5251	Utility Services		2,519,600		0		2,519,600
5255	Cleaning Services		33,800		0		33,800
5260	Maintenance & Repair Services		1,156,339		0		1,156,339
5265	Rentals		527,940		0		527,940
5270	Insurance		28,560		0		28,560
5280	Other Purchased Services		400,626		0		400,626
5281	Other Purchased Services - Reimb		390,773		0		390,773
5291	Food and Beverage Services		9,322,641		1,250,000		10,572,641
5292	Parking Services		305,580		0		305,580
<i>IGEXP</i>	<i>Intergov't Expenditures</i>						
5300	Payments to Other Agencies		275,258		0		275,258
5310	Taxes (Non-Payroll)		16,500		0		16,500
<i>OTHEXP</i>	<i>Other Expenditures</i>						
5450	Travel		193,171		0		193,171
5455	Staff Development		130,600		0		130,600
5490	Miscellaneous Expenditures		17,000		0		17,000
<b>Total Materials &amp; Services</b>			<b>\$20,580,326</b>		<b>\$1,250,000</b>		<b>\$21,830,326</b>
<b><i>Capital Outlay</i></b>							
<i>CAPCIP</i>	<i>Capital Outlay (CIP Projects)</i>						
5710	Improve-Oth thn Bldg		690,000		0		690,000
5720	Buildings & Related		4,081,105		(120,000)		3,961,105
5740	Equipment & Vehicles		426,000		0		426,000
5750	Office Furniture & Equip		102,000		0		102,000
<b>Total Capital Outlay</b>			<b>\$5,299,105</b>		<b>(\$120,000)</b>		<b>\$5,179,105</b>
<b><i>Interfund Transfers</i></b>							
<i>INDTEX</i>	<i>Interfund Reimbursements</i>						
5800	Transfer for Indirect Costs						
	* to General Fund-Support Services		1,870,208		0		1,870,208
	* to General Fund		122,978		0		122,978
	* to Risk Management Fund - Liability		386,429		0		386,429
	* to Risk Management Fund - Workers Comp.		112,883		0		112,883
<i>EQTCHG</i>	<i>Fund Equity Transfers</i>						
5810	Transfer of Resources						
	* to General Fund		0		120,000		120,000
	* to General Revenue Bond Fund		1,189,132		0		1,189,132
<b>Total Interfund Transfers</b>			<b>\$3,681,630</b>		<b>0.00</b>		<b>\$3,801,630</b>

**Exhibit A**  
**Ordinance No. 11-1262**

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>Metro Exposition Recreation Commission Fund</b>							
<b><i>Contingency and Ending Balance</i></b>							
CONT	Contingency						
5999	Contingency						
	* General Contingency		2,183,463		(1,250,000)		933,463
	* Contingency for Capital (TL TAX)		269,310		0		269,310
UNAPP	Unappropriated Fund Balance						
5990	Unappropriated Fund Balance						
	* Stabilization Reserve		620,500		0		620,500
	* New Capital/Business Strategy Reserve		3,893,133		1,217,000		5,110,133
	* Ending Balance		48,755		0		48,755
	* Renewal & Replacement		11,768,634		0		11,768,634
	* Prior Year PERS Reserve		1,991,822		0		1,991,822
<b>Total Contingency and Ending Balance</b>			<b>\$20,775,617</b>		<b>(\$33,000)</b>		<b>\$20,742,617</b>
<b>TOTAL REQUIREMENTS</b>		<b>190.00</b>	<b>\$68,326,354</b>	<b>0.00</b>	<b>\$1,217,000</b>	<b>190.00</b>	<b>\$69,543,354</b>



**Exhibit A  
Ordinance No. 11-1262**

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>Solid Waste Revenue Fund</b>							
<b>General Expenses</b>							
<b><i>Interfund Transfers</i></b>							
INDTEX	<i>Interfund Reimbursements</i>						
5800	Transfer for Indirect Costs						
	* to General Fund-Bldg		364,451		0		364,451
	* to General Fund-Support Services		3,356,758		0		3,356,758
	* to General Fund		490,820		0		490,820
	* to Risk Mgmt Fund-Liability		57,950		0		57,950
	* to Risk Mgmt Fund-Worker Comp		83,953		0		83,953
INTCHG	<i>Internal Service Transfers</i>						
5820	Transfer for Direct Costs						
	* to General Fund-Planning		405,654		0		405,654
	* to General Fund-Regional Parks		3,473		0		3,473
	* to General Fund-General Gov't		397,333		0		397,333
	* to General Fund-Support Services		81,444		0		81,444
	* to General Fund-SUS Education/Climate Change		75,058		0		75,058
	* to General Fund-PES Finance		412,954		0		412,954
	* to General Fund-PES Administration		562,309		0		562,309
	* to General Fund-SUS Administration		256,018		0		256,018
	* to Risk Management Fund		60,672		0		60,672
EQTCHG	<i>Fund Equity Transfers</i>						
5810	Transfer of Resources						
	* to General Renewal & Replacement Fund		18,402		0		18,402
	* to General Fund		0		26,347		26,347
	* to Rehab. & Enhancement Fund		367,984		0		367,984
<b>Total Interfund Transfers</b>			<b>\$6,995,233</b>		<b>\$26,347</b>		<b>\$7,021,580</b>
<b><i>Contingency and Ending Balance</i></b>							
CONT	<i>Contingency</i>						
5999	Contingency						
	* Operating Account (Operating Contingency)		2,000,000		(26,347)		1,973,653
	* Landfill Closure Account		4,840,545		0		4,840,545
	* Renewal & Replacement Account		7,700,218		0		7,700,218
UNAPP	<i>Unappropriated Fund Balance</i>						
5990	Unappropriated Fund Balance						
	* General Account (Working Capital)		5,759,668		0		5,759,668
	* General Account (EIL Reserve - GASB 49)		5,225,000		0		5,225,000
	* General Account (Rate Stabilization)		5,338,363		0		5,338,363
	* General Account (Capital Reserve)		5,330,000		0		5,330,000
	* PERS Reserve		1,154,095		0		1,154,095
<b>Total Contingency and Ending Balance</b>			<b>\$37,347,889</b>		<b>(\$26,347)</b>		<b>\$37,321,542</b>
<b>TOTAL REQUIREMENTS</b>		<b>93.60</b>	<b>\$99,841,837</b>	<b>0.00</b>	<b>\$0</b>	<b>93.60</b>	<b>\$99,841,837</b>

**Exhibit B**  
**Ordinance 11-1262**  
**Schedule of Appropriations**

	<u>Current</u> <u>Appropriation</u>	<u>Revision</u>	<u>Revised</u> <u>Appropriation</u>
<b>GENERAL FUND</b>			
Communications	2,515,796	0	2,515,796
Council Office (includes COO & Strategy Center)	3,701,124	0	3,701,124
Finance & Regulatory Services	3,364,337	0	3,364,337
Human Resources	1,842,888	0	1,842,888
Information Services	3,058,594	0	3,058,594
Metro Auditor	672,078	0	672,078
Office of Metro Attorney	2,013,825	0	2,013,825
Oregon Zoo	27,224,181	0	27,224,181
Parks & Environmental Services	6,799,414	120,000	6,919,414
Planning and Development	15,562,488	0	15,562,488
Research Center	4,672,052	0	4,672,052
Sustainability Center	5,409,248	(95,000)	5,314,248
Former ORS 197.352 Claims & Judgments	100	0	100
Special Appropriations	5,201,637	0	5,201,637
Non-Departmental			
Debt Service	1,529,472	0	1,529,472
Interfund Transfers	4,313,554	0	4,313,554
Contingency	3,441,260	0	3,441,260
Unappropriated Balance	13,191,950	0	13,191,950
<b>Total Fund Requirements</b>	<b>\$104,513,998</b>	<b>\$25,000</b>	<b>\$104,538,998</b>
<b>GENERAL RENEWAL AND REPLACEMENT FUND</b>			
Renewal & Replacement Program	3,419,506	0	3,419,506
Non-Departmental			
Interfund Transfers	128,000	0	128,000
Contingency	4,870,784	0	4,870,784
Unappropriated Balance	300,000	25,000	325,000
<b>Total Fund Requirements</b>	<b>\$8,718,290</b>	<b>\$25,000</b>	<b>\$8,743,290</b>
<b>MERC FUND</b>			
MERC	43,869,107	1,130,000	44,999,107
Non-Departmental			
Debt Service	0	0	0
Interfund Transfers	3,681,630	120,000	3,801,630
Contingency	2,452,773	(1,250,000)	1,202,773
Unappropriated Balance	18,322,844	1,217,000	19,539,844
<b>Total Fund Requirements</b>	<b>\$68,326,354</b>	<b>\$1,217,000</b>	<b>\$69,543,354</b>

**Exhibit B**  
**Ordinance 11-1262**  
**Schedule of Appropriations**

	<u>Current</u> <u>Appropriation</u>	<u>Revision</u>	<u>Revised</u> <u>Appropriation</u>
<b>SOLID WASTE REVENUE FUND</b>			
Operating Account			
Finance & Administrative Services	2,181,465	0	2,181,465
Sustainability Center	8,099,252	0	8,099,252
Parks & Environmental Services	39,691,715	0	39,691,715
Subtotal	<u>49,972,432</u>	<u>0</u>	<u>49,972,432</u>
Landfill Closure Account			
Parks & Environmental Services	3,003,783	0	3,003,783
Subtotal	<u>3,003,783</u>	<u>0</u>	<u>3,003,783</u>
Renewal and Replacement Account			
Parks & Environmental Services	980,000	0	980,000
Subtotal	<u>980,000</u>	<u>0</u>	<u>980,000</u>
General Account			
Parks & Environmental Services	1,542,500	0	1,542,500
Subtotal	<u>1,542,500</u>	<u>0</u>	<u>1,542,500</u>
General Expenses			
Interfund Transfers	6,995,233	26,347	7,021,580
Contingency	14,540,763	(26,347)	14,514,416
Subtotal	<u>21,535,996</u>	<u>0</u>	<u>21,535,996</u>
Unappropriated Balance	22,807,126	0	22,807,126
<b>Total Fund Requirements</b>	<b><u>\$99,841,837</u></b>	<b><u>\$0</u></b>	<b><u>\$99,841,837</u></b>

*All other appropriations remain as previously adopted*

## STAFF REPORT

### FOR THE PURPOSE OF AMENDING THE FY 2010-11 BUDGET AND APPROPRIATIONS SCHEDULE AND THE FY 2010-11 THROUGH FY 2014-15 CAPITAL IMPROVEMENT PLAN, AND DECLARING AN EMERGENCY

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Date: May 10, 2011

Presented by: Kathy Rutkowski, 503-797-1630

## BACKGROUND

Since the adoption of the budget several items have been identified that necessitate amendment to the budget. Each action is discussed separately below.

### Oregon Convention Center Food & Beverage

The Oregon Convention Center is experiencing food and beverage sales greater than original estimates. The current revenue forecast is \$9.6 million, an increase of \$1.2 million over the adopted budget. Food & beverage sales for conventions have exceeded original budget projections all year. In addition to better than expected sales throughout the year OCC booked two new corporate events, the Intel Tech Fest, a five day event with estimated sales of \$474 thousand in May and a Nike event in June with estimated sales of \$61 thousand. The current estimated food and beverage cost is \$7.9 million, also an increase of \$1.2 million over the adopted budget.

The current projected food and beverage margin is 18 percent, down 3 percent from the original budget estimate of 21 percent. The change in the margin is a result of increased labor and benefit costs, and the transition to a new Executive Chef, resulting in carrying salaries for two chefs for three months.

Oregon budget law does not allow the recognition and direct appropriation of this additional revenue without the benefit of a supplemental budget. This action transfers \$1,250,000 from the Operating Contingency to materials and services to provide for the needed increase in food and beverage expense. It also acknowledges the receipt of \$1,217,000 in additional revenue but places the additional revenue in the New Capital/Business Strategy Reserve (unappropriated balance).

### The Community Café (Hoyt Street Station Café)

The building improvements required to operate the Community Café previously referred to as the “Leg Up Program” are considered an improvement to a Metro asset. The funding source for the Cafe is a capital contribution to OCC from Aramark/Giacometti Joint Partnership. The original project approved in the adopted budget was estimated to be \$150,000. However the actual location was undetermined at the time the budget was prepared so an actual budget for remodel improvements was estimated. The current project cost is projected to be \$182,000. The additional amount is funded from the project contingency account within the original \$1,350,000 capital contribution to OCC.

The Community Café project will make improvements to Metro Regional Center, a general Metro asset. As a result, it is necessary to record the capital costs in the General Fund. As mentioned above, the project is funded by a capital contribution to the Oregon Convention Center from Aramark/Giacometti Joint Partnership.

Approval of this amendment will provide several actions necessary to fully implement the budgetary requirements of the project:

- a) Amend the Capital Improvement Plan for the increased cost of the total project from \$150,000 to \$182,000;
- b) Transfer up to \$120,000 from the MERC Fund to the General Fund to provide funding for the expenditures considered building improvements. Furniture & equipment items will not be transferred to Metro as they are part of the OCC food & beverage operating equipment;
- c) Recognize additional revenue in the General Fund of \$120,000 in the form of a transfer from the MERC Fund; and
- d) Increase capital outlay appropriation in the Metro Regional Center section of Parks and Environmental Services by \$120,000 to allow for the building improvement expenditures and the recognition of the increased value of the Metro asset.

In addition to the substantive amendments discussed above, several technical items have been identified that necessitate amendment to the General Fund budget. The requested actions clean up a few items that were identified after the FY 2009-10 audit was completed and the current year budget was adopted.

#### Solid Waste Information System

The development of the Solid Waste Information System (SWIS) is funded by solid waste revenues. Expenditures should be charged against the Finance and Regulatory Services appropriation in the Solid Waste Revenue Fund. However, during the last quarter of FY 2009-10 a payment was incorrectly charged against the Finance and Regulatory Services appropriation in the General Fund. This action seeks to remedy that error and reimburse the General Fund for the expense. A transfer of \$26,347 is requested from the Solid Waste Revenue Fund to the General Fund.

#### Renewal & Replacement Transfer

Net revenues from the Contractor's License Program for some time have been transferred to the renewal and replacement fund to assist in the General Fund contributions required to maintain the reserve. Because the transfer was "net revenues" (revenues less expenditures) it could not be calculated until after the close of the fiscal year. This transfer was overlooked at the end of FY 2009-10. This action seeks to transfer \$25,000 from the General Fund to the Renewal and Replacement Fund to remedy that error. (Note: beginning in FY 2010-11 this has been incorporated into general transfers to the renewal and replacement to avoid the year-end issue and increase efficiency.)

#### Nature in Neighborhood Grants

During the FY 2010-11 budget process, the Council authorized an additional contribution of \$95,000 to the Nature in Neighborhood grant program. The Nature in Neighborhood grant program is managed through the Special Appropriations category in the General Fund. However, the additional appropriation was double budgeted – once in Special Appropriations and again in the Sustainability Center. This action seeks to remove the unnecessary appropriation authorization from the Sustainability Center.

The net change to the General Fund from all three items described above is an increase in the ending FY 2010-11 budgeted fund balance of \$96,347. However, all three items have already been considered in the projections for the FY 2011-12 beginning fund balance. There is no change needed to FY 2011-12.

## **ANALYSIS/INFORMATION**

1. **Known Opposition:** None known.
2. **Legal Antecedents:** ORS 294.450 provides for transfers of appropriations within a fund, including transfers from contingency, if such transfers are authorized by official resolution or ordinance of the governing body for the local jurisdiction.
3. **Anticipated Effects:** This action provides for changes in operations as described above;
4. **Budget Impacts:** This action has the following impact on the FY 2010-11 budget:
  - a. Provides for additional appropriation related to increased food and beverage business at the Oregon Convention Center. Revenue will increase to offset the costs.
  - b. Requests action necessary to fully implement the budgetary requirements of the Community Café project.
  - c. Corrects several technical items in the General Fund resulting in an increased ending fund balance over amount budgeted of \$96,347.
  - d. Amends the FY 2010-11 through FY 2014-15 Capital Improvement Plan for the revised Community Café project costs.

