



# Metro | Agenda

Meeting: Metro Technical Advisory Committee  
 Date: Wednesday, May 2, 2012  
 Time: 10 a.m. – 12 p.m.  
 Place: Metro Regional Center, council chamber

Time	Agenda Item	Action Requested	Presenter(s)	Materials
10 a.m.	<b>CALL TO ORDER / ANNOUNCEMENTS</b>	Information	Chris Deffebach, Chair	none
10:10 a.m.	<b>Proposed amendments to the Regional Transportation Function Plan (RTFP)</b>  <i>Objective: Review and make recommendation to MPAC on RTFP amendments.</i>	Recommendation to MPAC	John Mermin	In packet
10:20 a.m.	<b>Regional brownfields scoping project initial findings</b>  <i>Objective: Review initial brownfields redevelopment findings. Gain insight from MTAC members on challenges, policies &amp; programs related to brownfields.</i>	Information/ Discussion	Miranda Bateschell	In packet & at meeting
11:10	<b>Michael Freedman presentation (discussion/comments)</b>	Discussion	none	none
11:40 a.m.	<b>Metro public engagement review proposal</b>  <i>Objective: MTAC members understand proposal; provide input on content and suggestions for implementation.</i>	Discussion	Patty Unfred	In packet
12:00 p.m.	<b>ADJOURN</b>			

MTAC meets on the 1<sup>st</sup> & 3<sup>rd</sup> Wednesday of the month. **The next meeting is scheduled for May 16, 2012.**

For agenda and schedule information, call Alexandra Roberts Eldridge at 503-797-1839, email: [Alexandra.Eldridge@oregonmetro.gov](mailto:Alexandra.Eldridge@oregonmetro.gov). To check on closure or cancellations during inclement weather, please call 503-797-1700#.



BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE	)	ORDINANCE NO. 12-1278
REGIONAL TRANSPORTATION FUNCTIONAL	)	
PLAN TO REMOVE THE SCHEDULE FOR	)	
UPDATING CITY AND COUNTY	)	
TRANSPORTATION SYSTEM PLANS; TO ADD	)	Introduced by Chief Operating Officer Martha
AN EXEMPTION PROCESS; AND TO REVISE	)	J. Bennett with the Concurrence of Council
PROCEDURES FOR EXTENSIONS AND	)	President Tom Hughes
EXCEPTIONS	)	

WHEREAS, the Metro Council adopted the 2035 Regional Transportation Plan (RTP) by Ordinance No. 10-1241B (For the Purpose of Amending the 2035 RTP (Federal Component) and the 2004 RTP to Comply with State Law; to add the Regional Transportation Systems Management and Operations Action Plan, the Regional Freight Plan and the High Capacity Transit System Plan; to amend the Regional Transportation Functional Plan (RTFP) and add it to the Metro Code; to amend the Regional Framework Plan; and to amend the Urban Growth Management Functional Plan) on June 10, 2010; and

WHEREAS, the RTFP contains a schedule for city and county updates to their transportation systems plans (TSPs) (Table 3.08-4); and

WHEREAS, a number of cities and counties have been unable to meet the schedule for updates due to budgetary and other limitations on their resources; and

WHEREAS, several cities seek exemptions from the requirements of the RTFP, which the RTFP does not authorize; and

WHEREAS, section 660-012-0055(6) of the Transportation Planning Rule (TPR) authorizes the director of the Department of Land Conservation and Development to grant small cities and counties exemptions from the TPR, but such exemptions are not fully effective without exemptions from associated requirements of the RTFP; and

WHEREAS, the RTFP provides procedures for extensions of time for compliance with, and exceptions from requirements of the RTFP, both of which, unlike similar procedures in the Urban Growth Management Functional Plan, require hearings before the Metro Council; and

WHEREAS, the Joint Policy Advisory Committee on Transportation and the Metro Policy Advisory Committee both considered the proposed amendments and recommended that the Metro Council adopt the amendments; and

WHEREAS, the Metro Council held a public hearing on the proposed amendments on May 17, 2012, on the proposed amendments; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The RTFP is hereby amended, as indicated in Exhibit A, attached and incorporated into this ordinance, to repeal the schedule for TSP updates in Table 3.08-4; to add a process for exemptions from the requirements of the RTFP; and to revise the procedures for

extensions of time and exceptions to allow the Chief Operating Officer to grant extensions and exceptions subject to appeal to the Metro Council.

- 2. The Findings of Fact and Conclusions of Law, attached and incorporated into this ordinance as Exhibit B, are adopted as the Council’s explanation how the amendments to the RTFP comply with the Regional Framework Plan and state law.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_, 2012.

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

Attest:

Approved as to Form:

\_\_\_\_\_  
Kelsey Newell, Regional Engagement Coordinator

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

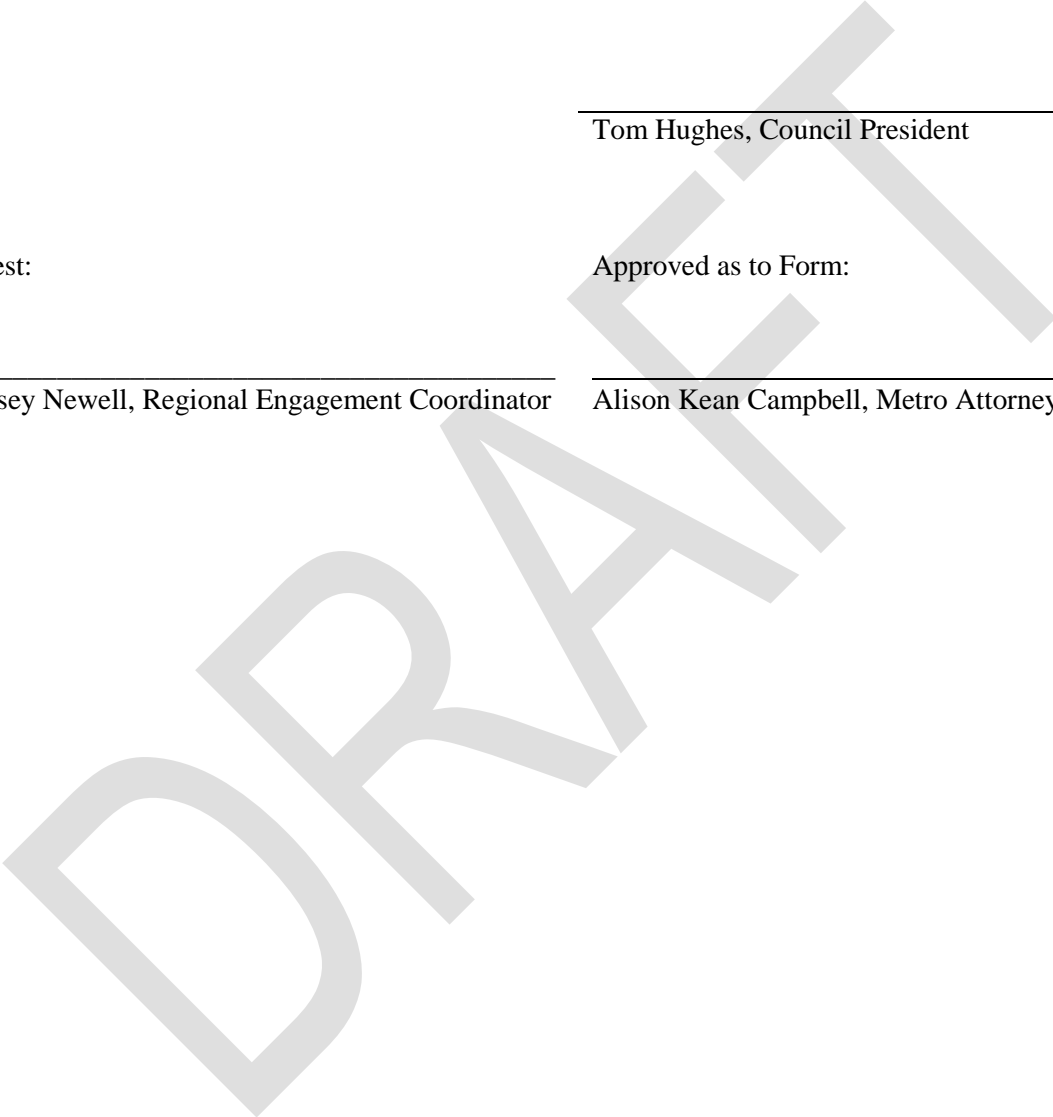


Exhibit A to Ordinance No. 12-1278

Amendments to Metro Code Chapter 3.08  
Regional Transportation Functional Plan

3.08.620 Extension of Compliance Deadline

- A. A city or county may seek an extension of time for compliance with the RTFP by filing an application on a form provided by the COO. Upon receipt of an application, the ~~Council President shall set the matter for a public hearing before the Metro Council and shall notify the city or county, the Department of Land Conservation and Development (DLCD) and those persons who request notification of applications for extensions~~ COO shall notify the city or county, the Oregon Department of Transportation and those persons who request notification of applications for extensions. Any person may file a written comment in support of or opposition to the extension.
- B. ~~The Council shall hold a public hearing to consider the application. Any person may testify at the hearing. The Council~~ COO may grant an extension if ~~it finds that~~ the city or county is making progress toward compliance ~~with the RTFP; or There~~ there is good cause for failure to meet the compliance deadline. Within 30 days after the filing of a complete application for an Extension, the COO shall issue an order granting or denying the extension. The COO shall not grant more than two extensions of time. The COO shall send the order to the city or county and any person who filed a written comment.
- C. The ~~Council~~ COO may establish terms and conditions for an extension ~~in order~~ to ensure that compliance is achieved in a timely and orderly fashion and that land use decisions made by the city or county during the extension do not undermine the ability of the city or county to achieve the purposes of the RTFP requirement. A term or condition must relate to the requirement of the RTFP for which the Council grants the extension. The COO shall incorporate the terms and conditions into the order on the extension. ~~The Council shall not grant more than two extensions of time, nor grant an extension of time for more than one year.~~
- D. The city or county applicant or any person who filed written comment on the extension may appeal the COO's order to the Metro Council within 15 days after receipt of the order. If an appeal is filed, the Council shall hold a

