

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING	)	ORDINANCE NO. 14-1329B
TITLE 4 OF THE URBAN GROWTH)	
MANAGEMENT FUNCTIONAL PLAN	)	Introduced by Martha J. Bennett, Chief
REGARDING THE ESTABLISHMENT OF	)	Operating Officer, with the concurrence of
TRAILS AND ACCESSORY FACILITIES IN	)	Tom Hughes, Council President
REGIONALLY SIGNIFICANT INDUSTRIAL)	
AREAS)	

WHEREAS, on December 16, 2010 the Metro Council adopted Ordinance No. 10-1244B, which included amendments to Title 4 (Industrial and Other Employment Areas) of the Urban Growth Management Functional Plan (UGMFP); and

WHEREAS, those amendments included the addition of new protections for Regionally Significant Industrial Areas (RSIAs) under Metro Code Section 3.07.420.D that require cities and counties within the Metro region to adopt land use regulations for RSIAs that “prohibit the siting of parks intended to serve people other than those working or residing in the RSIA”; and

WHEREAS, on February 28, 2013 the Metro Council adopted Resolution No. 13-4415 approving Metro’s Ice Age Tonquin Trail Master Plan, which describes a proposed 22-mile regional trail facility connecting the Tualatin River to the Willamette River and includes a preferred trail alignment that crosses through an area southwest of the City of Tualatin that is mapped with an RSIA designation; and

WHEREAS, on November 1, 2013 the Land Use Board of Appeals (LUBA) issued an opinion in *Terra Hydr v. City of Tualatin*, LUBA No. 2013-016, holding that the proposed regional trail described by Metro’s Ice Age Tonquin Trail Master Plan fell within the meaning of a “park” as that word is used in Metro Code 3.07.420.D and therefore would not be allowed within the RSIA; and

WHEREAS, under Metro’s 2006 Natural Areas bond measure and Metro Resolution No. 06-3672B, Metro was provided funds to purchase property, including easements for regional trails, from willing sellers only; and

WHEREAS, on April 23, 2014, the Metro Policy Advisory Committee voted to recommend that the Metro Council approve the proposed amendment to Title 4 in order to ensure that the Metro Code does not prohibit trails and accessory facilities from being located within industrial areas in the Metro region; and

WHEREAS, the Metro Council has determined that the protections created in Metro Code 3.07.420.D should not be construed to prohibit trails and accessory facilities that provide active transportation options and pedestrian and bicycle connectivity from crossing through an RSIA; now therefore,

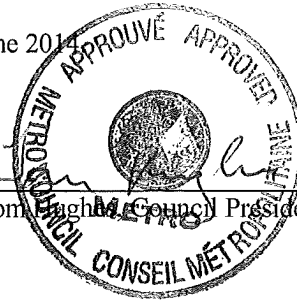
THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Section 3.07.420.D of the Metro Code is hereby amended as follows:

“D. Cities and counties shall review their land use regulations and revise them, if necessary, to prohibit the siting of schools, places of assembly larger than 20,000 square feet or parks intended to serve people other than those working or residing in the RSIA. Nothing in this subsection is intended to prohibit trails and facilities accessory to and in support of trails from being located within an area designated RSIA on Metro’s Title 4 Map, including but not limited to trailhead amenities, parking areas, benches, information kiosks, restrooms, shelters, bicycle racks, picnic areas and educational facilities. Where possible, trails and accessory facilities should be planned and located in a manner that limits impacts on industrial uses while still fulfilling the purpose of the trail and providing a positive experience for trail users.”

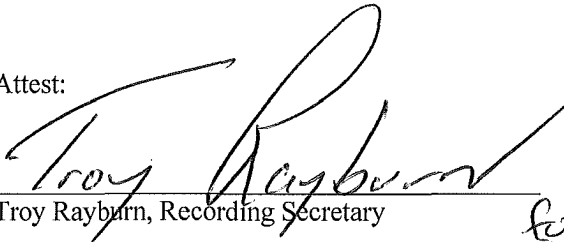
2. The Metro Council hereby adopts the findings of fact and conclusions of law set forth in Exhibit A, attached and incorporated into this ordinance, in support of its decision to amend Section 3.07.420.D of the Metro Code.

ADOPTED by the Metro Council this 12th day of June 2014




Tom English, Council President

Attest:


Troy Rayburn, Recording Secretary

Approved as to Form:


for Alison R. Kean, Metro Attorney

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WHEREAS, those amendments included the addition of new protections for Regionally Significant Industrial Areas (RSIAs) under Metro Code Section 3.07.420.D that require cities and counties within the Metro region to adopt land use regulations for RSIAs that “prohibit the siting of parks intended to serve people other than those working or residing in the RSIA”; and

WHEREAS, on February 28, 2013 the Metro Council adopted Resolution No. 13-4415 approving Metro’s Ice Age Tonquin Trail Master Plan, which describes a proposed 22-mile regional trail facility connecting the Tualatin River to the Willamette River and includes a preferred trail alignment that crosses through an area southwest of the City of Tualatin that is mapped with an RSIA designation; and

WHEREAS, on November 1, 2013 the Land Use Board of Appeals (LUBA) issued an opinion in *Terra Hydr v. City of Tualatin*, LUBA No. 2013-016, holding that the proposed regional trail described by Metro’s Ice Age Tonquin Trail Master Plan fell within the meaning of a “park” as that word is used in Metro Code 3.07.420.D and therefore would not be allowed within the RSIA; and

WHEREAS, under Metro’s 2006 Natural Areas bond measure and Metro Resolution No. 06-3672B, Metro was provided funds to purchase property, including easements for regional trails, from willing sellers only; and

WHEREAS, on April 23, 2014, the Metro Policy Advisory Committee voted to recommend that the Metro Council approve the proposed amendment to Title 4 in order to ensure that the Metro Code does not prohibit trails and accessory facilities from being located within industrial areas in the Metro region; and

WHEREAS, the Metro Council has determined that the protections created in Metro Code 3.07.420.D should not be construed to prohibit trails and accessory facilities that provide active transportation options and pedestrian and bicycle connectivity from crossing through an RSIA; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Section 3.07.420.D of the Metro Code is hereby amended as follows:

“D. Cities and counties shall review their land use regulations and revise them, if necessary, to prohibit the siting of schools, places of assembly larger than 20,000 square feet or parks intended to serve people other than those working or residing in the RSIA. Nothing in this subsection is intended to prohibit trails and facilities accessory to and in support of trails from being located within an area designated RSIA on Metro’s Title 4 Map, including but not limited to trailhead amenities, parking areas, benches, information kiosks, restrooms, shelters, bicycle racks, picnic areas and educational facilities. Where possible, accessory facilities should be planned and located in a manner that limits impacts on industrial uses while still fulfilling the purpose of the trail and providing a positive experience for trail users.”