## **RECOMMENDED ACTION**

The Chief Operating Officer recommends adoption of this Ordinance.

Agenda Item Number 5.1

**Ordinance No. 11-1253A**, For the Purpose of Adopting the Annual Budget For Fiscal Year FY 2011-12, Making Appropriations, Levying Ad Valorem Taxes, Authorizing an Interfund Loan and Declaring Emergency.

*Ordinances – Second Reading*

Metro Council Meeting  
Thursday, June 16, 2011  
Metro Council Chamber

BEFORE THE METRO COUNCIL

ADOPTING THE ANNUAL BUDGET FOR	)	ORDINANCE NO. 11-1253A
FISCAL YEAR FY 2011-12, MAKING	)	
APPROPRIATIONS, LEVYING AD VALOREM	)	Introduced by Dan Cooper, Acting Chief
TAXES, AUTHORIZING AN INTERFUND LOAN	)	Operating Officer, with the concurrence of
AND DECLARING AN EMERGENCY	)	Council President Tom Hughes

WHEREAS, the Multnomah County Tax Supervising and Conservation Commission held its public hearing on the annual Metro budget for the fiscal year beginning July 1, 2011, and ending June 30, 2012; and

WHEREAS, recommendations from the Multnomah County Tax Supervising and Conservation Commission have been received by Metro (attached as Exhibit A and made a part of the Ordinance) and considered; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The "Fiscal Year 2011-12 Metro Budget," in the total amount of **THREE HUNDRED EIGHTY MILLION ONE HUNDRED SIXTY ONE THOUSAND FOUR HUNDRED EIGHTY SEVEN (\$\_380,161,487**, attached hereto as Exhibit B, and the Schedule of Appropriations, attached hereto as Exhibit C, are hereby adopted.

2. The Metro Council does hereby levy ad valorem taxes, as provided in the budget adopted by Section 1 of this Ordinance, at the rate of **\$0.0966** per ONE THOUSAND DOLLARS (\$1,000) of assessed value for operations and in the amount of TWENTY EIGHT MILLION ONE HUNDRED SIXTY ONE THOUSAND FIVE HUNDRED THIRTY FOUR DOLLARS (\$28,161,534) for general obligation bond debt, said taxes to be levied upon taxable properties within the Metro District for the fiscal year 2011-12. The following allocation and categorization subject to the limits of Section 11b, Article XI of the Oregon Constitution constitute the above aggregate levy.

SUMMARY OF AD VALOREM TAX LEVY

	Subject to the General Government <u>Limitation</u>	Excluded from <u>the Limitation</u>
Operating Tax Rate Levy	\$0.0966/\$1,000	
General Obligation Bond Levy		\$28,161,534

3. In accordance with Section 2.02.040 of the Metro Code, the Metro Council hereby authorizes positions and expenditures in accordance with the Annual Budget adopted by Section 1 of this Ordinance, and hereby appropriates funds for the fiscal year beginning July 1, 2011, from the funds and for the purposes listed in the Schedule of Appropriations, Exhibit C.



4. An interfund loan from the Solid Waste Revenue Fund to the MERC Fund in an amount not to exceed \$2.5 million is hereby authorized. The loan will be made to provide short-term financing of the Eastside Streetcar Local Improvement District assessment on the Oregon Convention Center. The loan, including interest at a rate equal to the average yield on Metro's pooled investments, will be repaid from Oregon Convention Center revenues and/or reserves.

5. The General Asset Management Fund is hereby created for the purpose of managing the assets of Metro's General Fund facilities including but not limited to the Oregon Zoo, Regional Parks and Natural Areas, Metro Regional Center, and information technology infrastructure. Major revenue sources for the fund include but are not limited to grants, donations, General Fund contributions, and other revenues or contributions identified for capital, capital maintenance or renewal and replacement purpose. In the event of the elimination of this fund, the fund balance shall revert to any funds(s) designated for similar purpose.

6. The following funds are hereby consolidated into the General Asset Management Fund – the Metro Capital Fund and the Renewal and Replacement Fund. Balances remaining in these funds are consolidated with the General Asset Management Fund effective July 1, 2011.

75. The Chief Operating Officer shall make the filings as required by ORS 294.555 and ORS 310.060, or as requested by the Assessor's Office of Clackamas, Multnomah, and Washington Counties.

8. This Ordinance being necessary for the health, safety, or welfare of the Metro area, for the reason that the new fiscal year begins July 1, 2011, and Oregon Budget Law requires the adoption of a budget prior to the beginning of the fiscal year, an emergency is declared to exist and the Ordinance takes effect upon passage.

ADOPTED by the Metro Council on this 23<sup>rd</sup> day of June 2011.

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Tom Hughes, Council President

ATTEST:

Approved as to Form:

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Anthony Andersen, Recording Secretary

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Alison Kean Campbell, Acting Metro Attorney

BEFORE THE METRO COUNCIL

ADOPTING THE ANNUAL BUDGET FOR ) ORDINANCE NO. 11-1253A  
 FISCAL YEAR FY 2011-12, MAKING )  
 APPROPRIATIONS, LEVYING AD VALOREM ) Introduced by Dan Cooper, Acting Chief  
 TAXES, AUTHORIZING AN INTERFUND LOAN ) Operating Officer, with the concurrence of  
 AND DECLARING AN EMERGENCY ) Council President Tom Hughes

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SUMMARY OF AD VALOREM TAX LEVY

	Subject to the General Government Limitation	Excluded from the Limitation
Operating Tax Rate Levy	\$0.0966/\$1,000	
General Obligation Bond Levy		\$28,161,534

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8. This Ordinance being necessary for the health, safety, or welfare of the Metro area, for the reason that the new fiscal year begins July 1, 2011, and Oregon Budget Law requires the adoption of a budget prior to the beginning of the fiscal year, an emergency is declared to exist and the Ordinance takes effect upon passage.

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ADOPTED by the Metro Council on this ~~23~~<sup>rd</sup> day of June 2011.

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Tom Hughes, Council President

ATTEST:

Approved as to Form:

\_\_\_\_\_  
Anthony Andersen, Recording Secretary

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Alison Kean Campbell, Acting Metro Attorney

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BEFORE THE METRO COUNCIL

ADOPTING THE ANNUAL BUDGET FOR ) ORDINANCE NO. 11-1253  
 FISCAL YEAR FY 2011-12, MAKING )  
 APPROPRIATIONS, LEVYING AD VALOREM ) Introduced by Dan Cooper, Acting Chief  
 TAXES, AUTHORIZING AN INTERFUND LOAN ) Operating Officer, with the concurrence of  
 AND DECLARING AN EMERGENCY ) Council President Tom Hughes

WHEREAS, the Multnomah County Tax Supervising and Conservation Commission held its public hearing on the annual Metro budget for the fiscal year beginning July 1, 2011, and ending June 30, 2012; and

WHEREAS, recommendations from the Multnomah County Tax Supervising and Conservation Commission have been received by Metro (attached as Exhibit A and made a part of the Ordinance) and considered; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The "Fiscal Year 2011-12 Metro Budget," in the total amount of THREE HUNDRED EIGHTY NINE MILLION THREE HUNDRED SIXTY THOUSAND SEVEN HUNDRED TWO DOLLARS (\$389,360,702), attached hereto as Exhibit B, and the Schedule of Appropriations, attached hereto as Exhibit C, are hereby adopted.
2. The Metro Council does hereby levy ad valorem taxes, as provided in the budget adopted by Section 1 of this Ordinance, at the rate of **\$0.0966** per ONE THOUSAND DOLLARS (\$1,000) of assessed value for operations and in the amount of TWENTY EIGHT MILLION ONE HUNDRED SIXTY ONE THOUSAND FIVE HUNDRED THIRTY FOUR DOLLARS (\$28,161,534) for general obligation bond debt, said taxes to be levied upon taxable properties within the Metro District for the fiscal year 2011-12. The following allocation and categorization subject to the limits of Section 11b, Article XI of the Oregon Constitution constitute the above aggregate levy.

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5. The Chief Operating Officer shall make the filings as required by ORS 294.555 and ORS 310.060, or as requested by the Assessor's Office of Clackamas, Multnomah, and Washington Counties.

6. This Ordinance being necessary for the health, safety, or welfare of the Metro area, for the reason that the new fiscal year begins July 1, 2011, and Oregon Budget Law requires the adoption of a budget prior to the beginning of the fiscal year, an emergency is declared to exist and the Ordinance takes effect upon passage.

ADOPTED by the Metro Council on this \_\_\_<sup>th</sup> day of June 2011.

\_\_\_\_\_  
Tom Hughes, Council President

ATTEST:

Approved as to Form:

\_\_\_\_\_  
Anthony Andersen, Recording Secretary

\_\_\_\_\_  
Alison Kean Campbell, Acting Metro Attorney

## STAFF REPORT

### CONSIDERATION OF ORDINANCE NO. 11-1253 ADOPTING THE ANNUAL BUDGET FOR FISCAL YEAR 2011-12, MAKING APPROPRIATIONS AND LEVYING AD VALOREM TAXES, AND DECLARING AN EMERGENCY

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Date: April 7, 2011

Presented by: Dan Cooper  
Acting Chief Operating Officer

## BACKGROUND

I am forwarding to the Metro Council for consideration and approval my proposed budget for fiscal year 2011-12.

Metro Council action, through Ordinance No. 11-1253 is the final step in the process for the adoption of Metro's operating financial plan for the forthcoming fiscal year. Final action by the Metro Council to adopt this plan must be completed by June 30, 2011.

Once the budget plan for fiscal year 2011-12 is approved by the Metro Council on May 5, 2011 the number of funds and their total dollar amount and the maximum tax levy cannot be amended without review and certification by the Tax Supervising and Conservation Commission. Adjustments, if any, by the Metro Council to increase the level of expenditures in a fund are limited to no more than 10 percent of the total value of any fund's expenditures in the period between Metro Council approval in early May 2011 and adoption in June 2011.

Exhibit A to this Ordinance will be available subsequent to the Tax Supervising and Conservation Commission hearing June 9, 2011. Exhibits B and C of the Ordinance will be available at the public hearing on April 7, 2011.

## ANALYSIS/INFORMATION

1. **Known Opposition** – Metro Council hearings will be held on the Proposed Budget through May 5, 2011. Opportunities for public comments will be provided. Opposition to any portion of the budget will be identified during that time.
2. **Legal Antecedents** – The preparation, review and adoption of Metro's annual budget is subject to the requirements of Oregon Budget Law, ORS Chapter 294. Oregon Revised Statutes 294.635 requires that Metro prepare and submit its approved budget to the Tax Supervising and Conservation Commission by May 15, 2011. The Commission will conduct a hearing on June 9, 2011 for the purpose of receiving information from the public regarding the Metro Council's approved budget. Following the hearing, the Commission will certify the budget to the Metro Council for adoption and may provide recommendations to the Metro Council regarding any aspect of the budget.
3. **Anticipated Effects** – Adoption of this ordinance will put into effect the annual FY 2011-12 budget, effective July 1, 2011.
4. **Budget Impacts** – The total amount of the proposed FY 2011-12 annual budget is \$389,360,702 and 749.56 FTE.

**RECOMMENDED ACTION**

The Acting Chief Operating Officer recommends adoption of Ordinance No. 11-1253.

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Agenda Item Number 5.2

**Council Consideration and Vote on Final Proposed Council  
and Technical Amendments to FY 2011-2012 Budget.**

Metro Council Meeting  
Thursday, June 16, 2011  
Metro Council Chamber



Materials following this page were distributed at the meeting.



**METRO COUNCIL MEETING**

Meeting Summary

June 9, 2011

Metro Council Chambers

Councilors Present: Council President Tom Hughes and Councilors Carl Hosticka, Barbara Roberts, Rex Burkholder, Kathryn Harrington and Shirley Craddick

Councilors Excused: Councilor Carlotta Collette

Council President Tom Hughes convened the regular Council meeting at 2 p.m.

**1. INTRODUCTIONS**

There were none.

**2. CITIZEN COMMUNICATIONS**

Carol Chesarek, 13300 NW Germantown Rd., Portland: Ms. Chesarek requested a clarification on the Metro Council's position on House Bill 3225 which addresses construction of new roads in urban reserves. She was concerned that Metro support of the bill would undermine the urban reserves premise that concept planning in new urban areas must be completed prior to approval of new infrastructure.

Councilor Carl Hosticka clarified the origin of the bill and Metro's involvement to date. He confirmed that the Metro Council is not actively promoting nor opposing the bill at this time.

**3. "IT'S OUR NATURE" COMMUNICATIONS INITIATIVE**

Ms. Kathleen Brennan-Hunter and Ms. Laura Odom of Metro provided a brief presentation on Metro's new "It's Our Nature" initiative which launches in June 2011. The communication initiative, supported by Metro's voter-approved natural areas program, was designed to provide visibility to invested voter-approved funds, engage citizens and provide follow through to important recommendations on transparency and accountability raised by the bond oversight committee and Metro Auditor. Information on the communication initiative may be accessed online at [www.oregonmetro.gov/naturalareas](http://www.oregonmetro.gov/naturalareas)

Additional presentation information included the 1995 and 2006 voter-approved bond measures, the initiative's publication and promotional materials, and new interactive web site.

**4. CONSIDERATION OF THE MINUTES FOR MAY 19, 2011**

Motion:	Councilor Kathryn Harrington moved to adopt the May 19, 2011 Council minutes.
Vote:	Council President Hughes and Councilors Roberts, Harrington, Hosticka, Craddick, and Burkholder voted in support of the motion. The vote was 6 aye, the motion <u>passed</u> .

**5. RESOLUTIONS**

5.1 **Resolution No. 11-4261**, For the Purpose of Adopting an Order on a Request for an Extension of Time for Completion of Comprehensive Planning for Bonny slope West 9 Study Area 93) by Multnomah County on Appeal from an Order of the Chief Operating Officer.

Motion:	Councilor Rex Burkholder moved to adopt Resolution No. 11-4261.
Second:	Councilor Harrington seconded the motion.

Councilor Burkholder, with assistance from Metro staff Ray Valone, introduced Resolution No. 11-4261. According to Metro Code Section 3.07.830, cities and counties may request a time extension for compliance with an Urban Growth Management Functional Plan requirement. In addition, the Chief Operating Officer may grant the request if the city or county is making progress toward compliance and that the COO may “establish terms and conditions for the extension in order to ensure compliance is achieved in a timely and orderly fashion and that land use decisions made by the city of county during the extension do not undermine the ability of the city or county to achieve the purposes of the functional plan...”

While Multnomah County has continued to make progress on the Bonny Slope West Concept Plan since the area was first brought into the urban growth boundary in 2002, on March 11, 2011 the County applied for an extension for fulfilling the Title 11 requirements for the area. The COO approved, by Order No. 11-053, the County’s request for the extension and established that the County or another body by agreement with the county shall adopt the comprehensive plan provisions that comply with Metro Code within 2 years following the agreement or within 10 years of the date of the approved order, whichever comes earlier. Property owner Mr. James Crawford appealed the COO decisions in April 2011.

If adopted, the resolution would approve, by Order 11-055, the County’s request for an extension based on the above terms/conditions and deny the Mr. Crawford’s appeal of the COO’s Order No. 11-053.