Exhibit A to Ordinance No. 12-1278

hearing to consider the appeal. TheAfter the hearing, the Council shall issue an order with its conclusion and analysis and send a copy to the city or county, ~~the DLCD~~ and any person who participated in the proceeding. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

3.08.630 Exception from Compliance

- A. A city or county may seek an exception from compliance with a requirement of the RTFP by filing an application on a form provided by the COO. Upon receipt of an application, the ~~Council President shall set the matter for a public hearing before the Metro Council and shall notify the DLCD and those persons who request notification of requests for exceptions~~COO shall notify the city or county, the Oregon Department of Transportation and those persons who request notification of requests for exceptions. Any person may file a written comment in support of or opposition to the exception.

~~Following the public hearing on the application, the Metro Council~~The COO may grant an exception if ~~it finds~~:

B.

1. It is not possible to achieve the requirement due to topographic or other physical constraints or an existing development pattern;
2. This exception and likely similar exceptions will not render the objective of the requirement unachievable region-wide;
3. The exception will not reduce the ability of another city or county to comply with the requirement; and
4. The city or county has adopted other measures more appropriate for the city or county to achieve the intended result of the requirement.

- B. Within 30 days after the filing of a complete application for an exception, the COO shall issue an order granting or denying the exception.

- C. The ~~Council~~COO may establish terms and conditions for the exception in order to ensure that it does not undermine the ability of the region to achieve the policies of the RTP.

**Exhibit A to Ordinance No. 12-1278**

A term or condition must relate to the requirement of the RTFP to which the Council grants the exception. The COO shall incorporate the terms and conditions into the order on the exception.

- D. The city or county applicant or a person who filed a written comment on the exception may appeal the COO's order to the Metro Council within 15 days after receipt of the order. If an appeal is filed, the Council shall hold a hearing to consider the appeal. TheAfter the hearing, the Council shall issue an order with its conclusion and analysis and send a copy to the city or county, the DLCD and those persons who have requested a copy of the order. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10) (a) (A).

3.08.640 Exemptions

- A. A city or county may seek an exemption from the requirements of the RTFP. Upon receipt of a request, the COO shall notify the city or county, the Department of Land Conservation and Development, the Oregon Department of Transportation and those persons who request notification of applications for exemptions. Any person may file a written comment in support of or opposition to the exemption.
- B. The COO may grant an exemption from some or all requirements if:
1. The city or county's transportation system is generally adequate to meet transportation needs;
  2. Little population or employment growth is expected over the period of the exemption;
  3. The exemption would not make it more difficult to accommodate regional or state transportation needs;  
and
  4. The exemption would not make it more difficult to achieve the performance objectives set forth in section 3.08.010A.
- C. Within 30 days after the filing the request for an exemption, the COO shall issue an order granting or denying the exemption.
- D. The COO shall prescribe the duration of the exemption and may establish other terms and conditions for the exemption

**Exhibit A to Ordinance No. 12-1278**

so long as the terms and conditions relate to the requirement of the RTFP to which the Council grants the exception. The COO shall incorporate the terms and conditions into the order on the exemption.

- E. The city or county applicant or any person who filed written comment on the exemption may appeal the COO's order to the Metro Council within 15 days after receipt of the order. If an appeal is filed, the Council shall hold a hearing to consider the appeal. After the hearing, the Council shall issue an order with its conclusion and analysis and send a copy to the city or county and any person who participated in the proceeding. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10) (a) (A).



**Exhibit B to Ordinance No. 12-1278**

**Findings of Fact and Conclusions of Law**

[PLACEHOLDER]

DRAFT



## STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 12-1278, FOR THE PURPOSE OF AMENDING THE REGIONAL TRANSPORTATION FUNCTIONAL PLAN TO REMOVE THE SCHEDULE FOR UPDATING CITY AND COUNTY TRANSPORTATION SYSTEM PLANS; TO ADD AN EXEMPTION PROCESS; AND TO REVISE PROCEDURES FOR EXTENSIONS AND EXCEPTIONS

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Date: April 9, 2012

Prepared by: John Mermin, 503-797-1747

### BACKGROUND

The Regional Transportation Functional Plan (RTFP) is part of Metro Code (Chapter 3.08) and implements the policies contained in the Regional Transportation Plan. Cities and Counties local transportation system plans and implementing ordinances must be consistent with the Regional Transportation Functional Plan.

The Metro Council approved the 2035 Regional Transportation Plan and Regional Transportation Functional plan on June 10, 2010. Metro consulted with each city and county to determine a timeline for this local work and adopted a schedule that is part of the RTP Ordinance (No.10-1241B). Since that time four jurisdictions were unable to meet 2011 deadlines due to resource constraints and other limitations. Metro staff expects several local jurisdictions to be unable to meet the existing schedule for 2012.

On December 16, 2010 Metro Council adopted Ordinance 10-1244B which amended several Urban Growth Management Functional Plan titles, including streamlining the local compliance procedures described in Title 8. Formerly the process for receiving extensions and exceptions was time consuming for the Council and local governments since it required a public hearing and decision by the Metro Council. Ordinance 10-1244B amended the procedure to make the granting of extensions & exceptions administrative decisions of Metro's Chief Operating Officer, with possible appeal to the Metro Council.

Since the adoption of the RTFP, the City of Rivergrove contacted Metro staff inquiring about exemption from its requirements. The Regional Transportation Functional Plan does not address the issue of exemptions. Metro staff believes there are other communities in the region that would be interested in an exemption process. The State Transportation Planning Rule (TPR) includes a provision for exemption from its requirements, but Metro had not previously addressed exemption from regional transportation requirements.

#### Staff Recommendation

*Extensions & Exceptions* - Metro staff recommends amending the RTFP procedures for extending compliance deadlines (3.08.620) and granting exceptions to specific requirements (3.08.630) to match the procedures within the UGMFP (3.07.830 and 3.07.840). The changes would make requests from local governments for extensions or exceptions administrative functions of Metro's Chief Operating Officer (COO), but still allow for an appeal to the Metro Council.

*Exemptions* - Staff recommends amending the RTFP to add a section (3.08.640) providing for exemption from all or some RTFP requirements. A jurisdiction would be eligible for an exemption if:

- its existing transportation system is generally adequate to meet its needs,
- little population or employment growth is expected, and

- exempting them would not make it more difficult to accommodate regional or state needs, or to meet regional performance targets.

Staff believes that five jurisdictions, Johnson City, Maywood Park, King City, Durham and Rivergrove, may meet these criteria and may wish to apply for exemption from RTFP requirements. To receive an exemption a jurisdiction would need to send a formal request to Metro's COO.

Schedule of deadlines - Metro staff recommends moving the schedule for RTFP compliance (Table 3.08-4) from the RTFP into the RTP Appendix (Exhibit A to Ordinance No. 10-1241) 2013. This change will ensure that Metro code need not be amended in the future when the COO grants extensions to compliance deadlines.

## **ANALYSIS/INFORMATION**

### **1. Known Opposition**

None known at this time.

### **2. Legal Antecedents**

- Metro Ordinance No.10-1241B, which included adoption of the Regional Transportation Plan and Regional Transportation Functional Plan
- Metro Ordinance No.10-1244, which included updates to the Urban Growth Management Functional Plan to streamline the compliance process to make the granting of extensions and exceptions an administrative decision of Metro's Chief Operating Officer

### **3. Anticipated Effects**

Adoption of the legislative would amend Title 6 of the Regional Transportation Functional Plan (Compliance Procedures).

### **4. Budget Impacts**

None

## **RECOMMENDED ACTION**

Metro Staff recommends that the Council adopt Ordinance No.12-1278



## Metro | Memo

Date: Wednesday May 2, 2012  
To: MTAC  
From: Miranda Bateschell, Senior Regional Planner  
Subject: Regional brownfields scoping project update  
Purpose: Common understanding of initial findings  
Gain insight from MTAC members on challenges, policies & programs related to brownfields

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As you will recall from the presentation on February 15th, the goal of the regional brownfields scoping project is to demonstrate the need for brownfield restoration and redevelopment in our region, and outline a range of solutions and best practices that could be applied in the metro area. The final report will illustrate and estimate the extent of brownfields in the region's 2040 design types and outline potential initiatives for regional discussion. The project is currently halfway through its first phase, which is focused on research.