2. The Metro Council hereby adopts the findings of fact and conclusions of law set forth in Exhibit A, attached and incorporated into this ordinance, in support of its decision to amend Section 3.07.420.D of the Metro Code.

ADOPTED by the Metro Council this _____ day of May 2014.

Tom Hughes, Council President

Attest:

Approved as to Form:

Troy Rayburn, Recording Secretary

Alison R. Kean, Metro Attorney

Exhibit A to Ordinance No. 14-1329B
Findings of Fact and Conclusions of Law

The Metro Council adopts these findings in support of Ordinance No. 14-1329B, which amends Title 4 of the Urban Growth Management Functional Plan (UGMFP) to expressly allow trails and accessory facilities in areas designated as Regionally Significant Industrial Areas (RSIAs) on Metro’s Title 4 map. A detailed explanation of the background of the Ice Age Tonquin Trail Master Plan (IATTMP) and the LUBA decision in *Terra Hydr, Inc. v. City of Tualatin*, ___ Or LUBA ___ (LUBA No. 2013-016, November 1, 2013) that created the need for this legislative amendment is provided in the staff report to the Metro Council dated April 24, 2014, which is hereby adopted and incorporated by reference as part of these findings.

A. Procedural background

Metro provided notice of the proposed text amendment to DLCD on March 13, 2014. The draft amendment was reviewed and revised by the Metro Technical Advisory Committee (MTAC) at its meetings on March 19, 2014 and April 2, 2014. At the close of its meeting on April 2, 2014, MTAC voted to recommend approval of the amendment, as revised, to the Metro Policy Advisory Committee (MPAC). MPAC reviewed the proposed amendment at its meeting on April 23, 2014 and voted to recommend the amendment for approval by the Metro Council. The first evidentiary hearing before the Metro Council was held on May 8, 2014, at which point the hearing was continued for three weeks, until May 29, 2014. At the close of the May 29, 2014 public hearing, the Metro Council voted to close the public hearing but to hold open the written record for seven days until June 5, 2014 for the submittal of additional written evidence and testimony, and to deliberate regarding adoption of the proposed amendment and supporting findings at its meeting on June 12, 2014. Materials were timely submitted during the seven-day open record period by counsel for the Tonquin Industrial Group, the Port of Portland, and Metro staff, and those documents are hereby accepted by the Metro Council as part of the record.

B. The purpose of this amendment is to clarify the intent of the Metro Council to allow trails and associated facilities in RSIAs.

The Metro Council adopted Title 4 in 1997 for the purpose of providing and protecting a supply of sites for employment and industrial uses. The prohibition on “parks” in RSIAs was added by Metro in 2010, when the Metro Council amended Title 4 to include a requirement that cities and counties adopt land use regulations for RSIAs that “prohibit the siting of schools, places of assembly larger than 20,000 square feet or parks intended to serve people other than those working or residing in the RSIA.” Metro Ordinance No. 10-1244B. The amendment in 2010 was motivated in part by a situation that arose in 2007 in the City of Happy Valley, where approximately 70 acres that had been included in the UGB for industrial purposes and designated RSIA by Metro were purchased by public entities and converted to school and park uses. Because the city had not yet adopted local plan and code provisions that would have protected the land for industrial use, almost half of a 150-acre RSIA was converted to non-industrial uses. As explained in a work session memorandum to the Metro Council on the subject: “Title 4 of the Functional Plan is silent on use of Industrial and RSIA land for schools and parks, thus it is not

prohibited.” July 31, 2007 Work Session Worksheet, page 2 (Attachment 10 to May 29, 2014 staff report).

Documents in the record reveal that the staff reports for the 2010 amendments to Title 4 proposed a broader prohibition on “recreational facilities and parks,” suggesting an original staff intent to also prohibit facilities such as trails. July 20, 2010 Memorandum to MPAC, page 4 (Attachment 11 to May 29, 2014 staff report); November 19, 2010 Staff Report to Metro Council, page 17 (Attachment 12 to May 29, 2014 staff report). In fact, the MPAC recommendation to the Metro Council was to “amend Title 4 to prohibit new schools, places of assembly, recreational facilities and parks.” *Id.* However, the “recreational facilities” portion of the staff proposal and MPAC’s recommendation was removed prior to adoption of Ordinance No. 10-1244B, indicating that the Metro Council’s intent was to limit the prohibition to “parks” and not all “recreational facilities,” such as trails.

In 2008 the Metro Council appointed a Blue Ribbon Committee for Trails to evaluate where regional trails fit in the region’s priorities and to recommend strategies for expanding the region’s trail network. The committee’s final report recommended that regional trails are vitally important to local communities because they provide alternative transportation routes and ways to connect with nature. The committee also concluded that investments in bike and pedestrian travel will produce significant environmental, livability, health and economic benefits to the region. A copy of the committee’s final report describing the region-wide benefits provided by trails is included in the record as Attachment 6 to the May 29, 2014 staff report.

Both before and since the 2010 amendments to Title 4, Metro has been continuously working on the planning and development of a system of trails to provide active transportation options and connectivity throughout the region, including trails that cross through RSIA. For example, the Peninsula Crossing Trail, completed in 2002, crosses through an RSIA in North Portland, and sections of the Springwater Trail were planned and constructed through an RSIA in southeastern Gresham in 2000. Metro’s planning work on the Tonquin Trail began with a feasibility study in 2004 and a public planning process that began in 2009, continued through the 2010 amendments to Title 4, and culminated with the Metro Council’s adoption of the Ice Age Tonquin Trail Master Plan (IATTMP) in February 2013. The Metro Council approved a master plan for the Tonquin Trail that passes through an RSIA, like many other trails that Metro and other local governments have planned and developed across industrial areas and RSIA. As noted in the staff report, the following existing and planned trails in the Metro region include segments that cross through RSIA:

- Columbia Slough Trail and Marine Drive Trail, North and NE Portland (existing)
- Springwater Corridor, Gresham (existing)
- Gresham-Fairview Trail Phase 5 (proposed)
- Willamette River Greenway, North and NW Portland (proposed)
- 40-Mile Loop Trail, Gresham (proposed)
- Clackamas Bluffs Trail, Happy Valley (proposed)
- Waible Creek Greenway, Hillsboro (proposed)

The Metro Council finds that the relatively small acreage requirements associated with a 20-foot trail easement and related trail amenities do not create the same type of threat to industrial uses presented by the wholesale conversion of entire lots or parcels into schools or parks. Therefore, the Metro Council has never viewed trails and related facilities to fall within the prohibition on “parks” under section 3.07.420.D of the Metro Code. The Metro Council finds that the primary purpose of the 2010 amendments was to prohibit large tracts of industrial land from being converted by local governments to public uses with significant acreage requirements such as parks and schools, and that the addition of the prohibition on “parks” in RSIA in 2010 was not intended to also prohibit the siting of trails and associated facilities in RSIA.

Because the word “park” is not defined in Title 4, in the *Terra Hydr* case LUBA consulted a dictionary definition of that word and concluded that the definition was broad enough to include the Tonquin Trail and related amenities as described in the IATTMP. However, as evidenced by the ongoing planning and development of the trails listed above both before and since 2010, and the removal of “recreational facilities” from the list of RSIA prohibitions in Ordinance No. 10-1244B, the Metro Council’s intent is not, and has never been, to prohibit trails in RSIA.

Therefore, the purpose of this amendment is to clarify that the intent of the Metro Council is not to include trails and accessory facilities within the meaning of the word “parks” for purposes of the Title 4 use restrictions in RSIA. This amendment also operates to remove any potential uncertainty regarding the legal status of existing trails in RSIA arising out of the LUBA opinion in *Terra Hydr*. It is not the intent of the Metro Council in adopting this amendment to impede industrial uses or create any unavoidable conflicts with industrial uses. Rather, as stated in the portion of the code amendment that was included in response to NAIOPs concerns, Metro and local governments should plan and develop trails and related amenities in a manner that minimizes potential impacts on industrial uses.

The Metro Council finds that there are multiple examples across the region of trails that successfully pass through industrial areas without causing unworkable conflicts or demonstrated safety problems. Examples include a segment of the proposed North Portland Willamette Greenway that crosses directly through the Swan Island Industrial Area, the Marine Drive Trail, which includes approximately 8.5 miles crossing through an RSIA along the Columbia River in North and Northeast Portland, and the northern portion of the Springwater Corridor south of OMSI that is located immediately between an active rail line and the Ross Island Sand & Gravel cement batch plant, including a location where the trail crosses the primary access point for Ross Island’s cement mixer trucks and other heavy equipment.

Regarding the Tonquin Trail and the segment that crosses through the Tonquin Industrial Group (TIG) properties, Metro has no condemnation authority for those acquisitions, and may only negotiate purchases of easements from willing sellers. This prohibition on the use of condemnation is the result of language included in Metro’s 2006 Natural Areas bond measure and Metro Resolution No. 06-3672B. As explained at the May 8, 2014 hearing by Metro Sustainability Center Director Jim Desmond, the “willing seller” requirement also applies to local governments who receive grants from the 2006 bond funds. Accordingly, if the trail is

located through the TIG area, the specific location of the trail will be the result of negotiation and agreement with the property owners, ensuring that it would be sited in a way that minimizes potential conflicts with industrial uses in a manner that is acceptable to the property owners.

The amendment includes a list of specific “accessory facilities” that will not be prohibited in RSIA’s, but only so long as those facilities are “accessory to and in support of” a trail. It is not the intent of the Metro Council to allow RSIA’s to be filled with those types of facilities and thereby become *de facto* parks; rather, the purpose of this amendment is only to allow such facilities if they directly support a trail. The code amendment includes the list of examples of specific types of facilities in response to LUBA’s conclusion in the *Terra Hydr* case, which was based in part on the description in the IATTMP of the types of park-like facilities that could be associated with the trail and trailheads. Metro is including the list of facilities as examples designed to make it clear that not just trails, but also the identified types of accessory facilities, are allowed to be sited in RSIA’s.

Kelly Ross on behalf of the Oregon Chapter of NAIOP raised concerns at the public hearing on May 8, 2014 regarding the extent to which the proposed amendments to Title 4 would reduce existing protections in RSIA’s and allow unchecked establishment of recreational facilities and *de facto* parks in those areas, so long as there was a trail somewhere in the vicinity. In response to NAIOP’s concerns, the proposed code language has been amended to clarify that any recreational facilities may only be allowed in an RSIA if they are “accessory to and in support of” a trail. Metro staff also included new language in the ordinance at the request of NAIOP explaining that Metro may only use its available bond money to purchase easements for regional trails such as the Tonquin Trail from willing sellers, and may not use condemnation authority. Finally, also at NAIOP’s request, the code language has been amended to state that trails and accessory facilities to a proposed trail should be planned and located in a manner that limits impacts on industrial uses while still fulfilling the purpose of the trail and providing a positive experience for trail users. With these amendments, NAIOP has indicated that they do not oppose Ordinance No. 14-1329B.

C. Findings regarding potentially applicable approval criteria

1. Metro Regional Framework Plan (RFP) policies

Under RFP 7.3, Metro’s functional plans must be “consistent with the policies of the RFP.” There are two potentially applicable policies in the RFP, policies 1.4.4 and 1.4.6, which are addressed below.

a. RFP Policy 1.4.4 – Protecting RSIA’s from incompatible uses

RFP 1.4.4 states that it is the policy of the Metro Council to “require, through the Urban Growth Management Functional Plan, that local governments exercise their comprehensive planning and zoning authorities to protect Regionally Significant Industrial Areas from incompatible uses.” This policy is implemented through Title 4 of the UGMFP, which requires local governments to adopt land use regulations that limit the size and location of retail commercial uses and professional services in RSIA’s. MC 3.07.420.B. Since 2010, Title 4 has

also included the section being amended by this decision, which prohibits “schools, places of public assembly larger than 20,000 square feet or parks intended to serve people other than those working or residing in the RSIA.” MC 3.07.420.D. Title 4 also includes limitations on the division of lots or parcels 50 acres or larger into smaller lots or parcels. MC 3.07.410.F.