Council President Hughes opened a public hearing on Resolution No. 11-4261:

- James Crawford, 24955 NW Oak Hill, Yamhill: Mr. Crawford was opposed to the resolution. He stated that the County has intentionally avoided not enabling development of the area. He expressed support for the City of Beaverton and Beaverton School District to use the Bonny Slope land for the new proposed public high school. He was concerned that granting the extension would prevent this potential development. (Written testimony included as part of the meeting record.)
- Guillermo Maciel, Multnomah County: Mr. Maciel read written testimony on behalf of Chair Jeff Cogen, Multnomah County, in support of the resolution. While the County has not provided urban planning services since the mid-1980s, when funding became available the County, in partnership with the community, created a concept plan for the area. Unfortunately, there is no plan to move forward with implementation as the City of Portland is legally unable to provide urban services and no other jurisdiction has expressed interest in serving the area. (Written testimony included as part of the meeting record.)

- Karen Schilling, Multnomah County: Ms. Schilling’s testimony was in support of the resolution. She briefly highlighted how the County has met the Metro Title 11 extension criteria including acquisition of Construction Excise Tax (CET) monies for concept planning, entering an intergovernmental agreement with the City of Portland to assist in the planning process and release of the *Existing Conditions Opportunities & Constraints* and creating a concept plan. She provided a brief overview of the County’s actions to date, the county’s transfer of services (i.e. urban planning and building permits) and governance challenges. (Written testimony included as part of the meeting record.)

Council discussion included Washington County’s interest in providing governance and service to the area.

- John Orlando, 12735 NW Skyline Blvd., Portland: Mr. Orlando was opposed to the resolution stating that while technically this is the first request for an extension, the County should have completed this planning in 2003-2004 as part of the comprehensive plan. He recommended the Council apply pressure to the County. He also noted the site’s potential for infill.
- Carol Chesarek, 13300 NW Germantown Rd., Portland: Ms. Chesarek supported the resolution, but recommended that the 10-year timeframe be removed. She outlined some of the area’s governance and development challenges. She was not opposed to the area being developed as long as the cities’ provide governance.
- Mike Nelson, 12401 NW Thompson Rd., Portland: Mr. Nelson was opposed to the resolution. He believed the value of his property had decreased since brought into the UGB in 2007 due to his inability to subdivide the land for residential purposes. He also discussed Multnomah County and the City of Portland’s roles and potential exposure to Measure 49 claims. (Written testimony included as part of the meeting record.)

Seeing no further citizens who wished to testify, Council President Hughes closed the public hearing.

Council discussion included the need for early evaluation of the urbanization potential for possible UGB expansion areas, the urban and rural reserves process, the 2002 UGB expansion, and Washington County and Washington County cities’ abilities to provide services.

Vote:

Council President Hughes and Councilors Roberts, Harrington, Hosticka, Craddick, and Burkholder voted in support of the motion. The vote was 6 aye, the motion passed.

5.2 **Resolution No. 11-4264**, For the Purpose of Concluding that the Concerns and Considerations Raised about the Columbia River Crossing Project in Exhibit A t Resolution No. 11-08-3960A have been Addressed Satisfactorily.

Motion:	Councilor Burkholder moved to adopt Resolution No. 11-4264.
Second:	Councilor Harrington seconded the motion.

Councilor Burkholder and Council President Hughes introduced Resolution No. 11-4264 and provided a brief historical overview of the project and the Columbia River Crossing (CRC) Locally Preferred Alternative adopted by the Metro Council in July 2008.

Mr. Andy Cotugno of Metro, with assistance from Ms. Nancy Boyd of the CRC project, provided a brief presentation on the status of the LPA conditions. The presentation included information on how the project has either resolved or continues to track 11 conditions or concerns identified by the Council in July 2008:

- Tolling
- Demand Management
- Financing Plan
- Light Rail
- Bridge Design
- Design of Bicycle & Pedestrian Facilities
- Number of Auxiliary Lanes
- Impact Mitigation & Community Enhancement
- Urban Development Impacts at Redesigned Interchange
- Preservation of Freight Access
- Urban Development Impacts at Redesigned Interchange

The resolution, if approved, would concur that the 11 concerns and considerations have been sufficiently addressed to proceed with finalizing the Final Environmental Impact Statement (FEIS) and also acknowledge that further refinements and decisions will be made and will include engagement by the Metro Council.

Council President Hughes opened public comment on Resolution No. 11-4264:

- Jeff Bernard, 2138 SE 16<sup>th</sup>, Portland: Mr. Bernard requested the total cost of the project be provided. He was concerned that the project's carbon footprint had not been addressed. He also questioned where the \$9 million joint contribution by ODOT and WSDOT was coming from and potential impacts to other entities.
- Terry Parker, P.O. Box 13503, Portland: Mr. Parker stated that the CRC does not have an equitable finance plan. He was specifically concerned with the share auto users – versus transit riders or cyclist or pedestrians – will be contributing to the bridge through tolling and motorist-paid taxes and fees. He cited impacts to jobs and the economy as reasoning. He recommended tolls for bicycles and a surcharge for transit be considered. (Written testimony included as part of the meeting record.)
- Ron Buel, 2817 NE 19<sup>th</sup> Ave., Portland: Mr. Buel opposed the resolution. He stated that the greenhouse gas (GHG) and air pollution portions completed by the CRC Independent Review Panel were inadequate. (Written testimony included as part of the meeting record.)
- Pai Welch, Portland Freight Committee: Ms. Welch expressed her support for the resolution.
- Douglas Allen, 734 SE 47<sup>th</sup>, Portland: Mr. Allen opposed the resolution. He stated that Condition F, regarding GHG, had not been met and that the project is not consistent with the state's GHG emission reduction goals. He was concerned with MetroScope's assumptions and recommended the project look at work completed by Portland State University's Transportation Studies group. (Written testimony included as part of the meeting record.)
- Chris Lopez, Northeast Coalition of Neighborhoods: Mr. Lopez was opposed to the resolution citing traffic congestion impacts on I-5 and the project cost as reasoning. He was concerned that the cost of the project would prevent funding for other congestion and

traffic infrastructure improvements needed in the neighborhoods he represents. He recommended that the project consider other alternatives that are less expensive, can be phased and provide benefits to GHG emissions.

- Carie Weisenbach-Folz, 6325 N. Albina Ave. #1, Portland: Ms. Folz was opposed to the resolution stating that the CRC project would negatively impact her neighborhood. She cited reduced safety, less walkable neighborhoods, increased pollution and increased auto dependency as reasoning.
- Kevin Jensen, Ironworkers/CR Coalition: Written testimony provided only. Testimony included as part of the meeting record.
- JoAnn Bowmon, Coalition for a Livable Future: Ms. Bowmon was opposed to the resolution. She was concerned that there has not been enough work completed to determine potential impacts to the community. She was also concern that there was no mechanism called out to address air quality issues.
- Jonathan Schlueter, Westside Economic Alliance: Mr. Schlueter supported the resolution. While the Washington County is geographically removed from the project area, the county is the 9<sup>th</sup> largest county in Oregon for shipping containerized freight over the Port of Portland docks. The Washington County Coordinating Committee unanimously voted in support of the resolution. He emphasized the project's importance to Washington County businesses. (Written testimony included as part of the meeting record.)
- Greg Benison, 4320 SW Corbett Ave., Apt. 102, Portland: Mr. Benison was opposed to the resolution. He was concerned that only 5 of the 11 conditions have been satisfied.
- John Reinhold, 2004 NE 15<sup>th</sup> Ave., Portland: Mr. Reinhold stated that the finance plan does not include the recent numbers that show the Vehicle Miles Traveled over CRC target area have decreased. He indicated that the reduction would adversely impact the revenue generated tolls. He stated that the cost of the bridge has not been adequately finalized, and that the GHG numbers do not take into account the new bridge construction or removal of the existing bridge. Additional comments included bridge design.
- Bob Stacey, 3434 SE Brooklyn, Portland: Mr. Stacey was opposed to the resolution. He supported building communities and a transportation system that provide more choices for travel. He stated that tolling the I-5 and building world-class transit and bike-pedestrian facilities would enable reduce travel times and allow freight to move reliably. (Written testimony included as part of the meeting record.)
- Rebecca Hamilton, AROW: Ms. Hamilton was opposed to the resolution. She stated that the financial impact of the project was underestimated; she cited traffic projections over the bridge and unfunded community enhancement fund as reasoning.
- Fred Nussbaum, 6510 SW Barnes Rd., Portland: Mr. Nussbaum was opposed to the resolution. He stated that there was memorial in the state legislature, HJM-22, that has passed out of the House's Transportation and Economic Committee that removed specifics of the CRC proposal and spoke generally to the modernization building and rebuilding of facilities in the CRC corridor. He also addressed the finance plan.

- Jim Labbe, 6325 N. Albina, Portland: Mr. Labbe was opposed to the resolution, stating that the project will be tremendously destructive to the region. He addressed climate change and GHG emissions, and emphasized that the project should do better than a no-build option. Mr. Labbe also expressed support for the CLF testimony.
- Ray Polani, AORTA: Mr. Polani expressed support for rail transit and freight movement. He recommended the Council review work recently completed by Sightline Institute in Seattle, WA. (Written testimony included as part of the meeting record.)
- Joe Clinkenbeard, 3951 N. Williams Ave., Portland: Mr. Clinkenbeard was opposed to the resolution. He requested that more consideration be given to the financing plan and environmental impacts. Mr. Labbe also expressed support for the NECA, and Ms. Hamilton and Mr. Stacey's testimonies.
- Donna Murphy, 1501 N. Hayden Island Dr., Portland: Ms. Murphy, Co-Chair of the Hayden Island Livability environmental justice group, was concerned that the current CRC plan does not address impacts to the community during the project's construction phase. She was specifically concerned with impacts or removal of the local Safeway.
- Pamela Ferguson, Hayden Island Livability Project: Ms. Ferguson requested that the arterial bridge to Hyden Island be one of the first items to be constructed as it provides an important connection to her community. She also stated that the manufactured housing development has already established community enhancement agreements with ODOT, WSDOT, Portland and Vancouver, WA and she encouraged Metro to honor those agreements in the future.
- Tom Buchele, PEAC: Mr. Buchele stated that, for legal reasons, the level of new project analysis provided could not be included in the FEIS. He inquired as to what elements of the plan would be dropped should the project come in over budget; he anticipated that the mitigation efforts and community enhancement components would be dropped. (Written testimony included as part of the meeting record.)

The Council requested a clarification on the difference between the DEIS and FEIS processes.

- Jim Howell, AORTA: Mr. Howell was opposed to the resolution stating that the current CRC proposal does not reduce traffic congestion, pollution or GHG emissions, improve freight, or create jobs. He provided a CD to the Council with a set of proposed project alternatives. (Written testimony and CD included as part of the meeting record.)
- Roger Staver, Hayden Island Neighborhood Network: Mr. Staver stated that HiNooN had concerns with the resolution as it related the neighborhood's Hayden Island Plan components: (1) neighborhood retail center; (2) stormwater treatment wetlands; (3) park and ride, (4) eastside multi-use path, (5) public areas and park facilities; and (6) local street design. He concluded that Hyden Island continues to support the concepts in the plan. (Written testimony included as part of the meeting record.)
- Victor Viets, 421 N. Tomahawk Island Dr., Portland: Mr. Viets was in support of the resolution. He highlighted land use conflicts created by the project's designed interchanges. He specifically requested that conflicts between wetlands and the neighborhood retail area be addressed. (Written testimony included as part of the meeting record.)

- Chris Girard, Plaid Pantry: Mr. Girard addressed the CRC's finance plan. He requested that the Council at least withhold action on the finance plan, stating that approval would endorse a finance plan that still has issues to address.
- Carolee Collen, 1501 N. Hayden Island, Portland: Ms. Collen stated that the residents in her community have and continue to be impacted. She stated that while the community is excited about the project, impacted residents need to be heard.
- Chris Smith, 2353 NW Pettygoe, Portland: Mr. Smith opposed the resolution, stating that testimonies given articulate that the Council's conditions have not yet been met.

Council discussed Mr. Joe Cortright's independent review of the project and if his report had been reviewed by his peers. Mr. Smith indicated that independent citizen reviews of project – that provide significant contradicting data -- has not been included or evaluated during the process.

- Joesphine Wentzel, US Digital: Ms. Wentzel emphasized the lack of support by both Oregon and Washington state legislatures. She stated that Vancouver residents have hired a forensic auditor to look at the project spending. She emphasized the need for transparency.
- Corky Collier, Columbia Corridor Association: Mr. Collier supported the resolution. He stated that the Exhibit B, project conditions, was a very objective, thorough and succinct report. He stated that everyone needs to continue to work to improve the project and address community impacts and bike access. He believed that the project improvements would occur.
- Brad Perkins, Cascadia High Speed Rail: Mr. Perkins stated that the project does not meet National Environmental Policy Act (NEPA) requirements. He stated that High Speed Rail, between Portland and Vancouver, WA, should to be considered and studied. (Written testimony included as part of the meeting record.)
- Mara Gross, Coalition for a Livable Future: Ms. Gross was opposed to the resolution stating that WSDOT and ODOT have not addressed the concerns identified by the Council in 2008. She addressed the project's perspective on community enhancement funds, increased climate pollution, and expensive finance plan.
- Ian Williams, 9715 SE Evergreen Hwy, Vancouver, WA: Mr. Williams supported the resolution. He stated that if the project continues to look for the perfect bridge, the project would never be completed.
- Sharon Nasset, Third Bridge Now: Ms. Nasset addressed the Council on the NEPA process. She stated that the SW Regional Transportation Council and Clark County Commission confirmed that the Third Bridge and other options were not studied. She stated that this is against civil rights outline in the NEPA process.
- Walter Valenta, 173 NE Bridgeton Dr., Portland: Mr. Valenta addressed the Council on the Governors' truss bridge selection. While he was disappointed by the selection, he remained hopeful that a world-class architecture firm would be brought in to the project. He requested that the Council hold firm to the design elements as they risk being cut if the budget is impacted.



- Robert Liberty, 3431 SE Tibbitts St., Portland: [Councilor Hosticka read testimony into the record.] Mr. Liberty encouraged the Council to table the resolution until June 2012 stating that the project had failed to satisfy the conditions. He indicated that the Council legislation did not satisfy the conditions, but rather described of how the conditions would be met in the future. He also addressed issues with the finance plan. (Written testimony included as part of the meeting record.)
- Katie Eyre Brewer, P.O. Box 3027, Hillsboro: [Councilor Hosticka read testimony into the record.] Representative Brewer requested that the Council delay their vote, pending legislative action. Her testimony addressed the finance plan and preservation of freight access. (Written testimony included as part of the meeting record.)
- Michael Powers, 1538 NE 24<sup>th</sup>, Portland: Written testimony provided only. Testimony included as part of the meeting record.

Seeing no additional citizens who wished to comment, Council President Hughes opened the resolution for Council discussion.

Councilor Hosticka was opposed to the resolution stating that the project had yet to satisfy the conditions raised by the Council. Additionally, he could not support a resolution that expressed Council's comfort that discussions would continue and that future work would satisfy the concerns. He also was concerned with the lack of a detailed finance plan.

Council discussion included:

- The statewide significance of the project
- Oregon and Washington states' participation
- Collaboration among project stakeholders and the public
- Council touch points on the CRC including the Land Use Final Order (LUFO), publication of FEIS, Regional Transportation Plan, project finance plan, etc.
- Importance of mitigating impacts to the local community during and after project construction (i.e. air pollution and dust)
- Importance of developing a long-term monitoring system for air pollution
- Importance of building a bridge that the region is proud of that has artistic architecture and design elements.

Vote:

Council President Hughes and Councilors Roberts, Harrington, Craddick, and Burkholder voted in support of the motion. Councilor Hosticka opposed the motion. The vote was 5 aye, 1 nay, the motion <u>passed</u> .
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## 6. **CHIEF OPERATING OFFICER COMMUNICATION**

Mr. Dan Cooper provided an update on the first Annual All-PES meeting and work party at the Howell Territorial Park, the anticipated Hoyt Street Station Café opening, and the June 14 All Managers meeting regarding the Diversity Action Plan.