At the May 2<sup>nd</sup> meeting, staff will request your input on the project's initial findings. At this point, these findings only cover existing conditions and do not yet cover analysis or recommendations. In preparation, please review the enclosed **materials**:

- Memo on Oregon's existing regulatory policies and programs for brownfield redevelopment
- Summary of findings of previous brownfields policy studies
- Memo of the challenges faced at brownfield redevelopment sites

Staff will provide only a brief overview, so please come prepared to discuss the following **questions**:

- What are the primary challenges you have faced in redeveloping contaminated properties?
- What public policies or programs are working well to foster brownfield redevelopment? Which ones need improvement? Which create disincentives to redevelopment?
- What needs/gaps have been identified that can be addressed through policy-level changes?
- How important are the following factors in determining the success or failure of a brownfield redevelopment?
  - Regulatory environment
  - Cost of cleanup
  - Financing
  - Real estate market
  - Risk management

At the meeting, staff will also present a preliminary draft of brownfield redevelopment typologies, which are intended to illustrate the different typical brownfield sites found in the region. A number of brownfield redevelopment projects were identified, examined as case studies, and then categorized into brownfield site typologies. The goal is to have typologies you can apply to specific properties in your community to estimate a range of potential conditions and opportunities, and hopefully, help guide local investment choices. Staff will ask for your input on:

- What additional information is needed for you to use these brownfield typologies?





# MEMORANDUM

To: Miranda Bateschell Date: April 25, 2012  
From: Seth Otto Project: 0075.04.01  
RE: Brownfield Challenges Discussion

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The following memo summarizes the challenges to brownfield redevelopment that were identified in surveys collected from the Metro Brownfield Scoping project case studies, and from the discussion on challenges at the Technical Review Team meeting held 04/05/2012. The issue areas included in the discussion of challenges are grouped into four categories as described below. Some challenges cut across these categories, but the categories provide a useful organizing framework.

- **MANAGING RISK**

Includes multiple types of risk involved in a brownfield project: environmental risk, market risk, and construction risk. Also relates to uncertainty regarding environmental issues both the contamination itself and regulatory decisions.

- **LINKING CLEANUP & REDEVELOPMENT**

Refers to the two sides of brownfield project from a regulatory perspective that are essentially one project to a developer.

- **REGULATORY PROCESS**

Includes mechanics of the regulatory review and permitting of both cleanup and redevelopment.

- **FINANCIAL / CAPACITY**

Refers to cost implications and organizational ability to address the complexity of contaminated sites.

## MANAGING RISK

### **Uncertainty**

Seller, buyer, and lender concerns about environmental liability and lack of predictability in regulatory decisions. This uncertainty discourages development, sometimes more than the actual cost of cleanup.

### **Fear of DEQ**

Owners of contaminated sites are sometimes reluctant to discuss environmental issues with regulatory staff for fear of triggering legal obligations, fines or liability.

### **Conservative Legal Advice**

Lawyers representing land owners and potential developers may take conservative positions with respect to the liability risks of environmental contamination and may not fully understand the liability protections that can protect their clients. This is especially common for municipal attorneys who represent local governments but do not specialize in environmental law.

### **Long-term Monitoring**

Long-term monitoring requirements place a financial obligation on developers with no certainty regarding when the obligation will end.

## LINKING CLEANUP & REDEVELOPMENT

### **Red Light Dilemma**

Properties with high cleanup costs relative to redevelopment value are generally not financially feasible to develop without significant public funding or regulatory flexibility to balance costs and revenue potential.

### **Cleanup in Context of Redevelopment**

Requirements for remediation often occur without consideration for demands of redevelopment.

### **Incentive to Delay**

There is a perception that there may be a benefit to waiting to cleanup and redevelop a property for the following reasons:

- The process may be modified to be easier or less costly.
- Tax structure creates a disincentive to cleanup properties.
- However, environmental regulations are continually getting more rigid. Is there a way to document this trend to show property owners that waiting can actually cost them more? This could drive action.

### **Educational Component**

Most property owners only go through the process once, so there is always a learning process at the front end of a project. Property owners and developers might not understand the tools and finance mechanisms available to help realize site cleanup and redevelopment.



#### Lack of Buyer Knowledge

The risks associated with buying a contaminated property can be overwhelming for buyers that are not knowledgeable about the cleanup process and liability protections that are available. More outreach and education efforts for potential purchaser and developers is necessary, but efforts to reach these audiences have had limited success.

#### Lack of Owner Knowledge

Owners of contaminated properties may be unaware of tools and regulatory mechanisms in place to help advance property investigation and remediation. More outreach is necessary to educate owners on the programs in place.

## REGULATORY PROCESS

### **Land supply and competition**

If the process is too difficult, developers might go elsewhere in the region or country to buy and redevelop property

### **Outcome-based management and unified permitting**

The process of arriving at an acceptable remediation solution is currently often characterized by delay and poor communication between parties. Additional challenges arise from permitting requirements that require coordination and negotiation with multiple agencies, sometime simultaneously.

### **VCP Liability Release**

The Voluntary Cleanup Program provides a No Further Action letter when cleanup is determined to be complete but does not provide a legal settlement of liability. The lack of a timely pathway to liability settlement can deter property developers from investing in contaminated sites.

## FINANCIAL CAPACITY

### **Timing**

Extended project schedules can pose an obstacle to delivering clean property at an appropriate time relative to the real estate market cycle.

### **Limited Financial Resources to Conduct Investigation and Cleanup**

Obtaining financial participation from responsible parties and/or insurance companies can consume significant amount of time, energy, and cost. There are also complications associated with leveraging and multiple funding sources on a single project.

### **Limited State Cleanup Funds**

Oregon DEQ, Business Oregon, and the City of Portland have grant and loan programs that can support environmental assessment and cleanup, but these programs have relatively small budgets.



# Summary of Findings of Previous Brownfields Policy Studies

In the last 15 years, there have been a series of policy studies focused on cleanup and redevelopment of brownfields in the Portland metropolitan area. These studies began with Portland being awarded a grant from the US Environmental Protection Agency (EPA) that recognized the city as a brownfield showcase community in 1998. That effort led to the establishment of the Portland Brownfield Program within the city's Bureau of Environmental Services. The Metro regional government established their own brownfield program.

Designation of the Portland Harbor as a Superfund Site in 2001 led to a series of further studies especially focused on promoting redevelopment of industrial properties for continued industrial use. For reference purposes the recommendations of these are grouped according to issue areas in the following table.

## List of primary brownfield studies

- 1998 – Portland Brownfield Initiative
- 2004 – Brownfield/Greenfield Development Cost Comparison Study (Port, PDC, City, Metro)
- 2007 – STAMP (National Brownfield Assoc.)
- 2009 – 2010 – Portland Plan Economic Opportunities Analysis

Issue areas addressed in these studies are grouped into four categories as described below. Some challenges cut across these categories and some solutions address multiple issues, but the categories provide a useful organizing framework.

- **MANAGING RISK**  
Includes multiple types of risk involved in a brownfield project: environmental risk, market risk, and construction risk. Also relates to uncertainty regarding environmental issues both the contamination itself and regulatory decisions.
- **LINKING CLEANUP & REDEVELOPMENT**  
Refers to the two sides of brownfield project from a regulatory perspective that are essentially one project to a developer.
- **REGULATORY PROCESS**  
Includes mechanics of the regulatory review and permitting of both cleanup and redevelopment.
- **FINANCIAL / CAPACITY**  
Refers to cost implications and organizational ability to address the complexity of contaminated sites.

## References:

1. Portland Brownfield Initiative
2. Brownfield-Greenfield Cost Comparison
3. National Brownfield Association STAMP Recommendations
4. City of Portland Economic Opportunity Analysis

# Summary of Findings of Previous Brownfields Policy Studies

## MANAGING RISK

### CHALLENGES

#### Uncertainty

Uncertainty related to potential extent of contamination, lack of predictability in regulatory decisions, and potential for federal liability. This uncertainty discourages development, sometimes more than the actual cost of cleanup. (2)

### SOLUTIONS

#### Pooled Environmental Insurance

A number of environmental insurance products are available to manage risks associated with cleanup and redevelopment of contaminated property such as environmental impairment liability insurance and cost cap insurance. These insurance policies are typically scripted for individual sites and carry a high transaction cost that makes them financially nonviable for small sites. Establishing a regional insurance pool can bring down the costs of environmental insurance and make it more widely available. (2)

#### Innocent Purchaser Protection

Expand liability protections available through Prospective Purchaser Agreements (including release from EPA or third party law suits). (1)

#### References:

1. Portland Brownfield Initiative
2. Brownfield-Greenfield Cost Comparison
3. National Brownfield Association STAMP Recommendations
4. City of Portland Economic Opportunity Analysis