The existing provisions of Title 4 are consistent with RFP 1.4.4 and are specifically designed to protect RSIA's from incompatible uses. The Metro Council finds that Title 4 will continue to be consistent with RFP 1.4.4 with the amendment to MC 3.07.420.D adopted in Ordinance 14-1329B. As described above in Section B of these findings, it was never the intent of the Metro Council to include trails and associated facilities within the meaning of the prohibition on “parks” in Title 4. Consistent with that original intent, the Metro Council finds that trails and related facilities are not “incompatible” with industrial uses. This fact is evidenced by numerous examples of trails throughout the Metro region that cross through heavy industrial areas, including RSIA's, without creating unmanageable conflicts with existing industrial uses and operations.

For example, an existing portion of the proposed North Portland Willamette Greenway includes approximately two miles of trail that crosses directly through the Swan Island Industrial Area, which is designated RSIA under Title 4. Much of the trail through Swan Island has been in place since the 1980s, but parts have been built through the RSIA more recently, including a portion along North Ballast Street that was built in 2012. Correspondence in the record from Sarah Angell, Director of the Swan Island Transportation Management Association (a program of the Swan Island Business Association), states that “the Swan Island TMA is very concerned that the legality of the existing North Portland Greenway trail that passes through Swan Island has been called into question by a recent LUBA opinion interpreting Title 4.” Ms. Angell goes on to explain that the industrial employers on Swan Island are strong proponents of the Greenway trail and would like to see it expanded:

“A dense industrial employment district (and RSIA), host to more than 10,000 jobs primarily in trades and manufacturing, Swan Island exemplifies that its trail infrastructure – far from incompatible with industrial operations – is actually essential to the vitality of its businesses and the functionality of the Island as a whole. With just one access road and near-term expansion at Daimler Trucks North America, Vigor and UPS, FedEx’s return and the PCC Trades Education Center coming to the Island, our industrial employers advocate for more pedestrian infrastructure now more than ever.

“* * * In just several years, bike commuter miles among Daimler Trucks North America’s workforce have tripled thanks in part to the newly complete Waud Bluff trail, segments of the North Portland Greenway trail and the *Going to the River* multiuse path. The success of this infrastructure has demonstrated that bikes in industrial/freight areas are not incongruent but instead have resulted in more clearly defined spaces that guide travel behavior and make for safer roadways; an outcome particularly appreciated by Swan Island’s many truck drivers.”

Consistent with the above-stated views of industrial employers on Swan Island regarding compatibility of bikes with industrial and freight operations, the City of Portland provided crash data and a related map for the Swan Island industrial area indicating that activity related to increased bicycle use of the Greenway Trail and connecting streets has not resulted in traffic compatibility problems with existing uses on the island. As the city's information shows, there have only been two crashes involving bicycles and automobiles on the Greenway Trail and roads that provide access to the Greenway Trail on Swan Island between 2000 and 2012. Email from Clay Veka of City of Portland dated June 5, 2014.

TIG argues that Swan Island is a different type of industrial area from the TIG area, and that the Greenway Trail is also different in that it starts and stops on the island and is mostly adjacent to office uses. While there may be differences between the existing Greenway Trail on Swan Island and the Tonquin Trail as proposed in the IATTMP, the Metro Council finds that evidence regarding the Swan Island Business Association's support for this amendment to Title 4 and its strong support for increasing bicycle and pedestrian activity through an industrial enclave (and RSIA) is compelling evidence that such activity is not incompatible with industrial uses. Similarly, the Port of Portland submitted an email to the Metro Council dated May 8, 2014 that identifies many of its industrial properties and developments, and states that "Our industrial developments typically include trails and some accessory trail uses as these are important amenities in most industrial areas."

Another example is the Marine Drive Trail, which includes approximately 8.5 miles crossing through an RSIA along the Columbia River in North and Northeast Portland. That trail has been in place since the 1980s, and industrial land owners have generally welcomed the trail. One industrial landowner, Staples, Inc., donated land in 2011 to facilitate the completion of a new segment of the trail. *See* Attachment 9 to May 29, 2014 staff report. A dozen other industrial landowners have sold land to Metro since 2008 for completion of the trail. Many of these landowners have expressed their appreciation of the trail and their desire for its completion. They see it as an asset because it draws bicyclists off busy roads like Marine Drive, and because it offers employees a place to walk during breaks. Memorandum from Robert Spurlock to Metro Council dated June 5, 2014. The Metro Council relies on this testimony as evidence that there is no inherent incompatibility between trails and industrial operations, and finds that TIG has not provided substantial evidence to support a conclusion that trails and industrial uses must be viewed as being incompatible, particularly given the number of existing examples of trails that cross through industrial areas and RSIA's in the Metro region. In the absence of evidence in the record indicating that these existing trails are causing unworkable conflicts with industrial uses in RSIA's, the Metro Council cannot conclude that this amendment to Title 4 fails to "protect RSIA's from incompatible uses" under RFP 1.4.4.

Evidence in the record indicates that even trails that are subject to very high levels of use may still be compatible with heavy industrial uses adjacent to the trail. As described at the May 8, 2014 hearing, the northern portion of the Springwater Corridor crosses through the central eastside industrial area before connecting with the Eastbank Esplanade near OMSI. As depicted on photographs in the record, a portion of that trail segment is located immediately between an active rail line and the Ross Island Sand & Gravel (RISG) cement batch plant, including a location where the trail crosses the primary access point for RISG's cement mixer

trucks and other heavy equipment. As shown in the photos, the sole RISG access point to this heavy industrial operation approaches the trail from a challenging angle and in order to exit the facility, cement mixer trucks must directly cross the trail either via a dangerous hard right turn or a nearly parallel crossing if the trucks are proceeding north. Attachments 4 and 5 to May 29, 2014 staff report. The RISG cement plant operates from dawn to dusk and includes heavy cement mixer traffic and flatbed trucks carrying loads of ready-mix concrete. That portion of the Springwater Corridor was opened in 2005 and currently has approximately 5,000 daily users, which equates to approximately 28,000 per week and 1.5 million per year. However, data provided by the City of Portland show that there has been only one accident in this general area involving a bicycle since 2003, and that crash was not at the RISG location. Memorandum from Robert Spurlock dated June 5, 2014; email message from Roger Geller of City of Portland dated June 3, 2014.