Metro Council Meeting

6/9/11

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7. **COUNCILOR COMMUNICATION**

There were none.

8. **ADJOURN**

There being no further business, Council President Hughes adjourned the regular meeting at 5:07 p.m. The Metro Council will reconvene the next regular council meeting on Thursday, June 16 at 2 p.m. in the Metro Council Chambers.

Prepared by,



Kelsey Newell,  
Regional Engagement Coordinator

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF JUNE 16, 2011**

<b>Item</b>	<b>Topic</b>	<b>Doc. Date</b>	<b>Document Description</b>	<b>Doc. Number</b>
	Agenda	6/9/11	Revised 60911 Council agenda	60911c-01
3.0	Publication	Summer 2011	Metro Green Scene	60911c-02
3.0	Handouts	N/A	Trifold publication and button	60911c-03
5.1	Letter	4/4/11	Letter to Council President Tom Hughes regarding appeal to Order 11-053	60911c-04
5.1	Article	5/30/11	Written testimony submitted by Jim Crawford	60911c-05
5.1	Letter	6/9/11	Written testimony submitted by Jeff Cogen	60911c-06
5.1	Letter	6/9/11	Written testimony submitted by Karen Schilling	60911c-07
5.1	Handout	N/A	Written testimony submitted by Mike Nelson	60911c-08
5.2	PowerPoint	6/9/11	<i>A Long-Term, Comprehensive Solution: Status of LPA Conditions</i> provided by Andy Cotugno	60911c-09
5.2	Publication	5/12/11	Columbia River Crossing Project Overview	60911c-10
5.2	Handout	6/9/11	Errata Sheet for Resolution No. 11-4264, Exhibit B	60911c-11
5.2	Handout	5/9/11	Written testimony submitted by Terry Parker	60911c-12
5.2	Handout	N/A	Written testimony submitted by Ron Buel	60911c-13
5.2	Memo	6/9/11	Written testimony submitted by Douglas Allen	60911c-14
5.2	Handout	6/9/11	Written testimony submitted by Kevin Jensen	60911c-15
5.2	Handouts	N/A	Written testimony submitted by Jonathan Schleuter	60911c-16
5.2	Handout	6/9/11	Written testimony submitted by Bob Stacey	60911c-17
5.2	Handout	6/1/07	Written testimony submitted by Ray Polani	60911c-18

5.2	Letter	6/9/11	Written testimony submitted by Tom Buchele	60911c-19
5.2	Handout & CD	6/9/11	Written testimony and CD submitted by Jim Howell	60911c-20
5.2	Letter	6/9/11	Written testimony submitted by Roger Staver	60911c-21
5.2	Handouts	N/A	Written testimony submitted by Victor Viets	60911c-22
5.2	Letter	6/8/11	Written testimony submitted by Joe Cortright	60911c-23
5.2	Memo & Attachments	6/8/11	Written testimony submitted by Brad Perkins	60911c-24
5.2	Handout	6/9/11	Written testimony submitted by Robert Liberty	60911c-25
5.2	Letter	6/8/11	Written testimony submitted by Katie Eyre Brewer	60911c-26
5.2	Letter	6/9/11	Written testimony submitted by Michael Powers	60911c-27



Date: June 16, 2011  
To: Tom Hughes, Council President  
Members of the Metro Council  
From: Dan Cooper, Acting Chief Operating Officer  
Cc: Senior Leadership Team  
Finance Team  
Council Policy Coordinators  
Re: **Recommendation for funding Councilor amendments**

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At Tuesday's work session, the Council identified and discussed briefly a variety of sources for funding Councilor amendments. My recommendation is that you fund whatever amendments the Council chooses in the order described below. In my opinion this provides the Council with the greatest flexibility as the year progresses, allowing for further action on any of the amendments as they meet or complete certain phases and further allowing the Council to consider other opportunities not yet identified.

Order	Funding Source		Amount
1	"Risk Fund transfer"		\$ 238,000
2	Reserve for Future Election Costs		\$ 58,411
3	Opportunity Fund		\$ 500,000
		<b>Total</b>	<b>\$ 796,411</b>
		maintain in reserves for	\$ 150,000
		funding Council projects	\$ 350,000
4	CII Election Referral Cost	that advance next year	

I have created a summary which follows that provides a running tally of available funds, in the order that represents the discussion as I heard it on Tuesday. The upper part of the chart portrays the amendments around which there seemed to be consensus; the lower part of the chart indicates those amendments that may require more discussion.

<b>Amendment</b>	<b>Title</b>	<b>Appropriate Now for FY 11-12</b>	<b>Hold to complete Parks Inventory/ Analysis</b>	<b>Available Funds</b>
				<b>\$796,411</b>
Collette/ Harrington #1	Development Center Funding for Downtown Revitalization and Placemaking	\$ 170,000		\$ 626,411
Collette #2	Eco-Efficient Employment in Action	\$ 50,000		\$ 576,411
Harrington #1	Regional Brownfield Problem Scoping	\$ 65,000		\$ 511,411
Harrington #2	Parcelization – Supporting redevelopment with lot assembly tools	\$ 65,000		\$ 446,411
	<b>Total Spending</b>	<b>\$ 350,000</b>		
	Balance Remaining			\$ 446,411
Burkholder #2	Master plan updates and partnership development for Howell Territorial Park		\$180,000 - \$280,000	
Hosticka #1	Planning and design for a publicly accessible Tualatin River canoe launch		\$100,000 - \$250,000	
Burkholder #1	Climate Initiatives Program Staff	\$ 135,000		
	Lower range total	\$ 415,000		\$ 31,411
	Upper range total	\$ 665,000		<b>\$(218,589)</b>

## Council Proposals For Budget Amendment Discussion

Councilors	# 1
Collette and Harrington	

### Short Title

Development Center Funding for Downtown Revitalization and Placemaking

### Concise Description

The additional funding proposed in this amendment, coupled with Metro's existing tools, programs and staff, will enable the Development Center to offer a full complement of assistance for downtown revitalization and development through partnerships with 5-7 targeted communities annually. Working in response to local opportunities and established community priorities, these partnerships will help advance local redevelopment goals and set the stage for private investment and infill development in downtowns and main streets throughout the region. Important revitalization activities and placemaking projects with local cities may include:

- Partner with communities to promote urban revitalization activities and events that **engage downtown stakeholders**, cultivate strong civic identity, and enable downtowns and main streets to flourish
- Provide targeted funding and design assistance for **storefront improvement projects** and public investments to **enhance the economic performance of commercial districts**
- Perform development opportunity studies for adaptive re-use projects, and otherwise partner with cities, private property owners and business owners to **strategically reinvest in existing properties**, revive commercial districts and set the stage for new development
- Partner with local jurisdictions to **implement "walkability audits"** and other activities to promote best practices for designing and developing walkable communities
- Plan and implement placemaking projects and strategic public investments that demonstrate innovative sustainable design practices and **create a favorable climate for private investment**
- Organize tours and educational events to **highlight creative, cutting-edge approaches to public-private partnerships** and high-quality, sustainable urban design.

### Objective

The region's 2040 growth concept calls for new development to be focused in the region's downtowns and main streets. However, despite strong local aspirations of some jurisdictions to attract new development and investment to their communities; many of the region's centers and corridors have experienced stagnation and decline over the years, even during periods of significant overall population growth and real estate investment.

The Development Center has been engaged in redevelopment and revitalization work throughout the region in partnership with local communities over the last few years due to the Development Opportunity Fund. The response from communities has been overwhelmingly positive, and demand for continued funding and partnerships with Metro has increased. In addition, the recently completed TOD Strategic Plan has clearly called out a need for predevelopment activities and station area planning, and identified the current lack of resources to support such activities.

**Duration** (put an 'x' in the appropriate line, for specific length write in the length)

One time                      Specific length: 2 years with review                       On-going  


**Cost Estimate**

In Spring 2009, the Metro Council allocated \$500,000 to create the “Development Opportunity Fund” to enable the Development Center to implement projects throughout the region that would spur redevelopment and investment in downtowns and main streets. This allocation, along with prior special allocations of placemaking funds, has enabled the Development Center to undertake an average of 10 projects per year in local communities over the past two fiscal years at an average cost of \$36,000 per project.

Collectively, over fiscal years 2009-10 and 2010-11, the Development Opportunity Fund combined with other resources has enabled the Development Center to direct \$722,000 of funding to projects and leveraged approximately \$471,000 from external sources. The proposed FY 2011-2012 budget includes only \$80,000 of materials and services funding for the Development Center, which would likely support only 2-3 projects annually, representing a significant reduction in activities and partnerships with local communities. The proposed additional funding of \$170,000 in FY 2011-2012 proposed in this amendment would enable the Development Center to provide a more robust program and support approximately 6-8 initiatives. It is anticipated that existing staffing levels in the Development Center will be sufficient to support this level of activity.

**Funding Options**

Funding for this amendment will come for a combination of money in the Opportunity Fund or the funds in the amount of approximately \$238,000 that were in excess as a result of the transfer of 2.8 FTE from the Risk Fund to the General Fund.

**Relationship to other programs**

This proposal relates to, and will enhance and complement the following existing programs or projects:

- Integrated mobility corridors (SW Corridor Plan/East Metro Connections Plan)
- Community Investment Initiative
- Community Development and Planning Grants (formerly known as CET grants)
- Major regional transit investments – Lake Oswego to Portland transit project, Portland-Milwaukie Light Rail
- Active Transportation Project

**Stakeholders**

Local cities, downtown business owners and downtown property owners, as well as the general public will benefit from increased vitality, prosperity, and investment in the region’s downtowns. Cities will see



increased tax revenues over time as downtowns flourish and property values rise. The increased desirability and value will attract and support new investments in higher-density development. As commercial districts improve, local property owners will benefit from increased values and rents for their retail spaces, and small retail businesses will benefit as downtown districts attract greater volumes of customers.

Local citizens will benefit from access to better services, interesting local businesses, and lively walkable urban destinations. As downtowns redevelop and become more economically successful, it will be important to implement programs to ensure that affordable housing remains available in these locations so that citizens of all income levels have access to the benefits of walkable, urban communities and can meet their daily needs.

***Parcelization – Supporting redevelopment with lot assembly tools***

**Concise Description**

*(Please describe the proposal, sufficient in scope that the cost and/or level of effort can be evaluated.)*

Executive Summary

**One obstacle to realizing zoned development capacity in many centers, transit corridors, employment and industrial areas throughout the Portland metropolitan region is the parcelization of land areas in the form of many small lots, perhaps even in different ownership. This is a proposal to research and measure the extent of the problem of parcelization in our region and to uncover land aggregation tools that may be of use to local governments and property owners. This project will provide regionwide data to inform the Metro Council and the Community Investment Initiative Leadership Council on the extent of the parcelization problem and potentially provides options for addressing land parcelization and site assembly.**

Overview

Discussions with local elected officials and staff have indicated that site assembly is a barrier to redevelopment in the region's centers, corridors, industrial and employment areas. Even for relatively small projects, getting adjacent land owners to agree to the redevelopment goals and enter into a purchase, lease or other agreement is time-consuming and difficult to arrange. Complications can be even greater for multiple large employment sites. Agreements are more likely to be made when the market for redevelopment is hot and less likely in areas with low or longer term returns on investment, despite the value to regional growth management goals.

While the TOD program and the acquisitions for the natural areas bond measure have given Metro some experience on these issues for Metro's investments, Metro has not provided assistance to others in the region with these problems.

The current large lot industrial inventory and replenishment work program will include lot assembly as a topic for large lot industrial and employment areas, but **the current proposed budget does not have the resources to focus on addressing lot assembly problems on an area-specific level or in major regionally significant areas such as downtowns/centers, and transit corridors which are hindered for redevelopment by this problem, and thus obstruct the ability to make the most of land within the existing UGB across the entire metropolitan region.**

**Objective**

This proposal will provide a report containing the following:

Part I

- Documentation of the extent of the lot assembly problem, starting with examples in priority redevelopment areas in centers, transit corridors, employment and industrial areas
- Identification of circumstances that would most favorably respond to lot assembly efforts and potential actions that may help put these circumstances in place.
- Overview of tools Metro and local cities currently have to engage property owners with land assembly solutions

Part II

- Outline of potential solutions and best practices drawn from local organizations like Business Oregon, Port of Portland, PDC and other organizations from elsewhere in the U.S.

**Duration** (put an 'x' in the appropriate line, for specific length write in the length)

  X   One time                      Specific length: \_\_\_\_\_                      \_\_\_\_\_ On-going

**Cost Estimate**

**\$65,000 in M&S for consultant expertise into the Land Use Planning Section.**

**Funding Options**

To be determined from available options which may include:

- a. Use of one-time money from Opportunity Fund (\$500,000 total available);
- b. Use of "Unapp. Balance- Stabilization" in Account #5990 in General Fund (\$238,152 available).
- c. Partial deployment of funding obligated in FY 2012 for CII work program (currently \$350,000 for election referral and \$75,000 for direct marketing/PSA);
- d. Other.

**Relationship to other programs**

The work would inform other current efforts, including the Community Investment Initiative, the SW Corridor Plan and East Metro Connections Plan, the Climate Smart Communities Scenarios, the large lot Industrial inventory and replenishment program, and others.

**Stakeholders**

The outcomes of this project will benefit regional policy-makers by uncovering the extent of parcelization in centers, corridors, employment and industrial areas and offering solutions for later implementation. Other stakeholders include property owners, local communities, jurisdiction planners and economic development professionals who could use this information to craft strategies targeting land aggregation.

## Council Proposals For Budget Amendment Discussion

Councilor Collette	# 2
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### Short Title

Eco-Efficient Employment in Action

### Concise Description

The latest volume of Metro's Community Investment Toolkit focuses on supporting businesses in realizing greater economic and ecological benefits by using less water, less energy, less capital, less land and generating less waste. The focus is increasing the region's economic sustainability through more efficient infrastructure, site design and utilization of land through redevelopment. The toolkit focuses on the economic and community returns associated with this new approach to building employment areas. After publication last fall, the public and private sector reacted positively to the toolkit as well as to the experts Metro brought in to further explore the use of these tools in the region. The experts met with public and private stakeholders from **three local communities interested in exploring eco-efficient employment areas.**

This budget amendment will provide the resources needed to hire a consultant/eco-efficient expert to **implement an eco-efficient business strategy in 1-2 communities.** This work would include:

- Follow-up with the three interested communities as well as other communities to assess readiness for eco-efficient employment areas;
- Identify opportunities in 1-2 communities that are ready to consider implementation;
- Identify relevant eco-efficient tools for these areas and explore the potential costs and benefits;
- Engage all relevant stakeholders, including investors, utilities, engineers, planners, and elected officials;
- Conduct workshops or charrettes to identify the best solutions and action items for site-specific implementation;
- Recommend actions for each stakeholder group to execute the project;
- Increase familiarity with eco-efficient tools in other communities by recording and sharing the process and results with the rest of the region.

### Objective

There are **two primary objectives** of this budget amendment. The **first objective** is to realize on-the-ground implementation of eco-efficient employment tools for sustainable job growth in the region. The **second objective** is to utilize these eco-efficient business strategies as a model for the rest of the region. To achieve these objectives, an important **outcome** of this work is the engagement of the public and private sector together to identify local solutions and commit to action items related to their area of business.