# Summary of Findings of Previous Brownfields Policy Studies

## MANAGING RISK

CHALLENGES	SOLUTIONS
<p><b>Superfund Overlay</b> The designation of the Portland Harbor as a Superfund Site has added a significant layer of complexity and uncertainty to redevelopment of properties on the waterfront and properties that contribute stormwater runoff to the harbor. There is uncertainty regarding remedial actions that may be required and assignment of liability. (3)(4)</p> <p>Estimated costs of 18 case study harbor sites remaining underutilized: (2)</p> <ul style="list-style-type: none"> <li>• Missed opportunity over 10 years for 166 acres of site reuse:</li> <li>• \$320 million in investment, 1,450 jobs and \$81 million of annual payroll not realized</li> <li>• Opportunity cost effectively doubles if all STAMP sites remain unused indefinitely</li> <li>• Loss of family wage jobs paying \$56,000+ per year or nearly 30% above the regional wage average</li> <li>• Reduced competitiveness for major employers</li> <li>• Loss of tax base to the State of Oregon, City of Portland, Willamette Industrial Urban Renewal Area (WIURA)             <ul style="list-style-type: none"> <li>○ \$9.1 million in personal income tax revenue annually</li> <li>○ \$9.1 million in property tax revenue annually</li> <li>○ \$152 million in potential tax assessed valuation to the taxable assessed valuation of the WIURA</li> </ul> </li> </ul>	<p><b>Identify a Champion (3)</b> Identify a clearly-defined point person or inter-agency team that can act as a champion for redevelopment of harbor properties. Specific tasks to undertake include:</p> <ul style="list-style-type: none"> <li>• Education and outreach</li> <li>• Create site inventory and profiles of specific parcels including economic, demographic, and environmental data</li> <li>• Create standard operating procedures for land transactions in the harbor</li> </ul> <p><b>Model Purchase and Sale Agreement (3)</b> Create a model agreement with indemnification language and distinctions between upland and in-water liabilities along with standard transfer issues such as due diligence period, timing of cleanup, warranties, and inspection period.</p> <p><b>Select a Master Developer (3)</b> Developer would be responsible for purchasing property, assembling parcels, and vertical build out.</p> <p><b>Create a Public Private Partnership to Own Property (3)</b> Create a legal entity to acquire harbor properties, manage and financial cleanup and redevelopment. This entity could be a public/private partnership that would be eligible for public funding to offset remediation and development costs.</p>

References:

1. Portland Brownfield Initiative
2. Brownfield-Greenfield Cost Comparison
3. National Brownfield Association STAMP Recommendations
4. City of Portland Economic Opportunity Analysis



# Summary of Findings of Previous Brownfields Policy Studies

## LINKING CLEANUP AND REDEVELOPMENT

CHALLENGES	SOLUTIONS
<p><b>Lack of Agency Coordination</b>                      Uncoordinated or potentially conflicting requirements from multiple agencies involved in permitting and approving cleanup and redevelopment cause challenges and time delays.(1)</p>	<p><b>One Stop Shop (1)</b>                      Create a Brownfield “team” within the City Departments (using existing staff) that cuts across all City Bureaus and have this “team” communicate with Bureaus in Cities that are within the Urban Growth Boundary.</p> <p>Create a Brownfields-specific “One-Stop Shop” with an ombudsman budgeted by all affected City Bureaus to coordinate all City activities associated with Brownfield revitalization projects.</p> <p>Create a similar team or ombudsman in DEQ to coordinate cleanup process with development.</p> <p>Create new policies that promote the revitalization of small parcels (so they are not lost in comparison to big sites)</p>
<p><b>Cleanup in Context of Redevelopment</b>                      Requirements for remediation often occur without consideration for demands of redevelopment. (1)</p>	<p><b>Cleanup Cost Proportionate to Land Value</b>                      Identify and eliminate potential cost barriers/hurdles that are disproportionate to smaller parcels (i.e. – reduce the “fixed” costs that must be spread out across a smaller parcel). (1)</p> <p><b>Regulatory Flexibility</b>                      Creating a zoning overlay to provide increased flexibility in allowing broader land uses for underutilized sites so that alternate uses can be considered if the cost of achieving a given use is an impediment to revitalization. (1)</p>
<p><b>Lack of Brownfield Knowledge</b>                      Property owners and developers might not understand the tools and finance mechanisms available to help realize site cleanup and redevelopment. More outreach is necessary to educate owners, developers, and the general public on brownfield issues and the policies and programs in place to promote cleanup and redevelopment. (1)</p>	<p><b>Outreach</b>                      Establish an institution that can assist owners and communities in understanding the cleanup and redevelopment process, how to manage risk, and how to access resources. (1)(3)</p>

References:

1. Portland Brownfield Initiative
2. Brownfield-Greenfield Cost Comparison
3. National Brownfield Association STAMP Recommendations
4. City of Portland Economic Opportunity Analysis



# Summary of Findings of Previous Brownfields Policy Studies

## LINKING CLEANUP AND REDEVELOPMENT

CHALLENGES	SOLUTIONS
<p><b>Marketing</b> Redevelopment of brownfield can be accelerated by inventorying and making information available about these properties to site selectors and prospective developers (2)</p>	<p><b>Site Inventory</b> Provide an inventory of available industrial sites with a robust set of information on each to support site selection decisions that involve a number of factors. (2)(4)</p>

## REGULATORY PROCESS

CHALLENGES	SOLUTIONS
<p><b>Transaction Costs of Regulatory Process</b> Process for site investigation, risk assessment, and study of cleanup alternatives requires a high level of time and resources. (1)</p>	<p><b>Presumptive Remedies and Standards</b> Create standardized look-up tables/cleanup levels (which have already been completed for industrial and single-family residential exposures using a standardized set of exposure parameters) for common revitalization land use (i.e. – multi-use development: 1st floor retail, 2nd – 3rd floor residential). (1)</p> <p>Use presumptive or comparable remedies more frequently (i.e. – take advantage of remedies picked for similar sites with similar findings, which is somewhat different from the use of generic remedies).(1)</p> <p><b>Information and Cost Sharing</b> Share “groundwater beneficial use determinations” on a localized basis, consistent with the site-specific requirements of the cleanup rules, to minimize “recreating the wheel” (1)</p>

References:

1. Portland Brownfield Initiative
2. Brownfield-Greenfield Cost Comparison
3. National Brownfield Association STAMP Recommendations
4. City of Portland Economic Opportunity Analysis



# Summary of Findings of Previous Brownfields Policy Studies

## FINANCIAL / CAPACITY

CHALLENGES	SOLUTIONS
<p><b>Cleanup Cost</b>                      Redevelopment of brownfield properties requires substantial upfront investment to characterize the nature and extent of contamination, develop a cleanup plan, and conduct the remedial actions. These costs are incurred at the beginning of the project, well ahead of the opportunity to generate revenues to offset them. This financial challenge often leads to properties lying abandoned or underutilized for years. (2)</p> <p><b>Cleanup Cost as a Percentage of Redevelopment</b>                      When cleanup costs overshadow property value, redevelopment of contaminated sites becomes less likely. The fear of this potential is present among developers and property owners even if property conversion is actually profitable. (2)</p> <p>Brownfields in Portland Employment Areas (4)</p> <ul style="list-style-type: none"> <li>• Brownfields represent 20 – 40% of developable land supply in employment areas</li> <li>• Potential for redevelopment by 2035                             <ul style="list-style-type: none"> <li>○ Central City – 85%</li> <li>○ Neighborhood commercial – 50%</li> <li>○ Campus Institutional – 65%</li> <li>○ Industrial – 30%</li> </ul> </li> </ul> <p><b>Greenfield Cheaper than Brownfield</b>                      Developing on greenfields is often more cost effective than redevelopment on contaminated sites. Policy tools must be designed to help close the gap and leverage the unique qualities of brownfield sites. (2)</p> <ul style="list-style-type: none"> <li>• Residual land values for case study projects (2)                             <ul style="list-style-type: none"> <li>○ Brownfields: -(\$7.80/sf) to -(\$0.63/sf)</li> <li>○ Greenfields: \$1.33/sf to \$6.96/sf</li> </ul> </li> </ul>	<p><b>Tax Incentives</b>                      Have the City and Metro promote and consider expanding the use of tax-related incentives/breaks, such as credits for dollars spent on environmental cleanup or credits or incentives for varied uses. (1)</p> <p><b>Brownfield Loans</b>                      In addition to the existing state brownfield loan program, create a revolving loan fund or financial assistance program to provide funds for prospective purchasers to obtain sufficient site data to determine the economic viability of a property; Consider a special fund for smaller sites. Consider making the loans forgivable (grants) if the redevelopment does not go forward. (1)(2)</p> <p><b>Government-owned Properties</b>                      Make financial assistance available to prospective buyers of Brownfield sites currently owned by government agencies so that the prospective buyer can determine the economic viability of the site. (1)</p> <p><b>Site Assessment Grants</b>                      Create new financial tools, such as a funding pool for site assessment work or financial tools specific to small sites or bridge loans for site cleanups.(1)</p> <p><b>Gap Financing</b>                      Adopt and implement a public gap financing strategy to resolve brownfield liability issues in tandem with committed private investment. This initiative should be focused on assuring competitiveness of brownfield properties with comparable greenfield site options both in Portland and regionally. (3)</p>
<p><b>Real Estate Market</b>                      Many brownfield sites have lower land value and limited market demand that will not offset the cost of cleanup.(2)</p>	<p><b>Prioritize Public Investment on Sites with Market Demand</b>                      Prioritize public investment in brownfields sites with high cleanup costs that are in locations with strong market potential. (2)</p>