Consistent with the existing provisions of Title 4, the Metro Council expressly interprets the term “incompatible” in RFP 1.4.4 to not encompass trail uses in industrial areas, because such uses are not inherently incompatible. Unlike other uses prohibited or limited in RSIA's under Title 4, to the extent there are any potential conflicts that could arise between trail uses and industrial uses, the trail uses may be made compatible through design elements such as signage, striping, lighting, fences, and other safety features that are designed to increase safety and minimize potential conflicts. Examples of these types of design features were described by Metro staff Robert Spurlock at the May 8, 2014 hearing and in his memorandum to the Metro Council dated June 5, 2014. As explained in that memorandum:

“The design of each of these trails incorporates elements similar to those included on the attached list of safety features. Using safety features such as these, and the types of traffic safety features described in Chapter 4 of the Ice Age Tonquin Trail Master Plan, the Ice Age Tonquin Trail and other trails to be developed in the future through industrial areas can be designed to minimize potential conflicts with industrial operations and ensure the trail will be compatible with industrial uses.” Spurlock Memorandum, page 2.

Also, at the request of NAIOP, the Metro Council has included additional language in this code amendment designed to minimize the potential impacts from accessory facilities by directing such facilities, where possible, to be planned and located in a manner that limits impacts on industrial uses and ensures compatibility. With regard to the Tonquin Trail segment that is the focus of the present dispute, in order for that trail to be located through the TIG area, the specific location of the trail will be the result of negotiation and agreement between Metro and the property owners, ensuring that it would be sited and designed in a way that minimizes potential conflicts with industrial uses and is compatible with their operations. This is true not only for the trail itself, but also any related facilities and amenities.

The TIG argues that the Tonquin Trail is incompatible with industrial uses because it will be open for use 24 hours a day, seven days a week, which creates a possibility of criminal activity, particularly at night. First, as a purely practical matter, there is no realistic way to “close” a 22-mile trail that includes on-street facilities, paths adjacent to roadways, and dozens of trail-roadway intersections. Also, because the development of a regional trail such as the

Tonquin Trail necessarily requires a specific type of federal transportation funding, the Federal Highway Administration requires that such trails must be “transportation” facilities (not recreational) that may not have restricted hours of operation. *See* 23 USC 217(i). This is true of the other regional trails discussed above that cross through industrial areas, which are all necessarily open for use at all times. The Metro Council finds that the evidence in the record does not support a conclusion that trails in RSIA are incompatible with industrial uses due to being operational on a 24/7 basis.

The Metro Council also finds that the evidence submitted by TIG’s economist regarding nefarious activity along the Springwater Corridor does not require a conclusion that any and all trails are inherently “incompatible” with industrial uses under RFP 1.4.4. Rather, such issues may be addressed on a property-by-property basis in order to reduce concerns and limit potential conflicts. *See* Memorandum from Robert Spurlock dated June 5, 2014. In the event the TIG property owners ultimately elect to sell easements for the development of the Tonquin Trail, any concerns related to the protection of property may be addressed as part of that acquisition process through design requirements, such as lighting and fencing. Such issues may also be addressed as part of any local planning process involving the local jurisdiction with land use authority over the relevant segment of the trail.

b. RFP Policy 1.4.6 – ensuring supply of 50-acre tracts

RFP 1.4.6 states the following policy of the Metro Council: “Consistent with policies promoting a compact urban form, ensure that the region maintains a sufficient supply of tracts 50 acres and larger to meet demand by traded-sector industries for large sites and protect those sites from conversion to non-industrial uses.” This policy is also implemented in part through Title 4 of the UGMFP, which includes limitations on the division of lots or parcels 50 acres or larger in industrial areas into smaller lots or parcels. MC 3.07.410.F; 3.07.430.D. Metro also has a statutory obligation to ensure that the UGB includes sufficient land to provide a 20-year regional supply for employment and industrial purposes. Metro takes its obligations in this regard very seriously, and in the most recent UGB amendment in 2011 added a single 330-acre site north of Hillsboro to the UGB specifically to be included as an RSIA for large-lot industrial use, in furtherance of the policy established by RFP 1.4.6.

The Metro Council does not agree with the TIG’s assertion that allowing trails to be located in RSIA means that Metro is not meeting its obligations under RFP 1.4.6 to maintain a sufficient supply of 50-acre tracts of industrial land and to protect such sites from conversion to non-industrial uses. As noted above, Metro’s primary obligation regarding maintaining a sufficient supply of industrial land is met every five years, when Metro undertakes the analysis required to determine whether or not there is a need to expand the UGB for industrial uses, and then expands the boundary if such a need exists. Further, amending Title 4 to allow for the future possibility of a trail to be located within the TIG area (if the property owners are ultimately willing to sell easements for the trail) has no direct or immediate effect upon the current supply of 50-acre tracts of industrial land. There is no reduction in the amount of inventoried industrial land in the region that will result from this decision, and there will be no impact on Metro’s forthcoming Urban Growth Report analysis of available industrial land for purposes of determining whether a UGB expansion is necessary.

For the same reasons, the Metro Council finds that this decision does not indicate that Metro is failing to protect large sites from conversion to non-industrial uses under RFP 1.4.6. This amendment to Title 4 does not take any property out of an RSIA or any other industrial zoning designation. In the event that a regional trail such as the Tonquin Trail is ultimately established in an industrial area through purchases from willing sellers, there will be no change in the underlying plan or zoning designations for the property. A regional trail of the type contemplated by the IATTMP will typically be 12 feet wide and require no more than a 20-foot wide easement. Although the actual establishment of a trail will introduce a new active transportation and recreational use in the industrial area, the Metro Council finds that it will not result in the wholesale “conversion” of the site to non-industrial use within the meaning of RFP 1.4.6.

Further, RFP 1.4.6 includes a significant caveat that the policy to protect large industrial sites must also be “consistent with policies promoting a compact urban form.” The policies promoting a compact urban form are set forth in Section 1.1 of the RFP, and include at least four separate policies that directly implicate the importance of supporting and establishing regional trails in the Metro region. Most notably, RFP 1.1.6 establishes a policy to “enhance compact urban form by developing the Intertwine, an interconnected system of parks, greenspaces and trails readily accessible to people of the region.” As described in the IATTMP at page 92, the Tonquin Trail will be part of the Intertwine system, as will other future regional trails. Further, RFP 1.1.3 includes a policy to “promote successful, walkable communities,” and RFP 1.1.8 establishes a policy to “promote a compact urban form as a key climate action strategy to reduce greenhouse gas emissions.” Active transportation strategies and regional trail development are key elements of Metro’s efforts to reduce greenhouse gas emissions. As noted in the IATTMP, “increasing active transportation benefits the region by reducing greenhouse gas emissions and congestion.” IATTMP at page 25.