**Products** will include implementation action plans for specific eco-efficient employment projects, documentation of the process including analysis in developing the action plan, and case study summaries. The information and lessons learned will be shared through these written materials and presentations to educate and inspire other communities in the region to implement eco-efficient employment practices. The work program associated with this budget amendment will **focus** on only one or two projects in order to engage all the necessary stakeholders, develop a meaningful action plan, and move into the **implementation of these specific projects.**

**Duration** (put an 'x' in the appropriate line, for specific length write in the length)

  X   One time

Specific length: \_\_\_\_\_

\_\_\_\_\_ On-going

### **Cost Estimate**

The proposed \$50,000 budget will provide \$10,000 in outreach to identify the one or two projects with the highest level of readiness to consider implementation. The additional \$40,000 will be spent to develop an implementation action plan for each project that is selected. In addition, Planning and Development staff will manage the contract and assist in outreach activities associated with this work plan. This project will leverage staff and resources from local stakeholders to complete these projects. The resulting projects will support employment growth and sustainability – important **triple bottom line returns** for the region and these individual communities.

### **Funding Options**

Funding for this amendment will come for a combination of money in the Opportunity Fund or the funds in the amount of approximately \$238,000 that were in excess as a result of the transfer of 2.8 FTE from the Risk Fund to the General Fund.

### **Relationship to other programs**

Climate Smart Communities

Community Investment Strategy

Solid Waste Roadmap strategic plan

Sustainability plan

Transit Oriented Development (increased employment in these areas)

Selected projects may be in the East Metro Connections Plan or Southwest Corridor Plan areas

### **Stakeholders**

Local businesses and business organizations, e.g. Westside Economic Alliance, Clackamas County Business Association, Columbia Corridor Association, etc.

Local jurisdictions – specifically those that have shown an interest and begun efforts to implement eco-efficient development

Utility companies

Public works and engineers

Development community

Community members

## ***Regional Brownfield Problem Scoping***

### **Concise Description**

*(Please describe the proposal, sufficient in scope that the cost and/or level of effort can be evaluated.)*

#### Executive Summary

**This budget amendment is a proposal to quantify the extent of need for brownfield restoration and redevelopment in our region's 2040 growth concept areas.** This information, while perhaps known at the local area level, **is not currently collected as a regional data set for subsequent investment discussions and programming efforts.** At a minimum, this project will **provide regionwide data to inform the Metro Council and the Community Investment Initiative Leadership Council on the extent of the brownfield problem in our region's downtowns, main streets, station communities, corridors and employment lands.** If fully funded the report **would additionally outline a range of solutions and best practices applied elsewhere that could be used in our metropolitan area.**

#### Overview

Metro's prior Brownfield program, over five years brought resources to assess petroleum-contaminated sites, developed new partnerships, and increased Metro staff's familiarity with EPA grant options and approaches applied elsewhere in the US. However, **that program addressed only a small part of the brownfield contamination-restoration needs in the region.** Additionally, with the conclusion of the EPA funded program, the current budget dedicates only .1 FTE to brownfield mitigation activities as part of the broader toolkit implementation effort. Consequently, **a lack of information about the size or extent of brownfield sites in the region hinders the ability to craft a strategic focus for prioritizing brownfield clean-up in order to make the most of potentially redevelopable land within the existing UGB across the entire metropolitan region.**

By moving forward this proposal, which will scope the extent of the problem and determine the resources needed to effect brownfield redevelopment, Metro can lay the foundation for productive engagement with local elected leadership and the general public to address the region's need for a successful brownfield program.

The purpose of this project is to **create a report outlining the extent of brownfields** in the region's 2040 design types targeted for redevelopment in centers, corridors, main streets, station communities and employment areas. Additionally, the report will **identify potential solutions** for Metro Council consideration and regional discussion. While some of this information may be known by Metro staff, including planning staff, no such report and toolset is readily and publicly available to help guide local communities and decision-makers.

**The resulting report would set the stage for a decision by the Council and regional stakeholders on whether increased regional effort on brownfields is appropriate, what strategies might be most successful, and how the work would be funded.**

## **Objective**

Create report detailing the following:

#### Research Step One:

- Assess the extent of the brownfield problem facing the region's downtowns, mainstreets, corridors, station areas, and employment lands to help us understand the level of contamination and the number of sites affected. This can be achieved by engaging local communities about the brownfield sites in the 25 cities and unincorporated areas of our 3 county metropolitan area.

- Document the types of sites that are likely to redevelop with existing policies and resources and those that are not.
- Identify the opportunity cost and regional significance of the status quo.

#### Research Step Two

- Identify a range of solutions that have been applied elsewhere and that have potential in the metro area.
- Calculate return on investment, risks and opportunity costs from applying a mix of new approaches.

**Duration** (put an 'x' in the appropriate line, for specific length write in the length)

One time                      Specific length: \_\_\_\_\_                       On-going

#### **Cost Estimate**

**\$65,000 M&S for consultant expertise into the Land Use Planning Section.**

#### **Funding Options**

**TBD from available options which may include:**

- Use of one-time money from Opportunity Fund (\$500,000 total available);
- Use of "Unapp. Balance- Stabilization" in Account #5990 in General Fund (\$238,152 available).
- Partial deployment of funding obligated in FY 2012 for CII work program (currently \$350,000 for election referral and \$75,000 for direct marketing/PSA);
- Other.

#### **Relationship to other programs**

The work would inform other current efforts, including the Community Investment Initiative, the SW Corridor Plan and East Metro Connections Plan, the Climate Smart Communities Scenarios, the large lot Industrial inventory and replenishment program, and others

#### **Stakeholders**

**The outcomes of this project will benefit regional policy-makers by uncovering the extent of brownfield problem and offering solutions for subsequent implementation.** Other stakeholders include property owners, local communities, jurisdiction planners and economic development professionals who could use this information to craft strategies targeting investments in brownfield clean-up efforts.



**Office of Mayor Sam Adams**

City of Portland

June 14, 2011

Metro Council  
600 NE Grand Avenue  
Portland, OR 97232

Dear Council President Hughes and Metro Councilors:

The City of Portland would like to express its support for the Climate Initiatives Program Staff budget amendment that will continue funding for a staff position to coordinate and manage Metro's climate change initiatives.

Climate change may well represent one of the greatest challenges to our future well-being. The region has received accolades for our climate work, but it is high praise on a low standard. Many local jurisdictions in the area have recognized that our good work to date is not nearly enough, and are looking to Metro to play an important role in our region's response to climate change. This leadership role needs to extend beyond the important and substantial work being done to meet House Bill 2001 requirements. Metro has already enabled capacity building at the local level by serving as a useful source of climate change information, tools, and technical assistance for local government partners, including Portland.

Specifically, Portland is looking to continue partnering with Metro to develop and promote strategies to address climate change preparation and adaptation at the regional level. Metro's leadership is built on a tradition of excellence in planning and stewardship of our natural environment. Climate change mitigation and preparation is a natural extension of Metro's regional role on these important issues.

Portland believes that Metro's climate change leadership will be impacted by the termination of this staff position, namely by reducing Metro's capacity to work to with Portland and other local jurisdictions to develop climate mitigation and preparedness strategies, to advance region-wide preparedness efforts, and to lead the region forward with a coordinated and comprehensive response to climate change.

We fully support Councilor Burkholder's efforts to ensure that this staff position remains funded and look forward to working with Metro in the future to advance climate change mitigation and preparedness efforts in the region.

Sincerely,

Sam Adams  
Mayor





## Environmental Health

3653 SE 34<sup>th</sup> Avenue Portland, OR 97202

### Environmental Health

Phone: (503) 988-3400

Fax: (503) 988-5844

[www.mchealthinspect.org](http://www.mchealthinspect.org)



## Public Health

## MULTNOMAH COUNTY OREGON

June 9, 2011

Metro Council  
600 NE Grand Avenue  
Portland, OR 97232

Dear Council President Hughes and Metro Councilors,

Multnomah County Environmental Health would like to express its support for the Climate Initiatives Program Staff budget amendment that will continue funding for a staff position to coordinate and manage Metro's climate change initiatives.

Metro plays an important leadership role in our region's response to climate change. While the work being done to meet House Bill 2001 requirements is important and substantial, there is a regional need for leadership in other areas, specifically climate change preparedness. Metro has enabled capacity building at the local level by serving as a vital source of climate change information, tools, and technical assistance for local government partners. Additionally, if funding continues, Metro will play an instrumental role in working with local partners to develop and promote strategies to address climate change preparation at the regional level.

Metro is strengthening its work by introducing the use of a health equity lens in several projects, including the East Metro Connections Plan, as well as ensuring environmental justice principles are being used in the Regional Flexible Funding process. Additionally, health and equity outcomes are being integrated into the Climate Smart Communities Scenario work, which is helping to highlight the "co-benefits" to public health from the greenhouse gas reduction activities that HB 2001 supports. The scenario planning that will occur over the next several years has both equity and public health analysis components and Multnomah County Environmental Health is committed to supporting this work by serving as a key stakeholder on these committees.

MECH believes that Metro's climate change leadership will be impacted by the termination of this staff position, namely by reducing Metro's capacity to develop climate mitigation and preparedness strategies, to advance region-wide preparedness efforts, and to lead the region forward with a coordinated and comprehensive approach to addressing climate change, all with the consideration of impacts on public health. We fully support Councilor Burkholder's efforts to ensure that this staff position remains funded and look forward to working with Metro in the future to advance climate change mitigation and preparedness efforts in the region.

Sincerely,

Lila Wickham, Director

Multnomah County Health Department, Environmental Health Services

Cc Consuelo Saragoza



**Staff**

**Mike Houck**, Executive Director

**Officers**

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**Goody Cable**, Vice-chair

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**Rodolpho Ramina**, Sustainability  
Consultant, Curitiba, Brazil

**Ann Riley**, California Department  
of Water Resources

**Geoff Roach**, Oregon Field  
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**Jennifer Thompson**,  
U. S. Fish and Wildlife Service

**Paddy Tillett**, Architect, ZGF,  
Portland

**Ethan Seltzer**, Director, PSU  
School of Urban Studies and  
Planning

**David Yamashita**,  
Senior Planner, Long Range Planning,  
Maui, Hawaii

**Dr. Alan Yeakley**, PSU  
Environmental Sciences and  
Resources

**Lynn Youngbar**, Organizational  
Development Consultant

June 9, 2011

Tom Hughes, Metro Council President  
Metro Council  
600 NE Grand  
Portland, OR 97232

Dear President Hughes and Councilors,

I am writing to you regarding the issue of Climate Change and Adaptation strategies. I recently attended the Regional Climate Leadership Summit which was an excellent overview of climate change and which focused on light vehicle contributions to greenhouse gas emissions. During her opening comments Councilor Collette referenced the need to address climate adaptation on the region scale as well, although the summit itself focused exclusively on climate mitigation through VMT reductions and other means to reduce emissions of greenhouse gases.

More recently Councilor Burkholder and Mike Hogle and Kim Ellis of Metro staff addressed the Portland Planning and Sustainability Commission of which I am a member. During the course of their presentation climate adaptation was discussed. Following the Metro presentation I asked what, specifically, Metro had in mind with regard to elevating climate adaptation at the regional level. The City of Portland's and Multnomah County Climate Action Plans have a fairly robust set of climate adaptation strategies but, as Councilor Burkholder correctly pointed out, Portland and Multnomah County cannot "go it alone" with regard to either mitigation or adaptation responses to climate change. Councilor Burkholder stated that he wasn't certain there would be sufficient funds in Metro's budget to attack the adaptation side of the climate response equation.

I am writing to you to request two actions by Metro Council. First, it is critical that climate adaptation be a region-wide effort that will require additional funding to tackle what is clearly an issue of regional significance. Secondly, I would argue that there are many actions that Metro could take to address climate adaptation within the context of its ongoing programs, without the need to expend additional money.

To be clear, when I refer to Climate Adaptation I am not referring to retrofitting bridges, buildings, or other hard, human-built infrastructure, although there is already one example where that has occurred with TriMet's revision of the design for the new Light Rail Bridge which anticipated an expected rise of Willamette River levels as much as two feet due to ocean rise. While retrofitting physical structures is one form of adaptation, the arena in which Metro has an immediate and large role to play with regard to climate adaptation is with land use, transportation and natural resource protection and restoration. Additionally, there is the issue raised in today's *Portland Tribune* in Kat West's article, "Portland should brace for 'climate refugees'", regarding the potential for significantly more population growth as a function of people attempting to escape increased severe weather events in the southeast, drought in the southwest and wildfires in the southwest and southern California.

The primary issue(s) I want to raise, however, relate to adaptation to protect natural resources and to avoid damage to structures by changes in hydrology and other anticipated changes in the regional landscape. These issues have not yet been addressed in the regional climate change dialogue. There are several highly respected recent publications regarding climate change in Oregon that predict significant impacts on the region's natural systems throughout our region and the Willamette Basin. Three of the publications listed below are rigorous, peer-reviewed projections of climate change impacts on our region's natural systems and recommended actions:

Climate Leadership Initiative. 2011. Building Climate Resiliency in the Lower Willamette Region of Western Oregon: A Report on Stakeholder Findings and Recommendations. The Resource Innovation Group. Eugene, Oregon. Available at: [www.theresourceinnovationgroup.org/climate-preparedness-pubs/](http://www.theresourceinnovationgroup.org/climate-preparedness-pubs/)

Oregon Global Warming Commission's Subcommittee on Fish, Wildlife, and Habitat Adaptation. 2008. Preparing Oregon's Fish, Wildlife, and Habitats for Future Climate Change: A Guide for State Adaptation Efforts. Prepared by Defenders of Wildlife and the Oregon Department of Fish and Wildlife.

Oregon Climate Change Research Institute. 2010. Oregon Climate Assessment Report, K.D. Dello and P.W. Mote (eds). College of Oceanic and Atmospheric Sciences, Oregon State University, Corvallis, OR. Available at: [www.occri.net/OCAR](http://www.occri.net/OCAR)

In their Impacts and Recommendations for Natural Systems the authors note that climate change will directly affect the natural systems of the Lower Willamette, including decreased air and water quality as well as endangered and threatened species. These impacts include changes to both aquatic and terrestrial systems. Other projected impacts include altered hydrology of streams, river and wetlands; loss of wetland systems; loss of biodiversity; increases in the number of invasive, non-native plants and animals; and increased fragmentation of wildlife corridors and habitats.

As I noted earlier, we are already implementing some of the actions they recommend to help adapt to climate change. But we also know the status quo is not sufficient. We have to ramp up these actions considerably, at a regional scale. An ad hoc, jurisdiction by jurisdiction basis will be insufficient to successfully adapt to climate change and build resiliency in both our man-made and natural systems. Based on what we now know is coming with climate change there is regional consensus that we need to do many things in the adaptation arena including:

- 1). Better protect floodplains, clearly an issue of regional importance, and a follow up to both Title 3 and Title 13, which would also protect some of the region's most significant natural resources and wildlife corridors
- 2). Increase the complexity of streams which would accomplish many of the same objectives as above.
- 3). Protect genetic diversity and recovery opportunities for fish and wildlife and protect biodiversity in the entire Portland-Vancouver metropolitan region as a complement to similar efforts outside our region or The Intertwine extent.
- 4). Better protect water recharge areas, which is also a regional water supply issue
- 5). Incorporate climate adaptation strategies into watershed management plans across the region.
- 6). Restore natural fire regimes, which is important for biodiversity as well as managing fire to reduce fire hazards at the Urban/Rural Interface.
- 7). Use a landscape scale approach to conservation, which presumably will be advanced by The Intertwine Alliance's Regional Conservation Strategy.
- 8). Reduce impervious surfaces region wide.

- 9). Expand carbon sequestration efforts through expansion of the urban forest canopy, strategic acquisition and restoration of natural areas, both urban and rural.
- 10). Establish an ecosystem services market by better documenting the economic value of green infrastructure. Metro should help build on existing work by Portland BES, Clean Water Services, PSU's Institute for Sustainable Solutions, Ecotrust Ecosystem Services research this agenda, which has the potential to create a funding mechanism to accomplish many of these responses.
- 11). Protect existing, high quality habitat and restore degraded systems (Protect the Best, Restore the Rest).
- 12). Increase and refocus monitoring which is an issue for the Greater Vancouver-PDX Indicators project
- 13). Improve collaboration and communication on regional natural resource issues. Metro's role as a regional convener is perfectly suited to addressing this issue. An important partner, of course, is The Intertwine Alliance, in which Metro is a major partner.
- 14). Metro's regional growth management strategies, including urban and rural reserves, should explicitly integrate climate adaptation strategies.