References:

1. Portland Brownfield Initiative
2. Brownfield-Greenfield Cost Comparison
3. National Brownfield Association STAMP Recommendations
4. City of Portland Economic Opportunity Analysis





# OREGON REGULATORY POLICIES AND PROGRAMS FOR BROWNFIELD REDEVELOPMENT

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*Prepared for*

**METRO**

**BROWNFIELDS TECHNICAL REVIEW TEAM**

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*Project No. 0075.04.01*

*Prepared by*

*Maul Foster & Alongi, Inc.*

*2001 NW 19th Avenue, Suite 200*

*Portland, OR 97209*



MAUL  
FOSTER  
ALONGI



# CONTENTS

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	ACRONYMS AND ABBREVIATIONS	IV
1	INTRODUCTION	1
2	OREGON CLEANUP PROGRAMS	3
	2.1 VOLUNTARY CLEANUP PROGRAM	3
	2.2 NO FURTHER ACTION DESIGNATIONS	4
3	PROSPECTIVE PURCHASER AGREEMENT	6
	3.1 DEFINITION & PURPOSE	6
	3.2 STRUCTURE	6
4	TAX INCREMENT FINANCING	11
	4.1 URBAN RENEWAL PLANS	11
	4.2 THE MECHANICS OF TIF	12
	4.3 ELIGIBLE EXPENSE	12
	4.4 LIMITATION ISSUES	13
5	TAX INCENTIVES	15
	5.1 TAX CREDITS AND EXEMPTIONS	15
	5.2 PROPERTY TAX ABATEMENTS	16
	5.3 TAX ASSESSMENT ON CONTAMINATED PROPERTY	17
6	PUBLIC FUNDING MECHANISMS	18

## ACRONYMS AND ABBREVIATIONS

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CERCLA	Comprehensive Environmental Response, Compensation and Liabilities Act
DEQ	Department of Environmental Quality
DLCD	Department of Land Conservation and Development
ECSI	Environmental Cleanup Site Information
TIF	Tax-Increment Financing
ICP	Independent Cleanup Pathway
NFA	No Further Action
OAR	Oregon Administrative Rule
ORS	Oregon Revised Statute
PPA	Prospective Purchaser Agreement
TGM	Transportation and Growth Management
TOD	Transit-Oriented Development
URA	Urban Renewal Area
USEPA	United States Environmental Protection Agency
VCP	Voluntary Cleanup Pathway
VHDZ	Vertical Housing Development Zone

# 1 INTRODUCTION

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The cleanup and redevelopment of contaminated properties is managed through a set of local, state, and federal policies, regulations, and financial incentives.

## **Federal Context**

The federal Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA or Superfund Law) established a federal role in the cleanup of contaminated sites and provided the model many states adopted in their own laws, including definitions of who is legally liable for contamination and the strict, joint and several liability regime. This liability structure has created great anxiety in the lender and developer community and has led to the unintended consequence of deterring investment in potentially contaminated properties, which became known as brownfields. CERCLA and state laws have been reformed over time to alleviate these concerns to some extent.

Who is a Potentially Liable Party?

*Owners & operators*—Past and present since hazardous substances released;

*Arrangers*—for the disposal of hazardous substances; and

*Transporters* of the materials.

What is Strict, Joint & Several Liability?

*Strict*—Responsibility applied regardless of fault

*Joint and Several*—All responsible parties can be forced to bear all costs of the cleanup regardless of the existence of other potentially liable parties

CERCLA is the primary regulatory framework for sites with high levels of contamination, which are put on the federal National Priorities List. The Portland Harbor was designated as a National Priorities List site in 2001, so many of the industrial properties in Portland fall under that jurisdiction. Analysis of the implications of the Portland Harbor Superfund listing is beyond the scope of this memo. Brownfield sites typically do not merit designation on the National Priorities List and are remediated under the jurisdiction of the state.

### **Oregon Cleanup Law**

The Oregon Cleanup Law (Oregon Revised Statute 465), which is implemented by the state Department of Environmental Quality (DEQ), is the primary law regulating remediation of brownfields in the state. It establishes the procedural and technical requirements for remediation of contaminated properties. The Cleanup Law incorporates several fundamental policies designed to promote cleanup and redevelopment of brownfields. The most important of these are a risk-based approach to cleanup, the Voluntary Cleanup Program, and Prospective Purchaser Agreements.

**Risk-based Approach**—cleanup levels and remedial actions are selected based on the potential for human and ecological receptors to be exposed to contaminants. Site specific risk assessments often lead to remedial actions that are protective of human health and the environment, while also being more cost effective than the traditional approach of meeting uniform numeric standards for all sites.

**Voluntary Cleanup Program**—provides an expedited administrative process in which the schedule and level of involvement of the DEQ is controlled by the project proponent.

**Prospective Purchaser Agreements**—creates a mechanism for innocent parties to negotiate the extent of cleanup and liability settlement with the State before purchasing a brownfield property.

A number of financial tools have also been established at the federal, state, and local level to promote cleanup and redevelopment of brownfields. These include: public grants, public low-interest loans, tax-increment financing, and tax incentives.

These programs are described in greater detail in the following sections.

# 2 OREGON CLEANUP PROGRAMS

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The DEQ offers multiple programs to help advance the organization's efforts in environmental cleanup and site restoration. The Cleanup Program's three administrative pathways allow property owners and government officials the flexibility to address cleanup based on site-specific criteria and the necessary level of agency oversight.

The Site Response Program is the original administrative process that occurs when DEQ discovers a highly toxic site. In this scenario, DEQ opts to take control of the remediation effort rather than wait for a responsible party to take action. Outside of the Site Response Program, participants interested in receiving DEQ oversight must decide between one of the following Voluntary Cleanup Program pathways.

## 2.1 Voluntary Cleanup Program

- 1) In the **Voluntary Cleanup Pathway (VCP)**, property owners willfully enroll. VCP sites may be of low, moderate, or high environmental priority. In this program, DEQ provides active oversight throughout the investigation and remediation through a collaborative process with the participant.
- 2) The **Independent Cleanup Pathway (ICP)** is a subset of all **Voluntary Cleanup Program** enrollees and is designed for property owners of low- to moderate- risk sites. The Independent pathway is similar to the VCP program in that participants voluntarily enroll. However, DEQ provides little to no oversight in the ICP, thereby leaving the participant responsible for more liability and risk.

The Voluntary Cleanup Program was authorized by the 1991 Legislature in order to provide willing parties DEQ oversight while they investigate and, if necessary, cleanup contamination from their properties. This cooperative process helps parties move through the process efficiently, and meet sometimes tight funding and redevelopment deadlines. If DEQ determines that the chemicals of concern have been adequately characterized and restored to a level protective of human health and the environment, DEQ will issue a No Further Action (NFA) letter to the responsible party. NFAs are only issued after cleanup activities are completed, reviewed, and approved by a public comment process.

The Voluntary Cleanup Program is the most common administrative pathway for cleanup of brownfield properties. In 2010, DEQ reported that

there were approximately 400 active Voluntary Cleanup Program sites, with approximately 300 sites following the traditional VCP, and approximately 100 in the Independent Cleanup Pathway program.

## 2.2 No Further Action Designations

The level of DEQ involvement throughout the remediation process is dependent upon the administrative pathway chosen. As stated, the VCP offers more agency oversight than the ICP. Additional DEQ oversight often results in a more time-intensive and costly process than an independent cleanup, but provides more certainty in the outcome of the project and a better chance of achieving a No Further Action designation (NFA).

During the 2010 fiscal year, DEQ issued NFA decisions at 51 sites. Since its inception in 1988, DEQ's Cleanup Program has made NFA decisions at 1,453 sites. This amounts to nearly one-third of all sites in the state's Environmental Cleanup Site Information (ECSI) database. Of these NFAs, approximately 787 were issued to sites within the VCP program, allowing far more NFAs than the Site Response Program could have completed alone.

A NFA represents a formal declaration from DEQ that the site has been restored to a level that no longer poses unacceptable risks to human health and the environment. Achieving a NFA means that property owners and developers can more confidently invest in their property and limits threats of future environmental regulatory measures.

However, NFA determinations may be rescinded or reopened under specific circumstances. In some instances, NFAs are issued on a conditional basis whereby the property owner must complete specific remediation efforts, engineering, and institutional controls as outlined by the NFA letter. If DEQ finds that these measures have not been successfully completed, the NFA may be revoked. Additionally, NFAs may specifically address individual contaminants and certify successful cleanup as it relates to those toxins mentioned by name in the NFA. If new hazards are discovered on-site, or advancements in scientific knowledge raise new concerns, DEQ may reopen the NFA and impose additional cleanup requirements. DEQ is very careful with regards to "re-openers" though, and only occasionally reopens cases when there is clear evidence of a new risk to human health or the environment.

The VCP is designed to help participants reach their environmental goals for a site as quickly and inexpensively as possible. However, with proper notification to DEQ, participants have the option of withdrawing from VCP, and if this occurs, DEQ is unlikely to take any follow-up action unless it considers the site a high environmental priority.



While very small, some risks do exist for participants who willfully enroll into the VCP program. For example, should the participant decide to drop out of the VCP or not perform cleanup requirements within a reasonable timeframe, DEQ is likely to move it to the Site Response program if the agency considers the site a high priority.