The provisions of RFP 1.4.6 must be applied in a manner that is “consistent with” the policies in RFP 1.1 regarding a compact urban form. Therefore, the Metro Council interprets all of these policies together to conclude that, even if the policy to protect large industrial sites from conversion to non-industrial uses could be read to apply to this decision, the Metro Council is obligated to consider that more general policy in light of the multiple specific policies in RFP 1.1 that expressly require Metro to develop trails, promote walkable communities, and reduce greenhouse gas emissions. Therefore, to the extent that this decision could be construed to “convert” industrial sites to non-industrial uses, the Metro Council concludes that, on balance, allowing trails and accessory facilities in RSIA is more “consistent with policies promoting a compact urban form” than not allowing such uses.

C. Responses to other issues

This section provides responses to other arguments raised by TIG that do not appear to be related to any applicable approval criteria.

1. Transportation issues

TIG submitted a report prepared by Chris Clemow, a traffic engineer with Group Mackenzie, raising issues under the state transportation planning rule (TPR). However, there is no basis on which this legislative text amendment to Title 4 of the UGMFP can be read to require a demonstration of compliance with OAR 660-012. The TPR applies to plan or code amendments that will significantly affect a transportation facility. This decision has no traffic-related implications and does not meet any of the three alternative definitions of “significantly affect” under the TPR. Mr. Clemow’s assertion appears to be based on the mistaken belief that this text amendment approves a trailhead use in the TIG area. However, this amendment does not cause or otherwise result in the development of any specific facilities in any particular locations. As explained by LUBA in *Terra Hydr v. Metro*, the IATTMP consists of a non-binding set of recommendations that do not constitute a final land use decision. The IATTMP map that identifies a potential trailhead in the TIG area does not create a binding requirement regarding the establishment of a trailhead in that location. Rather, the map provides recommendations regarding a preferred alignment and potential trailhead locations. The present decision is yet another step removed from the IATTMP, and has absolutely no impact on transportation facilities; therefore, the TPR does not apply.

2. Goal 9

TIG suggests that adopting this amendment will be contrary to the Goal 9 rule, OAR 660-009-0015, because the decision will convert a large amount of land designated RSIA to nonindustrial conflicting uses. First, as described above, this decision does not convert any industrial land to other designations or uses, it removes an unintended prohibition on trails from being located in RSIA. Regardless, there is no basis to apply Goal 9 or the Goal 9 rule to this amendment. The provisions of Goal 9 and the Goal 9 rule expressly apply to cities and counties, and not to Metro. The Goal 9 rule cited by TIG’s attorney only applies to Metro in the context of Metro’s inventory of 20-year employment land needs under OAR 660-024-0040(5), and not in the context of this legislative text amendment to the UGMFP.

SUPPLEMENTAL STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 14-1329B, FOR THE PURPOSE OF AMENDING TITLE 4 OF THE URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN REGARDING THE ESTABLISHMENT OF TRAILS AND ASSOCIATED FACILITIES IN REGIONALLY SIGNIFICANT INDUSTRIAL AREAS

Date: June 4, 2014

Prepared by: Roger Alfred

PROPOSED ACTION

Adoption of Ordinance No. 14-1329B amending Title 4 of Metro's Functional Plan to expressly allow the establishment of trails and related facilities within Regionally Significant Industrial Areas.

FINAL REVISED ORDINANCE AND STATUS

At the continued hearing on May 29, 2014, staff presented the Metro Council with an amended version of the proposed ordinance that included changes agreed upon with NAIOP. In testimony provided on behalf of NAIOP regarding the ordinance, Kelly Ross suggested that the word "trails" be added to the last sentence of the amended portion of Ordinance No. 14-1329B. OMA agreed to include that final clarifying revision, which is reflected in the attached version of the ordinance.

At the request of the attorney representing the Tonquin Industrial Group (TIG), the Metro Council agreed to hold the record open for one week, until June 5, 2014, for submittal of additional written evidence and argument. Prior to the Council meeting on June 12, 2014, Metro staff will distribute to the Council all materials received during the seven-day open record period that closes on June 5, 2014, along with proposed findings for consideration by the Council on June 12, 2014.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING	)	ORDINANCE NO. 14-1329A
TITLE 4 OF THE URBAN GROWTH)	
MANAGEMENT FUNCTIONAL PLAN	)	Introduced by Martha J. Bennett, Chief
REGARDING THE ESTABLISHMENT OF	)	Operating Officer, with the concurrence of
TRAILS AND ACCESSORY FACILITIES IN	)	Tom Hughes, Council President
REGIONALLY SIGNIFICANT INDUSTRIAL)	
AREAS)	

WHEREAS, on December 16, 2010 the Metro Council adopted Ordinance No. 10-1244B, which included amendments to Title 4 (Industrial and Other Employment Areas) of the Urban Growth Management Functional Plan (UGMFP); and

WHEREAS, those amendments included the addition of new protections for Regionally Significant Industrial Areas (RSIAs) under Metro Code Section 3.07.420.D that require cities and counties within the Metro region to adopt land use regulations for RSIAs that “prohibit the siting of parks intended to serve people other than those working or residing in the RSIA”; and

WHEREAS, on February 28, 2013 the Metro Council adopted Resolution No. 13-4415 approving Metro’s Ice Age Tonquin Trail Master Plan, which describes a proposed 22-mile regional trail facility connecting the Tualatin River to the Willamette River and includes a preferred trail alignment that crosses through an area southwest of the City of Tualatin that is mapped with an RSIA designation; and

WHEREAS, on November 1, 2013 the Land Use Board of Appeals (LUBA) issued an opinion in *Terra Hydr v. City of Tualatin*, LUBA No. 2013-016, holding that the proposed regional trail described by Metro’s Ice Age Tonquin Trail Master Plan fell within the meaning of a “park” as that word is used in Metro Code 3.07.420.D and therefore would not be allowed within the RSIA; and