All of these actions are scalable to the metro region. As I pointed out earlier, many of these actions are being implemented already in some jurisdictions and in some portions of the region. However, a regional climate adaptation strategy should ramp them up across the entire Portland-Vancouver region and across the urban and rural landscapes. Clearly, some additional funding will be needed to establish a regional climate adaptation strategy. But, a lot of the work will simply involve more coordination and collaboration.

A recent example of such integration and collaboration that comes to mind is the recent acquisition of the 146-acre Riverview Cemetery site. By pooling financial and other resources Metro, Portland Parks, and Portland's Bureau of Environmental Services, in a deal brokered by Trust for Public Land, an ecologically significant large-scale landscape purchase was realized. This acquisition secured cold water refugia on the temperature-limited Willamette River for cold water dependent salmonids (adaptation); prevented development on very steep slopes which are likely to become more unstable with climate change (adaptation); eliminated the need to provide expensive grey infrastructure on hard to build land subject to landslides and fire hazards (adaptation); Protects one of the largest remaining tracts of forest land in Portland (carbon sequestration) and provides better access to bicycle and pedestrian access to the Willamette River and between SW Portland neighborhoods (mitigation).

As Metro proceeds with development of a regional climate change strategy I urge the Council to incorporate adaptation strategies to complement its ongoing mitigation responses to climate change. That will require some additional budgeting as well as ramping up its regional collaboration and partnerships to respond to climate change, both of which are Metro's forte.

Respectfully,



Mike Houck,  
Executive Director



June 8, 2011

Metro Council  
600 NE Grand Avenue  
Portland, OR 97232

Dear Council President Hughes and Metro Councilors,

Climate Solutions is a Northwest NGO whose mission is to promote practical solutions to climate change. We would like to express our support for the Climate Initiatives Program Staff budget amendment that will continue funding for a staff position to coordinate and manage Metro's climate change initiatives. We believe that Metro's leadership is important to our region and will be paid back through better preparedness, improved mitigation strategies, and increased business opportunities.

Metro plays an important role in our region's response to climate change. Metro has enabled capacity building at the local level by serving as a vital source of climate change information, tools, and technical assistance for local governments, and community partners. Additionally, if funding continues, Metro will play an instrumental role in working with local partners to develop and promote strategies to address climate change preparation at the regional level. Metro has also played a role as a thought leader and promoter of climate-friendly business development in the region.

We have worked with Metro to develop a climate-friendly economic development strategy, specifically through the "Green print" that Metro spearheaded and supported. This stakeholder-supported process created a set of strategies that local jurisdictions can use to develop new business development in clean energy, clean tech and efficiency that would build upon our regions' reputation as a green leader. The strategies would create jobs, save dollars and attract investment.

Climate Solutions works closely with the business community to support climate-friendly business opportunities. There are a myriad of new opportunities that have created over 50,000 new jobs in Oregon in fields that include aviation biofuels, energy efficiency, wind installation, out-door oriented apparel, bikes, transit, wave energy, solar installation and manufacture, electric vehicles manufacture, battery and charging infrastructure development, green buildings and more. Companies throughout the Metro region are playing a national role in leading the development of new technologies, products and distribution. Metro citizens are early adopters who buy clean products and are eager to try new "clean" lifestyles and behaviors. Strategies to capitalize and grow these opportunities are critical and Metro is playing a key role.

We believe that Metro's climate change leadership will be impacted by the termination of this staff position, namely by reducing Metro's capacity to work to with local governments, NGOs and the

business community to develop climate mitigation and preparedness strategies, to advance region-wide business and lifestyle opportunities, and to lead the region forward with a coordinated and comprehensive approach to addressing climate change. We fully support Councilor Burkholder's efforts to ensure that this staff position remains funded and look forward to working with Metro in the future to advance climate change mitigation and preparedness efforts in the region.

Sincerely,

A handwritten signature in cursive script that reads "Lisa Adatto".

Lisa Adatto,  
Oregon Director, Climate Solutions



## Commissioner Deborah Kafoury, District 1

### MULTNOMAH COUNTY OREGON

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501 SE Hawthorne, Suite 600

Portland, Oregon 97214

(503) 988-5220 phone

(503) 988-5440 fax

[www.multco.us/cc/ds1/](http://www.multco.us/cc/ds1/)

[district1@multco.us](mailto:district1@multco.us)

June 1, 2011

Metro Council  
600 NE Grand Avenue  
Portland, OR 97232

Dear Council President Hughes and Metro Councilors,

I wish to express my support for Councilor Burkholder's budget amendment to provide funding for master plan updates and partnership development for eventual improvements to Howell Territorial Park on Sauvie Island, an area that lies within the boundaries of the district I represent.

Multnomah County has a long history of involvement with the property that now makes up Howell Territorial Park. We purchased the original land in 1962, moved by the desire to rescue and preserve the historic Bybee-Howell house and to use the land as a park and wildlife refuge. Ownership of the land was transferred to Metro in 1996.

Howell Territorial Park's immense natural, recreational, and historical value will be greatly enhanced when these resources are protected and the public is able to enjoy those resources. I understand that in order to achieve this vision, Metro will need to update the master plan in cooperation with the Multnomah County Land Use Department. Councilor Burkholder's budget amendment will enable these steps to happen and to move forward with implementing the vision for this treasured natural area.

Sauvie Island residents maintain a strong interest in renovating the Bybee-Howell house and improving the park for the benefit of island residents and the public at large. I thank Councilor Burkholder for including dollars for public involvement in this amendment. Island residents should have a central role in shaping improvement efforts.

I look forward to supporting Metro's efforts to make Howell Territorial Park a great place for residents of the County and the region to enjoy nature and explore their heritage. Thank you for receiving my comments of support.

Sincerely,

Deborah Kafoury

Cc: Karen Schilling, County Planning Director, Sauvie Island Community Association

**From:** Sue Bliss [sjbliss@spiritone.com]  
**Sent:** Monday, June 06, 2011 8:48 AM  
**To:** Metro Council  
**Subject:** Upcoming budget amendment

Metro Council  
600 NE Grand Ave.  
Portland, OR 97232-2736

To the Council:

Metro Councilor Carl Hosticka has introduced a budget amendment, to complete the Tualatin River Water Trail. This land was acquired several years ago.

Completing the Tualatin River Trail would bring forward a wonderful, nature-based resource and make it accessible to more citizens in the area. Winding through the metro area, the Tualatin provides free natural tourism for area residents, provides habitat for native species and is a beautiful example of Metro's plans to positively develop natural areas for the future.

While paddling the Tualatin many times, I have seen kingfishers, Great Blue Herons, nesting Green Herons and even river otters, while hawks fly overhead. The Tualatin offers peaceful respite from our busy metropolitan area; proposed new access points including Farmington Bridge, west of Beaverton, would encourage paddling on underutilized parts of the river and a positive kind of development.

Please champion this amendment, to continue bringing very needed, free recreation to our area.

Sincerely,

Susan J. Bliss  
2112 SE Gerhard Drive  
Hillsboro, OR 97123



June 1, 2011

**Metro Council**  
**600 NE Grand Ave.**  
**Portland, OR 97232-2736**  
[metro council@oregonmetro.gov](mailto:metro council@oregonmetro.gov)

I am writing today to ask that you approve funding for the development of the first of four proposed new paddler's access facilities on the Tualatin River. Metro Councilor Carl Hosticka is introducing a budget amendment in two weeks to fund this development. I am aware that competition for public funds is very strong this year. I am asking for this investment for a new public access facility on the Tualatin River to support Metro's purchase of 5 sites in 1992 to create the Metro Green Spaces Master Plan, which included a trail along the Tualatin River as well as the work the Tualatin Riverkeepers who raised over \$1 million dollars to perform habitat restoration on two of those original sites.

One restoration project has been completed and another is in progress. Hundreds of TRK volunteers have worked to remove invasive plants, replant with natives, and monitor these sites. It's now time to fulfill the vision by completing the trail. Completion of the Tualatin River Water Trail:

- Supports nature-based tourism, a key economic development strategy of the Washington County Visitors Association. Economic development means jobs.
- Gives Metro's citizens more access to experience nature on the Tualatin River National Wildlife Refuge.
- Enables me, my family and friends to expand our own paddling adventures along the beautiful Tualatin River.

With this funding, we can accomplish Metro's Title 1 objectives which include enhancing the water trail by providing safe access along the Tualatin River Greenway every 5 to 10 miles. Parking, docks and ramps, restrooms and picnic areas are part of the Title 1 objectives, as well as improving wildlife habitat. These 5 sites were acquired years ago and it is time to move forward with developing permanent access to the river at these locations.

Regards,



Lynn Carver  
President of the Board of Directors  
Tualatin Riverkeepers

June 13, 2011

Metro Council  
600 NE Grand Ave.  
Portland, OR 97232-2736

RE: Budget Amendment to Provide Tualatin River Paddlers' Access Facility

Dear Council President Hughes and Metro Council,

Clean Water Services supports the Metro Budget Amendment for development of a new public access facility on the Tualatin River.

Public access to the Tualatin River is a significant tool to achieve Clean Water Services' vision to enhance the environment and quality of life in the Tualatin River Watershed through visionary and collaborative management of water resources in partnership with others. More than 520,000 CWS customers enjoy clean water and healthy rivers and streams through innovative wastewater and stormwater services, flood management projects, water quality and stream enhancement projects, fish habitat protection, and more. Our services are crucial to the region's public health, environmental protection, and economic vitality. Providing our customers with the opportunity to experience a healthy Tualatin River is key to our vision.

Protecting public health and the Tualatin River is at the heart of our work. The 80-mile-long Tualatin River is unlike most rivers in the Northwest. It meanders slowly through relatively flat terrain, draining more than 700 square-miles of forested, agricultural and urban areas before joining the Willamette River. The Tualatin is Washington County's only river and an important resource to the region. The river is used for regional drinking water supply and agricultural irrigation. In addition, canoeing, kayaking, fishing, and wildlife viewing draw thousands of outdoor enthusiasts each year.

Clean Water Services supports the Metro Budget Amendment to develop a paddler's access facility on the Tualatin River. A new facility will allow our customers an opportunity to experience first-hand the benefits of the investments they have made in restoring the health of Tualatin River and its tributaries.

Sincerely,



Roy Rogers, Vice Chair  
Clean Water Services Board of Directors

**From:** Helen Durst [hldurst@gmail.com]  
**Sent:** Saturday, June 04, 2011 1:58 PM  
**To:** Metro Council  
**Cc:** govbrian@tualatinriverkeepers.org  
**Subject:** Tualatin River Water Trail

Metro Council

June 4, 2011

600 NE Grand Ave.

Portland, OR 97232-2736

Dear Metro Council,

Please complete the Tualatin River Water Trail -- a Metro Title I objective, and almost 20 years in planning. We have good access to the river in Tualatin, but access to the river at the 5 sites Metro owns is really needed now. Metro owns land at five sites:

Gotter Prairie near Scholls

Farmington Bridge, West of Beaverton (How about this one first?)

Munger Natural Area on Munger Lane

Moran Property near Sherwood

Stafford Natural Area on Borland Rd.

We have a treasure in the Tualatin River National Wildlife Refuge, and it could be even better. We need to complete the Tualatin River Water Trail. New access will give all Metro's citizens a new way to experience and appreciate nature on the Tualatin River National Wildlife Refuge.

Metro has owned the sites needed for the water trail for years. Now is the time to complete the trail!

I have spent many happy hours kayaking on the Tualatin, and am always surprised at how quiet it is on the river, and how much wildlife uses it -- so close to civilization, and yet removed from it. I think exposure to nature is a human need, and of course the wildlife needs its habitat. If people do not have access to this treasure, they may not value and protect it as much as it deserves. Please help us all value the Tualatin River with the long planned Tualatin River Water Trail.

Thank you,

Helen Durst

1220 SE 16<sup>th</sup> AVE

Hillsboro, OR 97123

**From:** Rhett Lawrence [rhettlawrence@yahoo.com]  
**Sent:** Thursday, June 02, 2011 2:08 PM  
**To:** Metro Council  
**Subject:** Tualatin River access

Dear Metro Councilors,

I am writing you about several sites along the Tualatin River that I believe should be developed in such a way as to increase access to the river. As I understand it, Metro acquired a number of sites years ago with the idea that they would be used for a Tualatin River Water Trail, but those sites have so far not been developed for river access. I believe that now is the time to do so.

Completion of the Tualatin River Water Trail would support nature-based tourism, which is a key economic development strategy of the Washington County Visitors Association. Furthermore, improved access to the river will give citizens of our area a new way to experience nature on the Tualatin River National Wildlife Refuge.

I am very much looking forward to spending much more time on the Tualatin River with my 5-year-old daughter and I hope you will work to complete the water trail and make public access to the river a little easier. Thanks for your time and I look forward to hearing how you proceed.

Rhett Lawrence  
6445 N Commercial Ave  
Portland OR 97217  
503-286-0215



WASHINGTON COUNTY  
**OREGON**  
VISITORS ASSOCIATION

June 3, 2011

Metro Council  
600 NE Grand Ave.  
Portland, OR 97232-2736

RE: Budget Amendment to Provide Tualatin River Paddlers' Access Facility

Dear Council President Hughes and Metro Council,

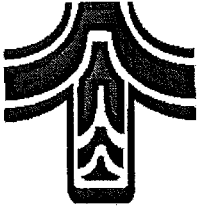
The Washington County Visitors Association positions Washington County, Oregon, as a preeminent destination for travel, tourism and events. We have made a strategic decision to promote nature-based tourism to share the natural amenities of our county with the world. Over the past two years we have supported development of paddling and nature observation opportunities on the Tualatin River with \$100,000 in grants to Tualatin Riverkeepers and the Friends of the Refuge.

Tourism brings in approximately \$450 million into the community, and has the potential to further diversify the Washington County economy. Through partnerships with stakeholders, our goal is to establish high-quality visitor experiences that excite, educate and reward visitors and residents alike. We are attuned to the needs of travelers and strive to match them with exceptional and memorable experiences that meet their interests. Paddling a canoe or kayak through the Tualatin River National Wildlife Refuge or Metro's Natural Areas clearly is an "exceptional and memorable" experience.

**Thus we strongly support the Metro Budget Amendment to develop a paddlers' access facility on the Tualatin River.** We view this as a team effort, and as your biggest cheerleaders, we value your partnership in extending and promoting the Tualatin River Water Trail.

Sincerely,

Terry Goldman  
President & CEO



# City of Tualatin

[www.ci.tualatin.or.us](http://www.ci.tualatin.or.us)

June 10, 2011

Metro Council  
600 NE Grand Ave.  
Portland, OR 97232-2736

RE: Budget Amendment to Provide Tualatin River Paddler Access Facility

Dear Council President Hughes and Metro Council,

The City of Tualatin urges further development of the Tualatin River Water Trail.

Our city's vision is focused around the Tualatin River. Over the past two decades voters in the City of Tualatin have approved two parks funding measures that have enabled us to acquire parks and greenspaces along the Tualatin River for recreational access. Our efforts were greatly enhanced by the passage of two Metro bond measures and support from Metro. Now the City of Tualatin has four developed public access sites with facilities to support canoes and kayaks: Brown's Ferry Park, Tualatin Community Park, Jurgens Park, and the Highway 99W canoe access.

Our four public access facilities are located within a 4 mile stretch of the river. We would like these facilities to serve as launching points for longer river adventures. That is why we support Metro's vision for paddler access every 5 to 10 miles along the Tualatin River. Our Highway 99W canoe access has become a popular launch point for paddlers seeking to experience the Tualatin River National Wildlife Refuge. Developing further access points between Tualatin and Hillsboro will open another 27 miles of river, with significant natural attractions to the public.