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# 3 PROSPECTIVE PURCHASER AGREEMENT

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## 3.1 Definition & Purpose

A Prospective Purchaser Agreement (PPA) is a legally binding agreement between the Department of Environmental Quality (DEQ) and a prospective purchaser or prospective lessee, which limits the purchaser's or lessee's liability under state law for environmental cleanup at the property in exchange for providing a "substantial public benefit" (ORS 465.327).

From the purchaser's perspective, the PPA is a risk management tool that provides certainty about the requirements for cleanup and protection from potential claims. With these protections, a purchaser can have greater certainty about cleanup costs and liability for past releases. PPAs can also satisfy lender concerns and make it easier for a project to obtain outside financing.

PPAs are a frequently used tool for promoting cleanup and redevelopment of brownfields in Oregon. Between 1995 and 2010, DEQ had negotiated 128 PPAs.<sup>1</sup>

## 3.2 Structure

**Eligibility**—The state places a number of requirements on a purchaser to allow them access to the protections provided by a PPA.

- **Innocent Purchaser**—The prospective purchaser must not be responsible for contaminating the property. Under the strict, joint, and several liability regime, this means they cannot have caused the contamination as an operator of a facility or the transporter of hazardous materials, or be responsible as an owner of the property.
- **Future Use**—The proposed future use of the property will not exacerbate the contamination or interfere with necessary cleanup actions.
- **Significant Public Benefit**—This factor is evaluated on a case-by-case basis, but typically involves
  - Substantial new resources to facilitate cleanup
  - Substantial environmental cleanup activities
  - Productive reuse of a vacant or abandoned industrial or commercial facility

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<sup>1</sup> Landman, C. Oregon Department of Environmental Quality. Personal communication. May 25, 2011.  
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- Development of the property by a public agency or non-profit to addresses an important public purpose

**Legislative Enhancements to PPAs in 2011** – New legislation signed by Gov. Kitzhaber and effective January 01, 2012 protects “innocent purchasers” (i.e., persons not responsible for prior contamination at a site) from litigation by third parties. It also expanded PPAs to include the release or spilling of oil (in addition to hazardous substances), and allows DEQ the option to streamline the process for PPAs by providing greater liability protection through administrative order than judicial decree.

**Type of PPAs**—The legislation described above has resulted in three different forms of PPAs: Administrative Agreement PPA, Consent Order PPA, and Consent Judgment PPA. The Administrative Agreement version is the simplest and quickest, but cannot provide third-party liability protection. The Consent Order and Consent Judgment versions do provide third-party protection, but both require a 30-day public notice and comment period. The fundamental difference between these two types is that a Consent Judgment is formally reviewed and executed in court while the Consent Order is accomplished administratively by the DEQ. Prospective purchasers decide which type to use based on their risk tolerance and schedule constraints.

**Process**—The following steps summarize the process for entering into a PPA.

1. **Initial Meeting**—DEQ determines whether a property and purchaser are eligible for a PPA, reach agreement on the type of PPA desired if possible, and discuss the type of “substantial public benefit” the purchaser would offer, on a conceptual level
2. **Application**—Prospective purchaser submits application form and cost recovery agreement to pay for DEQ staff time to review and process the PPA.
3. **Environmental Investigation**—Purchaser (or seller) completes necessary study to define nature and extent of contamination (if not already done) and propose remedial actions. DEQ will require that contamination issues be well understood before entering into negotiations on terms of PPA. Cleanup actions typically are conducted after the PPA is executed and land transaction is closed.
4. **Drafting of PPA**—DEQ and purchaser negotiate and agree on specific terms of the PPA. DEQ drafts the PPA for Administrative Agreements and Consent Orders. The Attorney General’s office is always involved in Consent Judgment PPAs, and may also be involved in other types, depending on the nature of the site and the outcomes desired.
5. **Public Notice Period**—Required for Consent Order PPA and Consent Judgment PPA, but not for Administrative Agreement PPA.

6. Execute PPA—For Administrative Agreement and Consent Order PPA, DEQ signs and executes. For Consent Judgment, the Attorney General's office files in circuit court which executes the agreement.
7. Recording—Purchaser records the PPA with the appropriate county.
8. Performing PPA Obligations—Cleanup actions are conducted on the property, and after review for completion, DEQ issues a letter (for Administrative Agreement PPAs) or a Certificate of Completion (for Consent Order and Consent Judgment PPAs).

Summary Comparison of PPA Types

<b>Elements</b>	<b>Administrative Agreement PPA</b>	<b>Consent Order PPA</b>	<b>Consent Judgment PPA</b>
<b>State Liability Protection</b>	State agrees not to require purchaser or future owners to perform or pay for cleanup actions beyond those defined in the PPA.	Same	Same
<b>Contribution Protection</b>	No contribution protection under state law.	Protects purchaser and future owners from contribution claims	Protects purchaser and future owners from contribution claims
<b>Third-Party Liability Protection</b>	No protection provided	Protects purchaser and future owners from third-party liability claims.	Protects purchaser and future owners from third-party liability claims.
<b>Public Notice Requirements</b>	None required for PPA. Future remedial action may require notice.	30-day public notice period required before executing PPA.	30-day public notice period required before executing PPA.
<b>Administrative Process</b>	Negotiated and executed by DEQ	Negotiated and executed by DEQ	Negotiated by DEQ. Attorney General's Office files with Circuit Court to be approved by a judge.

## References

Prospective Purchaser Program Guidance. Oregon Department of Environmental Quality. December 2011.  
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# 4 TAX INCREMENT FINANCING

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Tax Increment Financing (TIF) is the primary redevelopment and economic development tool associated with urban renewal areas (URAs). It helps Oregon cities and counties revitalize public and private properties and provide development-supportive infrastructure within URA boundaries. As such, TIF has been used to address environmental cleanup as this is one example of a blighting condition. TIF investments are guided by the goals outlined in the urban renewal plan for each URA. Urban renewal and tax increment financing enable local governments to focus resources on a particular area and stimulate much larger private investments. TIF offers a number of advantages over other funding alternatives: it is locally created and controlled; it can be invested more flexibly than general fund dollars; it provides a more certain and stable source of funding; and it leverages other public and private investments.

Urban renewal funds are primarily used to update and improve an area's infrastructure, including capital expenditures on transportation improvements and parks, and to provide incentives for desired development such as mixed-use projects, affordable housing, storefront improvement, and building rehabilitation. By leveraging TIF with private and other public investments these improvements help revitalize blighted areas.

## 4.1 Urban Renewal Plans

In order for land in Oregon to access TIF funding, a city or county must create an Urban Renewal Agency. Urban renewal agencies are enabled by state law (ORS Chapter 457), but are activated and approved by city council or county commission. The agencies become separate legal bodies from the council/commission, but in many cases, the urban renewal agency board is composed of members of city council/county commission.

In Oregon, all urban renewal areas must have an urban renewal plan which, among other criteria, needs to show how the area within the proposed boundaries is considered “blighted”. The term is defined by ORS 457.010, as an area that by reason of deterioration, faulty planning, inadequate or improper facilities, deleterious land use, or the existence of unsafe structures, is detrimental to the health, safety, or welfare of the community. Many agencies choose to do a feasibility study prior to engaging in a URA plan. These feasibility studies usually include a preliminary assessment of blight as well as information regarding property values, projections of tax increment revenues, development conditions, the availability and condition of streets and utilities, and a preliminary listing of potential projects.

If the area is found eligible for urban renewal, the city council or board of commissioners must adopt a formal urban renewal plan and accompanying urban renewal report that declare the area blighted and define the issues, challenges, and opportunities within the proposed boundaries. The plan and report serve as a roadmap for public investment and capital improvement priorities and include elements such as estimates for completion date, when the property tax base is frozen, money needed for various projects, when indebtedness will be retired, and the fiscal impact on the taxing entities. The planning must involve citizens at every stage, especially when determining projects and activities to be undertaken. Plans can be approved only after public notice, hearing, and public testimony. The plan is then presented to the planning commission for recommendations and adopted by city council or county commission. In some communities plans are adopted only after a vote of the citizenry. Substantial changes must be approved according to the same process as the adoption of the original plan.

## 4.2 The Mechanics of TIF

Once an urban renewal plan is approved, a URA can be established. Funds are generated by the properties in the URA by freezing the assessed value of real property within the defined area of investment. The tax collected above the frozen base is the increment. The agency may collect property tax generated through appreciation of value of existing properties and any new taxable development that occurs, regardless of which taxing district would have collected them otherwise. The urban renewal agency acquires capital by issuing short term borrowings and/or long term bonds against the future projected increase in property taxes for that area. The bond proceeds are invested in improvements or projects within the area. These investments can be direct payments for public improvement as well as loans and/or grants to assist with private redevelopment projects. TIF serves as a strong financial incentive to stimulate additional investment in targeted areas so that blighted conditions can be addressed thereby enhancing its economic vitality and physical vibrancy.