WHEREAS, under Metro’s 2006 Natural Areas bond measure and Metro Resolution No. 06-3672B, Metro was provided funds to purchase property, including easements for regional trails, from willing sellers only; and

WHEREAS, on April 23, 2014, the Metro Policy Advisory Committee voted to recommend that the Metro Council approve the proposed amendment to Title 4 in order to ensure that the Metro Code does not prohibit trails and accessory facilities from being located within industrial areas in the Metro region; and

WHEREAS, the Metro Council has determined that the protections created in Metro Code 3.07.420.D should not be construed to prohibit trails and accessory facilities that provide active transportation options and pedestrian and bicycle connectivity from crossing through an RSIA; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Section 3.07.420.D of the Metro Code is hereby amended as follows:

“D. Cities and counties shall review their land use regulations and revise them, if necessary, to prohibit the siting of schools, places of assembly larger than 20,000 square feet or parks intended to serve people other than those working or residing in the RSIA. Nothing in this subsection is intended to prohibit trails and facilities accessory to and in support of trails from being located within an area designated RSIA on Metro’s Title 4 Map, including but not limited to trailhead amenities, parking areas, benches, information kiosks, restrooms, shelters, bicycle racks, picnic areas and educational facilities.”

ADOPTED by the Metro Council this _____ day of May 2014.

Tom Hughes, Council President

Attest:

Approved as to Form:

Troy Rayburn, Recording Secretary

Alison R. Kean, Metro Attorney

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING	)	ORDINANCE NO. 14-1329 ^A
TITLE 4 OF THE URBAN GROWTH)	
MANAGEMENT FUNCTIONAL PLAN	)	Introduced by Martha J. Bennett, Chief
REGARDING THE ESTABLISHMENT OF	)	Operating Officer, with the concurrence of
TRAILS AND ASSOCIATED-ACCESSORY)	Tom Hughes, Council President
FACILITIES IN REGIONALLY)	
SIGNIFICANT INDUSTRIAL AREAS)	

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WHEREAS, under Metro’s 2006 Natural Areas bond measure and Metro Resolution No. 06-3672B, Metro was provided funds to purchase property, including easements for regional trails, from willing sellers only; and

WHEREAS, on April 23, 2014, the Metro Policy Advisory Committee voted to recommend that the Metro Council approve the proposed amendment to Title 4 in order to ensure that the Metro Code does not prohibit trails and ~~associated-accessory~~ facilities from being located within industrial areas in the Metro region; and

WHEREAS, the Metro Council has determined that the protections created in Metro Code 3.07.420.D should not be construed to prohibit trails and ~~associated-accessory~~ facilities that provide active transportation options and pedestrian and bicycle connectivity from crossing through an RSIA; now therefore,

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ADOPTED by the Metro Council this _____ day of May 2014.

Tom Hughes, Council President

Attest:

Approved as to Form:

Troy Rayburn, Recording Secretary

Alison R. Kean, Metro Attorney

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING	)	ORDINANCE NO. 14-1329
TITLE 4 OF THE URBAN GROWTH)	
MANAGEMENT FUNCTIONAL PLAN	)	Introduced by Martha J. Bennett, Chief
REGARDING THE ESTABLISHMENT OF	)	Operating Officer, with the concurrence of
TRAILS AND ASSOCIATED FACILITIES IN	)	Tom Hughes, Council President
REGIONALLY SIGNIFICANT INDUSTRIAL)	
AREAS)	

WHEREAS, on December 16, 2010 the Metro Council adopted Ordinance No. 10-1244B, which included amendments to Title 4 (Industrial and Other Employment Areas) of the Urban Growth Management Functional Plan (UGMFP); and

WHEREAS, those amendments included the addition of new protections for Regionally Significant Industrial Areas (RSIAs) under Metro Code Section 3.07.420.D that require cities and counties within the Metro region to adopt land use regulations for RSIAs that “prohibit the siting of parks intended to serve people other than those working or residing in the RSIA”; and

WHEREAS, on February 28, 2013 the Metro Council adopted Resolution No. 13-4415 approving Metro’s Ice Age Tonquin Trail Master Plan, which describes a proposed 22-mile regional trail facility connecting the Tualatin River to the Willamette River and includes a preferred trail alignment that crosses through an area southwest of the City of Tualatin that is mapped with an RSIA designation; and

WHEREAS, on November 1, 2013 the Land Use Board of Appeals (LUBA) issued an opinion in *Terra Hydr v. City of Tualatin*, LUBA No. 2013-016, holding that the proposed regional trail described by Metro’s Ice Age Tonquin Trail Master Plan fell within the meaning of a “park” as that word is used in Metro Code 3.07.420.D and therefore would not be allowed within the RSIA; and

WHEREAS, on April 23, 2014, the Metro Policy Advisory Committee voted to recommend that the Metro Council approve the proposed amendment to Title 4 in order to ensure that the Metro Code does not prohibit trails and associated facilities from being located within industrial areas in the Metro region; and

WHEREAS, the Metro Council has determined that the protections created in Metro Code 3.07.420.D should not be construed to prohibit trails and associated facilities that provide active transportation options and pedestrian and bicycle connectivity from crossing through an RSIA; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Section 3.07.420.D of the Metro Code is hereby amended as follows:

“D. Cities and counties shall review their land use regulations and revise them, if necessary, to prohibit the siting of schools, places of assembly larger than 20,000 square feet or parks intended to serve people other than those working or residing in the RSIA. Nothing in this subsection is intended to prohibit trails and associated facilities from being located within an area designated RSIA on Metro’s Title 4 Map, including but not limited to trailhead amenities, parking

areas, benches, information kiosks, restrooms, shelters, bicycle racks, picnic areas and educational facilities.”

ADOPTED by the Metro Council this _____ day of May 2014.

Tom Hughes, Council President

Attest:

Approved as to Form:

Troy Rayburn, Recording Secretary

Alison R. Kean, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 14-1329, FOR THE PURPOSE OF AMENDING TITLE 4 OF THE URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN REGARDING THE ESTABLISHMENT OF TRAILS AND ASSOCIATED FACILITIES IN REGIONALLY SIGNIFICANT INDUSTRIAL AREAS

Date: April 24, 2014

Prepared by: Roger Alfred

PROPOSED ACTION

Adoption of Ordinance No. 14-1329 amending Title 4 of Metro's Functional Plan to expressly allow the establishment of trails and related facilities within Regionally Significant Industrial Areas.