We urge you to pass Councilor Hosticka's budget amendment to fund further public access on the Tualatin River Water Trail.

Sincerely,

A handwritten signature in black ink, appearing to read "Lou Ogden".

Lou Ogden  
Mayor, City of Tualatin

**Subject:** Fwd: Metro I Restoration Legislation: Attn Mr. Hostica  
**From:** ideafactre@aol.com  
**Date:** Wed, 8 Jun 2011 19:11:35 -0400 (EDT)  
**To:** Brian@tualatinriverkeepers.org

-----Original Message-----

**From:** ideafactre <ideafactre@aol.com>  
**To:** Brian <Brian@tualatinriverkeepers.com>  
**Sent:** Tue, Jun 7, 2011 6:23 pm  
**Subject:** Metro I Restoration Legislation: Attn Mr. Hostica

6/07/11

Today I am writing you about the Metro 1 Title Objectives for habitat restoration of the Tualatin River. WOW - it has been a slow process for Metro Council to act upon its original plans since 1992! The river may run slow but your Council need not keep putting aside actions to develop permanent access at five locations.

Your amendment starts with development of one (1) access point. The other four (4) are most needed to complete this trail.

1) Word has spread about the tours on the Tualatin River, not just in Oregon and Washington, but in Western Canada as well. Inquiry has been posted by travel agents to bring visitors to this region and this river.

2) By acting now to improve the sites along the Tualatin River, one may have access to the Tualatin River National Wildlife Refuge. Children, adults and seniors are acting more responsibly in the "Green Revolution" and the consdrvancy of our lands and are asking "Why"? and "Why Not"?

3) Because Oregon has so many natural habitts preserved over several years, more new persons are seeking residency here and aggressively asking about the improvements which could be made.

4) I, personally, like to canoe and kayak on the Tualatin River and encourage others to seek out trails and access points for pursuing these activities. Because health of the public has become so more apparent in our society, there are more joggers and runners who seek the trails along the Tualatin River as welll.

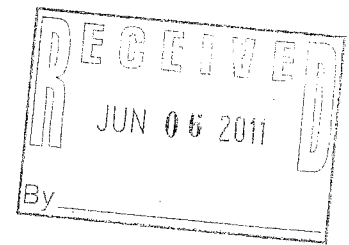
It is my fervent request Mr. Hostica that you encourage the Metro Council to act quickly, judiciously and without delay to develop access to all FIVE (5) locations of the Tualatin River.

Sincerely,

Genevieve L. Ford, MAS  
The Idea Factory, Ltd  
President



Metro Council  
600 NE Grand Avenue  
Portland, OR 97232-2736



Council Members:

As Tigard residents for twelve years, my husband Dale and I have watched the tremendous improvement in the health of the Tualatin River through the efforts of Metro, the Tualatin Riverkeepers (of which we are dedicated members) and other support organizations. The purchase of sites along the river under the Metro Greenspaces Master Plan has added much needed access to the river for riparian habitat restoration as well as recreational enjoyment. We have been involved in many restoration projects and maintain a restoration site on Derry Dell Creek, a tributary of the Tualatin.

We understand that Councilor Carl Hosticka will soon introduce a budget amendment to fund the development of the first of four proposed new paddler's access facilities on the Tualatin. This is an improvement that has been a very long time in coming. Completion of access points and the Tualatin River Water Trail will give Metro's citizens increased public access to the river, thus enhancing the ability to experience nature personally and to support nature-based tourism. We, as Washington County citizens, will greatly enjoy the ability to more easily access our local river both for paddle trips and to continue work on restoration projects.

We do realize that competition for public funds is very intense this year. We are asking that the Metro Council work effectively to secure the funds for increased public access to the Tualatin River. Now is the time to fulfill the promise made by the Master Plan to complete public access to the Tualatin, the river in our Washington County backyard.

Sincerely,

A handwritten signature in cursive script that reads "Sharon Rollins".

Sharon Rollins  
13205 SW Genesis Loop  
Tigard, OR 97223  
sgrollins@comcast.net

June 2, 2011  
14120 SW Stallion Dr  
Beaverton, OR 97008

Metro Council  
600 NE Grand Ave.  
Portland, OR 97232-2736

Dear Council Members:

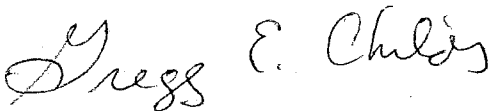
My wife and I are recreational canoeists. And one of our favorite places in the NorthWest to dip our canoe is the Tualatin River. We are very much in favor of improvements to the Tualatin River, which includes access facilities. I understand that the Council will be considering a budget amendment to fund such access facilities. I know that times are economically tough right now, and that the Council will probably be hard-put to favorably consider such an amendment.

I think that improved access facilities to the Tualatin River will be worth the cost. First, those of us who are already fortunate enough to be living in such a wonderful place will have increased opportunity to enjoy the River. Because of the tough economic times, we are cutting back on our travels and vacations. Having an improved River gives us better opportunities to enjoy life in spite of the bad economy. Such improvements may even encourage more people to start new hobbies like canoeing; starting a new hobby will certainly help the local economy, because those new hobbyists will go out and buy new canoes, clothes, etc. It almost sounds like a win-win situation.

There is another situation to consider. I am a real estate broker, and I work with many people who are considering moving to the Portland area. When those people come to town to see what it offers, one of their main considerations is recreation opportunities. If the Tualatin River was to have improved access facilities, this would be one little thing that shines like a gold nugget to the out-of-staters. By moving here, the local economy again will prosper.

Please give serious consideration to the budget amendment, and vote in favor of it.

Thank you.



Gregg Childs

14120 SW Stallion Dr.  
Beaverton, OR 97008



# Oregon

John Kitzhaber, Governor

**Oregon Parks and Recreation**

725 Summer St. NE, Suite C

Salem, OR 97301-1271

(503) 986-0707

Fax (503) 986-0794

[www.oregonstateparks.org](http://www.oregonstateparks.org)

June 13, 2011

Metro Council  
600 NE Grand Ave.  
Portland, OR 97232-2736



RE: Budget Amendment to Provide Tualatin River Planning & Design

Dear Council President Hughes and Metro Council,

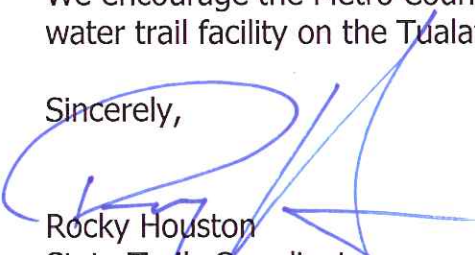
The Oregon Parks and Recreation Department's Trail Services Section encourages Metro to develop the Tualatin River Water Trail. The development of water trails is a key goal of the Statewide Trails Plan 2005-14. The planning of the trail will impact Metro Citizen's use and awareness of the Tualatin River as a recreational amenity.

With appropriate planning, OPRD's Recreational Trails Grant program grants could assist Metro and it's partners in developing the Tualatin River Water Trail. The grant program provides funding for recreational trail-related projects, such as paddling, hiking, running, bicycling, off-road motorcycling, and all-terrain vehicle riding. Yearly grants are awarded based on funds voted on by the U.S. Congress.

Funding is available to local governments and non-profits for recreational trail projects. Funding is divided into 30 percent motorized trail use, 30 percent non-motorized trail use and 40 percent diverse trail use. Water trails are included in the types of projects that we fund. Our program requires a 20% match. Applications for funds are due in October, and we encourage Metro or its partners to apply.

We encourage the Metro Council to support Metro staff's evaluation and design of a water trail facility on the Tualatin River.

Sincerely,

  
Rocky Houston  
State Trails Coordinator



# Oregon

John A. Kitzhaber, MD, Governor

**State Marine Board**

435 Commercial St NE, Suite 400

PO Box 14145

Salem, OR 97309-5065

(503) 378-8587

Fax (503) 378-4597

June 1, 2011



Metro Council  
600 NE Grand Ave.  
Portland, OR 97232-2736

**RE:** Budget Amendment to Provide Tualatin River Non-motorized Access Facility

Dear Council President Hughes and Metro Council:

The Oregon State Marine Board (OSMB) supports Metro's efforts to develop non-motorized access facilities as part of the Tualatin River Water Trail.

Our draft Statewide Boating Access Improvement Plan (2011-2017) identifies eight non-motorized facilities on the Tualatin River that are in need of upgrades or improvement, as well as potential new access sites. Included in this draft plan are proposed new access sites at Harris Bridge (Farmington), Scholls, and the Tualatin River National Wildlife Refuge. These proposals were received in conjunction with a series of open houses conducted by Marine Board staff in 2010 and other written suggestions received from boaters and organizations such as the Tualatin Riverkeepers.

Metro's purchase of land along the river for paddling access has laid the groundwork for extension of the Tualatin River Water Trail. We encourage the Metro Council to approve the \$250,000 budget amendment for evaluation and design of a new non-motorized access facility on the Tualatin River to help realize the extension of this trail as envisioned.

Sincerely,

Wayne Shuyler  
Boating Facilities Section Manager/Deputy Director





City of Tigard

June 9, 2011

Metro Council  
600 NE Grand Ave.  
Portland, OR 97232-2736

RE: Budget Amendment to Provide Tualatin River Paddlers' Access Facility

Dear Council President Hughes and Metro Council,

The Tualatin River is a wonderful natural and recreational amenity in our community linking cities from Forest Grove to West Linn. Cook Park in Tigard has become, perhaps, the most popular access point on the river and we see demand by kayakers and canoeists growing. To accommodate the increased demand and provide opportunities for our region's residents and tourists to experience the natural wonders of Metro's Gotter, Munger, Morand and Stafford natural areas from the river, I urge you to vote in favor of Councilor Hosticka's budget amendment supporting public access development in inaccessible stretches of the Tualatin River.

Metro has been a tremendous partner with the City of Tigard in establishing parks and greenspaces and linking the Fanno Creek Trail. We see the Tualatin River Water Trail as another example of a productive partnership among Metro, Tigard, Tualatin Riverkeepers and other government agencies. I wholeheartedly urge your support for developing additional links on the Tualatin River Water Trail.

Sincerely,

Mayor Craig Dirksen  
City of Tigard

P.S. I hope everyone on Metro Council will join me for the Mayor's Challenge Paddle Race with Tualatin Riverkeepers this summer as Councilor Burkholder attempts to defend his title!

c: Metro Councilor Hosticka  
Tualatin Riverkeepers

I:\ADM\Mayor Dirksen\LETTERS\2011\CityOfTigardWaterTrailSupport.doc



## TUALATIN RIVERKEEPERS.

11675 SW Hazelbrook Road • Tualatin, Oregon 97062

phone 503-218-2580 • fax 503-218-2583

[www.tualatinriverkeepers.org](http://www.tualatinriverkeepers.org)

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June 13, 2011

Metro Council  
600 NE Grand Avenue  
Portland, Oregon 97232

Dear Council President Hughes and Metro Council,

Tualatin Riverkeepers urge you vote yes on Councilor Hosticka's Budget amendment to support planning and design of a new public access facility on the Tualatin River Water Trail.

With funds from two greenspaces bond measures, Metro has invested in several properties along the Tualatin River with a vision of a 30 mile long public water trail. Tualatin Riverkeepers has raised over \$1 million in funds from various public and private sources for habitat restoration on two of these properties, Gotter Prairie and Munger Natural Area.

We are approaching the development of the Tualatin River Water Trail in a similar manner, lining up potential funders from the private and public sector. You will see letters of support from some of them today.

Demand for access to the Tualatin River has steadily increased since the Tualatin Riverkeepers ran the first Discovery Day Paddle Trip more than 20 years ago. Within a 4.5 mile stretch of the river in the Tigard-Tualatin area there are now 6 developed public access facilities. However, paddlers wanting to take a longer trip through less developed stretches of the river that include 5 of Metro's natural areas and the Tualatin River National Wildlife Refuge have a challenge before them. If paddlers put in at Rood Bridge Park in Hillsboro, they must paddle 28 miles downstream to the next restroom at Jurgens Park in Tualatin.

It is now time for the public to experience the water trail that they have invested in with two bond measures. We urge you to support Councilor Hosticka's budget amendment to plan and design the first of several new access facilities on the Tualatin River Water Trail.

Sincerely,

Brian Wegener  
Advocacy & Communications Manager

Monica Smiley  
Executive Director

EXECUTIVE COMMITTEE

PRESIDENT AND CHAIR  
MIKE GRANT  
KAISER FOUNDATION  
HEALTH PLAN OF THE NW

SECRETARY  
JACK ORCHARD  
BALL JANIK LLP

TREASURER  
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COMMUNITY NEWSPAPERS

JONAE ARMSTRONG  
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JIM EDWARDS  
COLLIERS INTERNATIONAL

MATT FELTON  
FELTON PROPERTIES INC

DICK LOFFELMACHER  
CB RICHARD ELLIS

ED TROMPKE  
JORDAN SCHRADER RAMIS PC

DIRECTORS

ALLYSON ANDERSON  
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DAVID BENNETT  
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JEFF BORLAUG  
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LOIS DITMARS  
PETERKORT TOWNE SQUARE

NORM EDER  
CONKLING FISKUM & MCCORMICK

RICH FOLEY  
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ALEX JACKSON  
PROVIDENCE HEALTH & SERVICES

KYLE LATTA  
KG INVESTMENT MANAGEMENT LLC

ALEX MILLER  
NW NATURAL

MIKE MOREY  
STANCORP MORTGAGE INVESTORS LLC

TIM PARKER  
THE MELVIN MARK COMPANIES

JIM PEITSCH  
NIKE, INC.

DAVE ROBERTSON  
PORTLAND GENERAL ELECTRIC

ANDY DUYCK, CHAIRMAN  
WASHINGTON COUNTY

MAYOR CRAIG DIRKSEN  
CITY OF TIGARD

MAYOR DENNY DOYLE  
CITY OF BEAVERTON

MAYOR LOU OGDEN  
CITY OF TUALATIN

MAYOR JERRY WILLEY  
CITY OF HILLSBORO

JONATHAN SCHLUETER  
WESTSIDE ECONOMIC ALLIANCE

SUSTAINING MEMBERS  
COMCAST

FELTON PROPERTIES INC.  
FRED MEYER STORES

GENENTECH  
HARSCH INVESTMENT PROPERTIES

INTEL  
KAISER FOUNDATION

HEALTH PLAN OF THE NW  
KG INVESTMENT MANAGEMENT LLC

THE MELVIN MARK COMPANIES  
NIKE, INC.

PACTRUST  
PORTLAND GENERAL ELECTRIC

PROVIDENCE HEALTH & SERVICES  
PS BUSINESS PARKS

SOLARWORLD  
THE STANDARD  
WASHINGTON SQUARE



June 14, 2011

Metro Council  
600 NE Grand Ave.  
Portland, Oregon  
97232-2736

Dear Council President Hughes and Metro Councilors,

Subject: Support For Budget Amendment to Improve Tualatin River Access

Westside Economic Alliance is pleased to support Councilor Hosticka's budget amendment and urges the Metro Council to approve this much-needed and long-overdue plan to develop a public access facility on the lower Tualatin River.

The Tualatin River is a valuable natural resource for both wildlife and the public in our region. Virtually all of the 529,710 residents in Washington County live in areas that are tributary to the Tualatin River. But with limited public access sites, few of us are able to experience the recreational opportunities, or appreciate the scenic beauty, available so close to where we live and work in the Tualatin Basin.

Councilor Hosticka's amendment seeks funding for the identification of, and preparation of construction documents for, a publicly accessible launch site for light watercraft on the Tualatin. Actual construction will need to be funded through other sources, including grants and financial support from stakeholders who will assume responsibility for maintenance, cleanliness and public safety.