## 4.3 Eligible Expense

Urban renewal agencies have authority to use TIF and other resources for: construction or improvement of streets, utilities, and other public uses; rehabilitation or conservation of existing buildings; acquisition and improvement of property; and/or resale and lease of property. A URA plan may authorize other projects and programs that fulfill economic development and jobs related goals, but TIF may only be used for the capital side of those endeavors. The renewal agency may provide assistance and incentives to enhance for-profit and non-profit business and/or property development using TIF loans and grants, or other funding programs. These projects are often supportive of wealth creation, economic development, and



employment plan goals of a community. Renewal agencies are also given powers regarding land disposition, and are authorized to sell, lease, exchange, subdivide, transfer, assign, or pledge land.

TIF is regularly used to invest in environmental cleanup projects in states like Montana, Massachusetts, Connecticut, and Wisconsin. While the practice is less common in Oregon, TIF has been used to address environmental cleanup as this is one example of a blighting condition. State statutes and administrative rules pose no obvious limitations on the use of TIF funds for such applications. According to ORS 457 and OAR 150-457, a URA project of any nature must simply demonstrate how improvements would benefit the neighborhood as a whole, improve property values, and leverage future investments.

State regulations do, however, make explicit mention of other limitations. For example, TIF cannot be used as a funding mechanism for social programs, operating expenses of non- or for-profit entities, or wage and income support. In addition, urban renewal funds cannot be used to condemn private property for private development.

#### 4.4 Limitation Issues

Though they are a powerful tool for urban redevelopment, URAs are restricted in their application. Oregon law limits the percentage of land in a city that can be designated for urban renewal. In a large cities (population greater than 50,000), the area inside URAs may exceed neither 15% of a city's total area nor 15% of its assessed valuation. In smaller jurisdictions (population less than 50,000), URAs may not exceed 25% of a city's total land area nor 25% of its assessed valuation. These limitations do not currently affect communities like Tigard, which have just begun to tap into their URA allowance. Alternatively, the City of Portland has approached 14% of its land (15% total allowance), effectively meaning that an existing URA district would need to be reduced or discontinued before a large new one is established.

Other restrictions on urban renewal dictate that area boundaries cannot be expanded by more than 1% without new voter approval under the City charter amendment approved by voters in 2008.

Changes to tax laws over the past two decades have also placed limitations on TIF. Measures 5 (1990) and 50 (1997), affected how TIF is collected and categorized three types of urban renewal areas.

Tax increment financing also comes with its political challenges. Sometimes jurisdictions whose taxes are included in an urban renewal area oppose deferring property tax gains associated with TIF, as this can impact their

operating budgets. Recent state legislation has mollified this concern with a revenue sharing formula that is now incorporated into the creation of new or amended URAs. While this most recent change has helped earn more support from taxing jurisdictions that contribute their share of increment to URAs, it does limit the amount of TIF available to a URA over a longer term.

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# 5 TAX PROGRAMS

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Tax incentives are financial tools that governments implement to encourage private investment to accomplish various economic and social objectives. The State of Oregon does not have tax incentives specifically targeted to brownfield cleanup and development, but there are several business tax credit and property tax abatement programs that may be applicable to certain brownfield projects. Tax incentives offer advantages to local governments by providing financial support to developers without directly taking money out of the current budget.

Oregon's property tax assessment framework includes a provision for reducing the assessed value of a property by the cost to cure environmental impacts. This valuation system has been used to reduce property taxes on some contaminated properties to nearly zero and is often critiqued as a policy that discourages cleanup of brownfields.

## 5.1 Tax Credits and Exemptions

Oregon offers a number of corporate and income tax credits and exemptions to encourage business investment in targeted sectors such as renewable energy and research. These include:

**Oregon Investment Advantage**—This income tax exemption program helps businesses start or locate in mostly rural counties by providing a multi-year deduction for all income-based taxes related to the new business operations, potentially eliminating state business tax liability during that multi-year period. General company eligibility requirements include: creation of at least five new full-time, year-round jobs that receive minimum level of compensation; facility operations need to be the first of their kind in Oregon for that company; and facility operations cannot compete within the local economy.

**Business Energy Tax Credit**—Eligible for costs including the building, equipment, machinery and other expenses related to the manufacturing of renewable energy products such as solar cells, wind turbines or components manufactured for the exclusive use in products using renewable energy. Businesses are eligible for a tax credit equal to 50% of up to \$40 million in eligible costs. The tax credit may be monetized through transfer to individuals or companies with Oregon tax liability at a discount rate determined by the state

## 5.2 Property Tax Abatements

Property tax abatements allow cities or counties within the state to temporarily reduce property taxes for certain housing development and rehabilitation projects. These tax incentives are often connected to designation of special districts. These programs can be used to offset front end costs and support financial feasibility of brownfield redevelopment projects in these designated areas. Examples of these programs include:

**Enterprise Zones**—Enterprise zones exempt businesses from local property taxes on new investments for a period of three to five years (ORS 285C.050). Sponsored by municipal or tribal governments, an enterprise zone typically serves as a focal point for local development efforts. Portland has established an Enterprise Zone that encompasses North and Northeast areas of the City. The Portland Enterprise Zone is managed by the Portland Development Commission and provides five-year property tax abatements for industrial-based businesses making new investments.

A new building/structure, structural modifications or additions, or newly installed machinery and equipment may qualify for exemption, but not land, previously used property value and miscellaneous personal items. To qualify for the tax exemption, businesses need to meet a number of criteria, including:

- Increase full-time, permanent employment of the firm inside the enterprise zone by the greater of one new job or 10% (or less with special-case local sponsor waivers);
- Generally have no concurrent job losses outside the zone boundary inside Oregon;
- Maintain minimum employment level during the exemption period;
- Enter into a first-source agreement with local job training providers;
- Compensate new workers at or above 150% of the county average wage.

**Vertical Housing Program**—encourages construction or rehabilitation of properties in targeted areas called Vertical Housing Development Zones (VHDZs) by providing a tax abatement opportunity for higher density, mixed-use developments in these areas (OAR 803.013). This policy is designed to reduce front-end costs to promote additional investment based on the recognition that higher density projects often carry greater development costs.

VHDZs are established by local jurisdictions applying to the state for the designation. Approval is based on considering a number of factors such as

proximity to transit and location in city core areas. To receive the tax abatement, a developer applies directly to the state. Eligible projects must be located entirely in a VHDZ and meet a number of criteria focused on density and mix of uses.

All projects meeting state regulations receive the property tax abatement on the improvement value for a ten-year period. The number of floors constructed or rehabilitated for residential use in proportion to the total square footage of a project determines the tax exemption rate the developer will receive. The rate of the abatement ranges from 20 to 80 percent:

- 20 percent for one floor of housing
- 40 percent for two floors of housing
- 60 percent for three floors of housing
- 80 percent for four or more floors of housing.

### 5.3 Tax Assessment on Contaminated Property

The Oregon Department of Revenue developed an administrative rule to provide a methodology for valuing contaminated property for the purpose of assessing property taxes (OAR 150-308.205-(E)). The rule defines a “contaminated site” as real property that is on the USEPA National Priority List (a Superfund site), in the DEQ inventory of confirmed releases, an illegal drug manufacturing site, or demonstrated to have had a release of hazardous substances. The rule requires that all three commonly used appraisal methods, the sales comparison approach, the cost approach, and the income approach be used to determine real market value of a contaminated site. The property values derived from these methods are adjusted to account for a number of factors related to the contamination including:

- Cost to cure defined as “the discounted present value of the estimated after tax cost of the remaining remedial work specific to the subject property to remove, contain, or treat the hazardous substance. Cost to cure may include the cost of environmental audits, surety bonds, insurance, monitoring costs, and engineering and legal fees. The costs must be directly related to the clean up or containment of a hazardous substance”
- Limitations on use of the property due to the contamination or governmental restrictions
- Fiscal implications such as the increased cost to insure or finance the property.

# 6 PUBLIC FUNDING MECHANISMS

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A number of public grants and loans are available in Oregon through various federal, state, and local government agencies to help overcome financial obstacles associated with brownfield redevelopment. Successful brownfield projects often combine funding from a number of sources that are targeted for both cleanup and redevelopment. The following section provides a brief overview of the primary public funding sources for brownfield projects in Oregon. While these are identified as the primary funding sources, brownfield projects are often able to leverage funds from a variety of sources beyond those discussed in the memo.

## U.S. Environmental Protection Agency

**Assessment Grant**—The Assessment grants provide funding to inventory, characterize, assess, and conduct planning and community involvement related to brownfield sites. Applications are solicited on an annual basis. The maximum award is \$400k for a single applicant or \$350k for a single assessment.

**Cleanup Grant**—These grants provide funding for the cleanup activities on brownfield sites. Applications are solicited on an annual basis. The maximum award is \$200k per site.

## Oregon Department of Environmental Quality

**Brownfield Program**—The Brownfield Program provides grants to public and quasi-public entities to promote redevelopment or property transfers. Grant awards typically equate to about \$35k.

**Site-Specific Assessment**—The Site-Specific Assessment exists to provide technical assistance to assess sites for public and quasi-public entities. The assistance is provided by DEQ pro bono staff time.

## Oregon Department of Land Conservation and Development

**Periodic Review and Technical Assistance**—DLCD awards grants and technical assistance for planning, economic development, planning and zoning processing, and other planning steps that can be used to leverage the redevelopment of various brownfield sites. The assistance is available to local, regional, and tribal governments.