PURPOSE OF PROPOSED AMENDMENT

The purpose of the proposed amendment is to respond to an issue arising out of a LUBA decision regarding the potential location of the Ice Age Tonquin Trail in a Regionally Significant Industrial Area (RSIA) near the City of Tualatin. LUBA held that the trail, as described in Metro's Ice Age Tonquin Trail Master Plan (IATTMP), fell within the meaning of a "park" that would be prohibited within an RSIA under Metro's existing Title 4 rules. The proposed amendment provides a clear legislative statement of the Metro Council's intent that this type of trail and facilities associated with the trail are allowed within an RSIA.

BACKGROUND

On February 28, 2013, the Metro Council adopted Resolution No. 13-4414 approving the IATTMP, which describes a proposed 22-mile regional trail facility connecting the Tualatin River to the Willamette River and includes a preferred trail alignment that crosses through an area southwest of the City of Tualatin that is mapped with an RSIA designation. The IATTMP was also adopted via resolution by Washington County and the Cities of Tualatin and Sherwood. At the same time, the City of Tualatin also adopted, via ordinance, amendments to its Transportation System Plan (TSP) that included elements of the trail, including a map showing the preferred alignment as described in Metro's master plan.

All five decisions were appealed to LUBA by the "Tonquin Industrial Group" (TIG), which is a coalition of property owners in the RSIA directly southwest of the City of Tualatin. The TIG is concerned about potential impacts to their industrial operations from the trail being located across their properties. At LUBA the TIG argued, among other things, that the trail constitutes a "park" that is prohibited within an RSIA under existing Metro Title 4 rules.

LUBA held that the adoption of the IATTMP by Metro, the City of Tualatin, and Washington County did not constitute "final land use decisions" subject to LUBA jurisdiction. Therefore, LUBA dismissed those appeals without considering the substance of TIG's arguments. LUBA's decision to reject TIG's appeal and dismiss Metro's adoption of the IATTMP was subsequently upheld by the Oregon Court of Appeals.

However, the City of Tualatin's ordinance adopting amendments to its TSP, which included a map showing the preferred alignment of the trail, was clearly a final land use decision. Therefore, LUBA considered the substance of TIG's arguments in that one appeal. Although LUBA rejected eight out of

nine sets of arguments raised by the opponents, LUBA agreed that the trail as described in the IATTMP fell within the meaning of a “park” as that term is used in Metro Code 3.07.420.D, which prohibits “parks intended to serve people other than those working or residing in the RSIA.”

In the absence of a definition of the word “park” under Title 4, LUBA relied in part on a dictionary definition of a park as a public “place of beauty or of public recreation.” LUBA noted that the IATTMP describes not just a trail but many other facilities including trailhead amenities, restrooms, picnic areas and information centers. Therefore, LUBA concluded that the IATTMP fell within the meaning of a “park” that would be prohibited in the RSIA under Title 4.

NEED FOR PROPOSED AMENDMENT

Proposed Ordinance No. 14-1329 provides a clear legislative statement that the Metro Council intends to allow the establishment of trails such as the Ice Age Tonquin Trail and their associated facilities within RSIA's. This is an important legislative fix that transcends the immediate dispute with the TIG because, in the absence of this amendment, LUBA’s decision creates legally binding precedent that would prohibit Metro and other local governments from locating trails within RSIA's anywhere in the region. In addition to the Ice Age Tonquin Trail, the following existing and proposed trails all include segments within an RSIA, and the proposed amendment is therefore necessary to ensure they can be planned and developed:

- Columbia Slough Trail and Marine Drive Trail, North and NE Portland (existing)
- Springwater Corridor, Gresham (existing)
- Gresham-Fairview Trail Phase 5 (proposed)
- Willamette River Greenway, North and NW Portland (proposed)
- 40-Mile Loop Trail, Gresham (proposed)
- Clackamas Bluffs Trail, Happy Valley (proposed)
- Waible Creek Greenway, Hillsboro (proposed)

By 2035, about half a million more people are expected to live within the Metro UGB, and the percentage of roadways experiencing severe congestion is expected to increase dramatically. Increasing congestion has real economic costs. Dedicated regional trails for pedestrians and cyclists will help free roadways for other users. Regional trails are the preferred travel corridor for walking and riding because they are safe and fast, and because they can offer a natural experience that is removed from the noisy and hectic urban environment.

In April 2008 the Metro Council appointed a Blue Ribbon Committee for Trails to evaluate where regional trails fit in the region's priorities and recommend potential strategies for expanding the region's trail network. The committee recommended that regional trails are vitally important to local communities because they provide alternative transport routes and ways to connect with nature. The committee also concluded that investments in bike and pedestrian travel will produce significant environmental, livability, health and economic benefits to the region.

The Metro Technical Advisory Committed (MTAC) considered the proposed amendment at its meeting on March 19, 2014 and recommended revisions to clearly state that all facilities associated with a trail are also allowed within an RSIA. MTAC reviewed OMA’s revisions at its meeting on April 3, 2014 and unanimously recommended approval by the Metro Policy Advisory Committee (MPAC).

MPAC considered the proposed amendments at its meeting on April 23, 2014 and voted to recommend approval of the proposed amendments to the Metro Council.

ANALYSIS/INFORMATION

1. **Known Opposition:** It is anticipated that a representative of the TIG may appear in opposition to the proposed amendments, and may argue that rather than amending Title 4, the Metro Council should instead amend the IATTMP to relocate the preferred alignment of the Tonquin Trail to a location that does not cross their properties.
2. **Legal Antecedents:** Metro Urban Growth Management Functional Plan Title 4; Metro Resolution No. 13-4414 approving the IATTMP; LUBA opinion in *Terra Hydr v. City of Tualatin*, ___ Or LUBA ___ (LUBA No. 2013-016, November 1, 2013).
3. **Anticipated Effects:** Adopting this ordinance will allow Metro and other local governments to locate trails and associated facilities within areas mapped RSIA under Title 4 of the Urban Growth Management Functional Plan. Several segments of existing regional trails are located within RSIA's, and this amendment will remove any legal uncertainty about the location of those trails under Title 4.
4. **Budget Impacts** None

RECOMMENDED ACTION

The Office of Metro Attorney recommends adoption of Ordinance No. 14-1329.