By supporting this budget request, the Metro Council will also be renewing a long-standing promise to the people of our region.

First identified in the 1992 Metropolitan Greenspaces Master Plan, Metro offered conceptual support for a "water trail" on the Tualatin River. Later, through the 1995 Natural Areas bond measure, Metro purchased over 398 acres for habitat restoration and access along the lower Tualatin River. Yet, after many years of planning and talk, none of this land has been developed for public access.

Westside Economic Alliance supports Councilor Hosticka's amendment because we recognize that improving access points to this hidden waterway will offer new recreation opportunities, improve public understanding of water quality issues, and support for wildlife habitat enhancement projects throughout the Tualatin basin.

Sincerely,

Jonathan Schlueter  
Executive Director

10220 SW Nimbus Avenue, Suite K-12, Tigard, Oregon 97223

Phone: 503-968-3100 □ Fax: 503.624-0641 □ E-mail: [westside@westside-alliance.org](mailto:westside@westside-alliance.org) □ URL: [www.westside-alliance.org](http://www.westside-alliance.org)

# Christopher Williams, AIA

---

Architecture and Planning

43400 SouthEast Hogue Mill Road, Corbett, Oregon 97019  
phone (503) 695-2462 • fax (503) 695-6367 • cell (503) 312-6810

**Mr. Carl Hosticka, Councilor**

**Metro Council  
600 NE Grand Ave  
Portland, OR 97232-2736**

**June 2, 2011**

**Re: Budget Amendment for Tualatin River Greenspace Enhancement & Watertrail Development**

Mr. Hosticka:

As an Oregon resident, avid outdoorsman and design professional, I fully endorse your efforts to establish funding for the Metro Greenspace development proposals within the Tualatin River basin. As I understand it, the upcoming amendment you will be introducing will point funding towards the development of the first of four proposed paddler's access facilities on the Tualatin, which has been the intent since acquiring the sites for these facilities. This appears to be a significant step toward completing the Tualatin River Water Trail, which at this point falls short of its designed watercourse access function.

As a recreation resource, the Tualatin River basin has historically been underutilized. Given the demographics in the area, the greenspace watertrail development should claim strong local support and will undoubtedly attract recreation enthusiasts from surrounding areas as well. Recreation based business will see the opportunities uncapped by the Watertrail completion effort. The probability of new jobs is very real.

My wife and I, being canoeists, are constantly looking for our own new recreation horizons. The completion of the Watertrail would be a delight to us both. I hope the new budget amendment you have crafted meets with success!

Christopher Williams



W A S H I N G T O N

•

O R E G O N

•

C A L I F O R N I A

FILE: TULTNRVRKPRS\_MEMO1\_6-2-11





**MATT WINGARD**  
**STATE REPRESENTATIVE**  
DEPUTY REPUBLICAN LEADER  
District 26



**Committees:**  
Co-Chair: Education  
Member: Rules

**HOUSE OF REPRESENTATIVES**  
**900 COURT ST NE**  
**SALEM, OR 97301**

June 7, 2011

Metro Council  
600 NE Grand Ave  
Portland, OR 97232-2736

Dear Metro Councilors,

I am writing to urge your support for Metro Councilor Carl Hosticka's budget amendment to help develop paddler's access facilities along the Tualatin River. This amendment would lay the ground work for hopefully more improvements to come at the sites Metro purchased along the river many years ago.

Last year I won a kayak competition sponsored by the Tualatin Riverkeepers and the experience gave me a renewed appreciation for the beauty of the river, but also an increased awareness of the lack of amenities for river users like parking, boat ramps, picnic areas and restrooms.

Development of safe and convenient access points on the Tualatin River not only has the potential to enhance tourism in the area and boost economic development, but it would also provide local residents with a way to experience the natural beauty of the area.

I understand the amendment being proposed by Councilor Hosticka would initiate many of the important planning functions such as site review, conceptual designs, grant applications and other necessary items, but this would be an important first step.

Thank you for your consideration,

  
Matt Wingard

**From:** David and Margaret Zeps [zepsm@hevanet.com]  
**Sent:** Thursday, June 02, 2011 11:42 AM  
**To:** Metro Council  
**Subject:** Tualatin River Paddler's access

David Zeps MD  
Margaret Zeps  
24130 SW Gage Road  
Wilsonville, OR 97070

Metro Council  
600 NE Grand Ave.  
Portland, OR 97232-2736

Dear council,

We support Metro Councilor Carl Hosticka's budget amendment to fund the development of the first of four proposed new paddlers' access facilities on the Tualatin River.

An important benefit of increased access is that increased use of the river by paddlers serves to monitoring activity along the river. Paddlers will report dumping, erosion, illegal waste discharge etc. that might otherwise go unnoticed. More casual watching by paddlers will help keep the river clean.

I live in the Stafford area and regularly canoe on the Tualatin River. I've taken family members and visitors on the river and additional access will expand the trip possibilities, especially for shorter trips. The Tualatin is a beautiful river.

Sincerely,  
David and Margaret Zeps

# CITY OF HILLSBORO

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June 6, 2011

Metro Council  
Attn: Tom Hughes  
600 N.E. Grand Avenue  
Portland, Oregon 97232

Dear President Hughes & Metro Councilors:

The City of Hillsboro urges Council approval of the proposed Metro budget amendment related to “Development Center Funding for Downtown Revitalization and Placemaking”, sponsored by Councilors Collette and Harrington.

Hillsboro along with other cities in the region has been highly engaged as a strategic partner in Metro’s efforts to promote more robust 2040 centers. Specifically in Hillsboro, we have made a series of investments and policy initiatives to revitalize downtown Hillsboro. These initiatives include the following efforts in which Metro has played a vital role, from both a staff and funding perspective:

- Rehabilitation of the vintage Town Theater into the Venetian Theater & Bistro – the centerpiece of our Main Street. Metro provided funding for the project through its Urban Living Infrastructure program.
- New Downtown Development Code – a series of revisions to our code to better stimulate new transit-oriented, mixed use, medium density development. Council adoption scheduled for July, 2011. Metro assisted in funding.
- Walkability Audit – this Metro program set the stage for a joint Metro/City funded “Downtown Accessibility Project” which will enhance pedestrian, transit, and bike access to and through downtown by re-establishing two way streets in the core area, as well as a possible “road diet” along the Baseline/Oak corridor.
- Enhancing Private Investment Climate – Metro is assisting Hillsboro and other cities in the region by providing the services of Michele Reeves, a renowned expert in the factors that are necessary to attract private investment in downtowns.
- 4<sup>th</sup> Main Project – Metro and the City are joint owners of this key transit-oriented development site. We have selected a great development team for this site (led by Tokola Properties) and we are in the midst of the pre-development phase, with all three parties jointly funding these activities.

*Metro Council*  
*Attn: Tom Hughes*  
*June 6, 2011*  
*Page 2 of 2*

Metro's Development Center has been a critical partner to these efforts. It includes perhaps the best "on the ground" set of tools that Metro has to promote our regional growth agenda. Without question, we would not be nearly as far along in our downtown revitalization efforts were it not for the Development Center. Metro's investment has leveraged City and private funds towards the goal of a stronger downtown Hillsboro, as well as stronger centers around the region.

For these reasons, the City of Hillsboro urges the Metro Council to support Councilor Collette's and Councilor Harrington's budget amendment restoring funding to the Development Center.

Thanks for your consideration. I would be happy to answer any questions. I can be reached at (503) 681-6473.

Respectfully Submitted,

CITY OF HILLSBORO

A handwritten signature in black ink, appearing to read "Jerry W. Willey". The signature is stylized with a large, looping initial "J" and a horizontal line extending to the right.

Jerry W. Willey,  
Mayor



Denny Doyle, Mayor

May 18, 2011

Ms. Kathryn Harrington  
Metro Councilor, District 4  
600 NE Grand Avenue  
Portland, Oregon 97232

Dear Kathryn,

Thank you for the opportunity to make comments during the Metro budget process, specifically on the amendments you have brought forward. I write in support of the following:

**Land Parcelization – Supporting redevelopment with lot assembly tools**

As a largely fully-developed First Tier Suburb redevelopment of existing land, complemented by the addition of incremental increases in land adjacent to the city but outside the Urban Growth Boundary, Beaverton has completed a detailed analysis of opportunities for increasing densities in our central district, infilling lots in the remainder of the city and adding new housing units in urban reserve areas.

As a part of this analysis, we have documented that we have approximately 500 vacant lots in the city, *located on approximately 550 acres of ground*, with an average parcel size of less than one acre. While this may be sufficient for traditional single family housing, it does not allow for high-density housing, nor typical employment facilities as being built today. This places our city at a serious disadvantage, even as we seek to increase the number of housing units in the city, undertake citywide infill and seek modest incremental growth.

The proposal to develop a tool kit to help communities address these issues would be of great assistance to us and we support the proposal. Our proposed urban renewal plan targets land assembly of under-developed or obsolete properties to accommodate employment uses, but new methods and incentives are needed. The proposed project could help us discover how to accomplish the goals specified in the 2040 Plan.

**Downtowns, Mainstreets and Station Centers -Funded through Metro Development Opportunity Fund**

Beaverton recently joined the Main Street Program. In conjunction with this effort, we have helped community members form the Beaverton Downtown Association. While Beaverton has not directly partnered with Metro on the Main Street program as of yet, we look forward to the opportunity to do so in the future, and see this as a critical element for relationship building within the downtown.

Again, thank you for the chance to comment, please contact me if you need additional information.

Sincerely,

A handwritten signature in black ink that reads "Denny Doyle".

Denny Doyle  
Mayor

City of Beaverton • 4755 SW Griffith Drive • PO Box 4755 • Beaverton, OR 97076 • [www.beavertonoregon.gov](http://www.beavertonoregon.gov)  
ph: 503.526.2481 • fax: 503.526.2571

*The Best of Oregon*

# CITY OF HILLSBORO

---



May 16, 2011

Metro Council  
Attn: Tom Hughes, President  
Metro  
600 NE Grand Avenue  
Portland, OR 97232

**RE: FY 2011-12 Metro Budget Proposals: *Regional Brownfield Problem Scoping & Parcelization-Lot Assembly Tools***

Dear President Hughes & Metro Councilors:

The City of Hillsboro strongly supports Region pursuit and Metro funding of the *Regional Brownfield Problem Scoping & Parcelization - Lot Assembly Tools* Project.

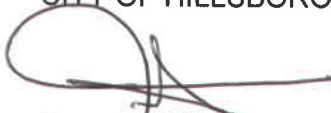
Both issues have been scrutinized and often discussed at MPAC over the last 2-3 years. The discussion usually ended with MPAC recognition that much more accurate and detailed information about amount, location, remedial needs and status of Brownfields throughout the Region is needed.

They also concluded that much more rigorous research, analyses and creative thinking are needed to come up with effective ways to accomplish parcel assembly not only for needed large industrial sites, but also to facilitate redevelopment within the Region's centers and corridors. Metro funding of the two proposals can lead to more effective solutions to these important Regional land use planning and development issues.

Thank you for receiving and considering our comments on these important issues.

Sincerely

CITY OF HILLSBORO



Jerry W. Willey  
Mayor

cc: Dan Cooper, Acting Metro COO



CITY OF

**PORTLAND, OREGON**

**Sam Adams, Mayor**  
Nick Fish, Commissioner  
Amanda Fritz, Commissioner  
Randy Leonard, Commissioner  
Dan Saltzman, Commissioner

May 17, 2011

Metro Council President Tom Hughes  
600 NE Grand Avenue  
Portland, OR 97232

RE: Proposed Amendments to Metro Budget

Dear President Hughes,

As the City of Portland's representatives to the Metro Policy Advisory Committee (MPAC), we wanted to take the opportunity to express our support for three of Councilor Harrington's budget amendments to provide funding for brownfields, lot assembly, and revitalization of centers and main streets. All three proposals will be critical to addressing how we can better utilize land inside the UGB and reduce pressure on the region's urban reserves.

We agree that the lack of a regional inventory of brownfield sites hinders the region's ability to prioritize brownfield clean-up. This proposal is timely in that it is an opportunity for Metro to partner with the City of Portland as we move forward with our CET grant to expand our brownfield efforts. We also agree there is a pressing need for additional policy tools to promote land assembly as a way to make more efficient use of land. Both of these proposals will help the region make the most of potentially redevelopable employment land within the existing UGB.

We also support the proposal to restore funding to the Downtowns, Main Streets and Station Centers program to continue this program at the current funding level. This program provides valuable assistance to local governments to help them realize their visions for their town centers and main streets.

Thank you for providing us with the opportunity to comment. We look forward to our continued partnership to making this region the greatest place.

Best regards,

Mayor Sam Adams

Commissioner Amanda Fritz

cc: Metro Councilor Shirley Craddick, District 1  
Metro Councilor Carlotta Collette, District 2  
Metro Councilor Carl Hosticka, District 3  
Metro Councilor Kathryn Harrington, District 4  
Metro Councilor Rex Burkholder, District 5  
Metro Councilor Barbara Roberts, District 6  
Portland City Commissioner Nick Fish  
Portland City Commissioner Randy Leonard  
Portland City Commissioner Dan Saltzman

# CITY OF HILLSBORO

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June 6, 2011

Metro Council  
Attn: Tom Hughes  
600 N.E. Grand Avenue  
Portland, Oregon 97232

Dear President Hughes & Metro Councilors:

The City of Hillsboro urges Council approval of the proposed Metro budget amendment related to “Development Center Funding for Downtown Revitalization and Placemaking”, sponsored by Councilors Collette and Harrington.

Hillsboro along with other cities in the region has been highly engaged as a strategic partner in Metro’s efforts to promote more robust 2040 centers. Specifically in Hillsboro, we have made a series of investments and policy initiatives to revitalize downtown Hillsboro. These initiatives include the following efforts in which Metro has played a vital role, from both a staff and funding perspective:

- Rehabilitation of the vintage Town Theater into the Venetian Theater & Bistro – the centerpiece of our Main Street. Metro provided funding for the project through its Urban Living Infrastructure program.
- New Downtown Development Code – a series of revisions to our code to better stimulate new transit-oriented, mixed use, medium density development. Council adoption scheduled for July, 2011. Metro assisted in funding.
- Walkability Audit – this Metro program set the stage for a joint Metro/City funded “Downtown Accessibility Project” which will enhance pedestrian, transit, and bike access to and through downtown by re-establishing two way streets in the core area, as well as a possible “road diet” along the Baseline/Oak corridor.
- Enhancing Private Investment Climate – Metro is assisting Hillsboro and other cities in the region by providing the services of Michele Reeves, a renowned expert in the factors that are necessary to attract private investment in downtowns.
- 4<sup>th</sup> Main Project – Metro and the City are joint owners of this key transit-oriented development site. We have selected a great development team for this site (led by Tokola Properties) and we are in the midst of the pre-development phase, with all three parties jointly funding these activities.



*Metro Council*  
*Attn: Tom Hughes*  
*June 6, 2011*  
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Metro's Development Center has been a critical partner to these efforts. It includes perhaps the best "on the ground" set of tools that Metro has to promote our regional growth agenda. Without question, we would not be nearly as far along in our downtown revitalization efforts were it not for the Development Center. Metro's investment has leveraged City and private funds towards the goal of a stronger downtown Hillsboro, as well as stronger centers around the region.

For these reasons, the City of Hillsboro urges the Metro Council to support Councilor Collette's and Councilor Harrington's budget amendment restoring funding to the Development Center.

Thanks for your consideration. I would be happy to answer any questions. I can be reached at (503) 681-6473.

Respectfully Submitted,

CITY OF HILLSBORO

A handwritten signature in black ink, appearing to read "Jerry W. Willey". The signature is stylized with a large, looping initial "J" and a horizontal line extending to the right.

Jerry W. Willey,  
Mayor