**Transportation and Growth Management Program**—The TGM Program provides grants for planning, specific development and redevelopment, land use and transportation plans, infill and redevelopment strategies, and development design. Assistance is provided in the form of a matching grant to local, regional, and tribal governments, as well as some special districts, councils of governments, metro planning organizations and coalitions. TGM funds can be utilized by public agencies to address brownfields at a local or regional scale through specific policies that address blighted properties and/or encourage infill and redevelopment.

## Oregon Housing and Community Services

**Housing Development Grant**— These grants are awarded for new construction, rehabilitation, and/or acquisition of low- and very-low-income housing units; predevelopment costs, planning, engineering or feasibility studies to government agencies, nonprofit community organizations, private individuals, and corporations. Thus, brownfield assessment and cleanup could be financed as a qualifying predevelopment cost. Grants are awarded in amounts up to \$100k.

## Oregon Business Development Department, Business Oregon

**Oregon Coalition Brownfield Cleanup**— Business Oregon awards loans and grants for brownfield site cleanup, similar to a revolving loan fund, to local governments, nonprofits, public, and private entities as a 20% cost share award in amounts up to \$1 million.

**Brownfield Redevelopment Fund**— This fund provides for loans and grants for site assessment and cleanup projects in varying amounts to local governments, nonprofits, public, and private entities.

## Oregon Metro

**Brownfields Recycling Program**— Oregon Metro provides environmental assessments and redevelopment plans for qualifying petroleum-contaminated sites within the Metro region. This program is funded through the U.S. Environmental Protection Agency. Currently, applications are not being accepted.

**Transit-Oriented Development**— TOD financial incentives are issued for the construction of multi-family housing, mixed-use buildings, commercial, school, senior housing, or retail uses, as long as there is a relationship to transit. Public, nonprofit, or private entities can be award grants and incentives up to \$250k. The TOD funds can assist redevelopment of brownfield properties that meet the criteria for participation in the program.

## City of Portland, Bureau of Environmental Services

**Brownfield Program**— The Bureau of Environmental Services Brownfield Program provides site assessments funded through the U.S. Environmental Protection Agency. The City is also in the process of initiating a new revolving loan fund, capitalized by an USEPA grant, for cleanup activities on privately or publically owned sites.





## Metro | Memo

Date: April 24, 2012  
To: Metro Technical Advisory Committee members  
From: Patty Unfred, Metro Communications manager  
Subject: New review process for Metro public engagement

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Metro's Office of Citizen Involvement is pleased to introduce a new public engagement review process to ensure that Metro's public involvement is effective, reaches diverse audiences and use emerging best practices.

*You received this information last month by email in lieu of the cancelled MTAC meeting, but I would like to present briefly at your May 2 meeting to gather any comments or suggestions that you may have. Please note that the proposal has been revised slightly from the previous version due to subsequent stakeholder input.*

The process has been in development since the Metro Committee for Citizen Involvement (MCCI) was suspended in 2010 due to declining participation that limited its effectiveness. Since that time, Metro staff has engaged community stakeholders, including local government public involvement staff, former MCCI members, and the International Association of Public Participation Cascade Chapter, to create a multi-track public engagement review process. The new process includes a semi-annual meeting of professional public involvement peers, an annual stakeholder summit and the establishment of a new standing public committee, the Public Engagement Review Committee (PERC). We are also introducing an annual public survey and subsequent annual report to evaluate Metro's public involvement efforts.

We are seeking review of the proposal and suggestions on how to best implement the process. The attached proposal, which describes the new process, will be presented as follows:

- Joint Policy Advisory Committee on Transportation (JPACT) – completed April 12, discussion, no formal recommendation
- Metro Policy Advisory Committee (MPAC) on May 9 – feedback requested but no formal recommendation
- Metro Council on May 17 and 24 – ordinance for adoption

Thanks for your review – I look forward to meeting with you on May 2.





## **Metro Public Engagement Review**

**Draft - April 24, 2012**

### **Introduction and overview**

In response to evolving communications and public engagement practices, Metro staff has developed a multi-track public engagement review process. This review process engages the public, community organizations, and local government public involvement staff to actively monitor and contribute to Metro's public engagement efforts. Efficient public engagement at the project level requires review at the agency level. The new process is in addition to the public involvement outreach done regularly at the project and program levels. All Metro public engagement activity is guided by the principles of citizen involvement adopted by the Metro Council in 1997.

### **Mission**

Active public engagement is essential to Metro's role as regional convener and makes Metro a more responsive and collaborative agency. Metro believes that good government requires the collaboration of elected officials, staff and representation of diverse residents of the region. Continual cooperation among these parties results in rich and sustainable policy decisions. Therefore, Metro is committed to fostering a robust public engagement environment.

Metro's public engagement review process provides:

1. Constructive feedback on Metro's public engagement practices.
2. More focused and effective public engagement process.
3. Access to local expert knowledge and best practices.

### **Purpose**

The public engagement review process guides Metro staff in the development and implementation of successful public engagement outreach with residents of the region.

### **Objectives and outcomes**

**Build public trust:** through transparent and open policy development and planning processes. Respect and consider all community input.

**Build sustainable decisions:** by convening diverse regional stakeholders and residents in order to identify and realize mutual interests and beneficial outcomes.

**Promote equity:** by recognizing the rich diversity of the region and ensuring that benefits and burdens of growth and change are distributed equitably.

**Understand local aspirations:** by engaging local experts and community members in order to access local knowledge and aspirations.

**Achieve efficiency:** by organizing public engagement activities to make the best use of public participants' time, effort, and interests.

**Improve best practices:** by coordinating with other public involvement experts and community members.

### Tools and tactics

Metro will convene a standing Public Engagement Review Committee, a stakeholder summit, and Public Engagement Peer Group to monitor Metro's public engagement efforts. The public engagement review process will also include an annual Opt In public engagement review survey and the production of an annual public engagement report. Tools and tactics are outlined below.

### Public Engagement Review Committee (PERC)

Chapter V, Section 27 of the Metro Charter requires that a standing "citizens' committee" be established and maintained by the Metro Office of Citizen Involvement. The Public Engagement Review Committee (PERC) meets this requirement. The PERC will convene twice each year, in May or June and again in November.

Duties of the PERC include:

- Assist in developing the stakeholder summit agenda
- Assist with outreach to stakeholder summit participants
- Assist in facilitating the stakeholder summit
- Review the annual public engagement report
- Provide input on content of the annual Opt In public engagement review survey

The Committee will be made up of public involvement staff persons from Clackamas, Multnomah, and Washington county governments; staff persons from community organizations; and at-large community members as follows:

Clackamas County.....	1
Multnomah County.....	1
Washington County.....	1
Community Organizations.....	3
At-large Community Member.....	3

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9 total members

Members of the PERC will be appointed as follows:

- Representatives (and alternates if desired) of the counties shall be appointed by the presiding executive of their jurisdiction/agency.

- Community member and community organization representatives and their alternates will be nominated through a public application process, confirmed by the Metro Council, and appointed by the Metro Council President.

Criteria for the selection of community member and community organization representatives include:

- **Community Service:** Demonstrated commitment to community involvement.
- **Experience:** Demonstrated skills, knowledge or experience valuable to support Metro's public engagement principles.
- **Diversity:** Individuals that are collectively representative of the geographic and demographic diversity of the region.

### **Stakeholder Summit**

Metro will convene an annual summit of community stakeholders representing diverse aspects of the region, members of Metro citizen advisory committees and oversight committees on ongoing projects. Meetings will be advertised and open to the general public.

The function of the stakeholder summit is to:

- Evaluate Metro public engagement practices from the previous year
- Share local community information
- Give advice on priorities and engagement strategies for upcoming Metro policy initiatives

### **Public Engagement Peer Group**

Metro will convene two meetings annually of public engagement staff and professionals from across the Portland metropolitan region.

The function of the public engagement peer group is to:

- Share and learn about best practices and new tools, including international, national and local examples and case studies
- Share information, upcoming policy discussions and events in order to facilitate collaboration and leverage individual jurisdiction outreach efforts
- Provide input on public engagement process for individual projects
- Document best practices for public engagement
- Review and update public engagement principles and planning guide

## **Public engagement review annual schedule**

**Winter**

Public engagement peer group meeting #1

### **Spring**

Public Engagement Review Committee meeting #1

- Assist with pre-planning stakeholder summit

Public engagement peer group meeting #2

- Assist with pre-planning stakeholder summit

### **Early fall**

Stakeholder summit

Annual Opt In public engagement review survey

### **Late fall**

Annual public engagement report released

Public engagement review committee meeting #2

- Review annual public engagement report

## **Measurement and evaluation**

The success of Metro's public engagement program is defined by consistently effective and efficient communication between Metro and the public. Metro staff will use the following tools to evaluate the success of Metro's public engagement processes:

- An annual Opt In public engagement review survey will measure public perception of Metro's public engagement processes
- Stakeholder summit and public engagement peer group participant interviews, questionnaires, and/or collected comments
- The public engagement report will summarize project evaluations, including:
  - Objectives
  - Context
  - Levels of involvement
  - Methods and techniques used
  - Who was involved
  - Inputs (costs)
  - Outputs (products and activities)

- Outcomes (benefits/impacts)