

## MINUTES OF THE METRO COUNCIL WORK SESSION MEETING

Tuesday, January 13, 2004  
Metro Council Chamber

Councilors Present: David Bragdon (Council President), Susan McLain, Brian Newman, Carl Hosticka, Rod Park, Rod Monroe and Rex Burkholder.

Council President Bragdon convened the Metro Council Work Session Meeting at 1:04 p.m.

### **1. DISCUSSION OF AGENDA FOR COUNCIL REGULAR MEETING, JANUARY 15, 2004.**

Council President Bragdon reviewed the upcoming Metro Council Regular meeting of January 15, 2004.

Ross Roberts and Mark Turpel discussed changes to the Land Use Final Order (LUFO) hearing process on the South Corridor, detailed in the document "LUFO Hearing Process Summary for Resolution No. 03-3372." This will be a continuation of the hearing from last week. The TriMet attorney and Metro Attorney felt that for the benefit of the public that may not have been able to make it last week and who come this week, to have Metro Attorney Dan Cooper go over the procedures of how to testify and appeal. The staff needs to do a staff report explaining the changes. He recommended that TriMet be given the opportunity to rebut any testimony if there is something that seems to be contested. The Council will need to decide if they feel comfortable moving forward or not. The staff will provide the Council with the 100-pages of findings tomorrow, January 14, 2004, which explain why this all conforms. One option is to bolster the findings where there may be concerns raised, if there is some area that was not adequately covered by the findings. If no problems are found with the findings, then the hearing can be continued. One option is to continue the meeting until January 22, 2004, giving TriMet more time to provide additional information, and anyone who had signed up to testify, would have until the morning of January 22, 2004 to respond to that. Then the hearing would again be opened on January 22. Or if the Council finds a problem with the application, then it could be returned to TriMet for revision. The staff's experience is that it is unlikely that someone will raise anything that will stop the process for a week. Councilor Newman asked about his statement on the hearing process agenda. Mr. Turpel said that Mr. Cooper's instructions for testifying are the most important.

Council President Bragdon mentioned disclosing ex-parte contacts.

Councilor Monroe explained that because of the snow and ice storm, staff work on the air-quality conformity would not be completed prior to the Joint Policy Advisory Committee on Transportation (JPACT) meeting this Thursday, January 14, 2004. So JPACT will be asked to approve it in concept, and then it will go to the Council either that afternoon or possibly the following week at Work Session or Thursday Council Meeting. It also depends on the Governor's office and how much time they need to review it. It needs to be done by January 26, 2004. If the Governor's office needs the additional time and Council action is therefore planned for Tuesday, then we will need to provide public notice of that agenda item and decision. Approval is needed by both JPACT and the Metro Council. Andy Cotugno, Director of Planning, said that we are still running the models to do the actual extrapolations of vehicle emissions. It's a pass-fail situation. If we pass all the budget levels for each year for each pollutant, then there's no problem; if we don't, then it won't be up for adoption. We expect to pass, but we won't know until the final

numbers are done. The Council has several options for proceeding. The Council could adopt something contingent on passing, or it could continue it until Tuesday or Thursday. The days are important because Metro will end up going into a lapse situation for a week or two. The sooner Metro is done, the sooner Metro is out of the lapse period.

Councilor Park talked about the possibility of re-opening the public comment period after it ends today, January 13, 2004. If the resolution is continued next Tuesday or Thursday, it seems that the public comment period should be continued, according to Mr. Cotugno. Councilor Monroe asked about calling the Governor's office to check on whether those two days make a difference and Mr. Cotugno said they are doing that now.

## **2. GOAL 5 PUBLIC OUTREACH**

Chris Deffebach, Planning Department Manager, distributed draft copies of the Fish and Wildlife Habitat Protection program (Goal 5) Public Notice brochures detailing upcoming workshops. Two different brochures, one for Clackamas County and one for Washington County, will be mailed to approximately 100,000 property owners and interested parties. They are scheduled to arrive at home addresses about February 17, 2004. Council is asked to provide comments to Karen Withrow in Public Affairs in one week. The cost of the Tualatin Basin copy will be shared with Washington County. Washington County would also like to send the Tualatin Basin copy to areas outside of Metro jurisdiction as they look toward implementing Title 3-type protections in the rest of Washington County. Washington County will pay for that completely on their own. Seven different workshops are scheduled for the first and third weeks of March. They are located strategically in the region to cover the region. It works well to have local jurisdiction representatives present to answer questions, and they have agreed to participate. Ms. Deffebach asked that Councilors get the workshops on their schedules. Ms. Withrow noted that Cindy Cato with Associated General Contractors (AGC) has been working with Metro to sponsor a more business-oriented forum that will be on the morning of March 3, 2004.

The purpose of the workshops is to lay out the options and ask the public where they want to land among the options. The staff is working on the format of the workshops with stations to encourage interaction among the various people and groups who come. They are encouraging organizations to come to the workshops and interact with each other, rather than having staff go to their individual meetings. They will also give presentations to groups that request it. The staff is continuing to work on other public outreach materials, including summaries of the last phase of the environmental, social, energy and economic (ESEE) analysis in late February. The goal is to have the summaries available to hand out to people by the first workshop in March. The brochures do not list the hearings that Metro will be having in late April and May. The workshops are for laying out the options. Then Metro will need to develop a recommendation for the allow-limit-prohibit treatment. Hearings will be in late April and May to comment on the recommendation. The brochure does include the March 29, 2004, public hearing for the Tualatin Basin because it is already scheduled, but the Metro public hearings are not. They will be publicized later.

The interactive map on Metro's website has been very popular, where people can look up their property. The Council suggested making sure a note about the website map is included in the brochures. Councilor Newman suggested having a note telling people how to look up an address. He also requested Councilors e-mail addresses be added. The staff is working on using the Metro website more in the next round of public outreach, including a tour of the inventory, with images. They are aiming to have it done by March 1, 2004, including a virtual tour. They want to show

various allow-limit-prohibit options in April. They would also like to prepare a cable broadcast about fish and wildlife habitat protections. Councilor Hosticka is participating in one filming at Tualatin Valley TV taping, along with a panel to discuss what it means. It is scheduled to air in February and March.

Councilor Park asked about a paragraph shown on the Washington County brochure draft (below the map) that addresses the question of property outside the urban growth boundary. It states that Metro's fish and wildlife habitat inventory includes one mile outside of the urban growth boundary. Washington County is talking about extending regulations to the rest of Washington County. Councilor McLain said she feels it is important to include that sentence on both brochures. Metro's inventory goes one-mile outside the Metro boundary.

Councilor McLain said it is important for the Council to know what the other Goal 5 partner jurisdictions will have at the workshops, and what they will be saying at the Goal 5 workshops. Metro cannot partner very well with them if Metro doesn't know what their message is. She asked that when those partners come before the Council Work Session, they let the Council know. Ms. Deffebach said that she invited the City of Portland staff to the February 10, 2004, Work Session to answer the question of how this fits with what the city is doing. She would also like to invite Clackamas County west as well. The intent is to get help in advertising the workshops. Councilor McLain explained that when Metro did the Title 3 workshops, they held a practice session to practice fielding questions, and recommended that Metro do the same this time with Goal 5, to be prepared to answer questions.

Councilor Burkholder asked about the breadth of coverage to reach out to people who are not property owners. Ms. Withrow said Metro will use its Goal 5 interested persons lists, neighborhoods and citizen planning organizations (CPOs), Planning e-news list with 5,000 e-mail addresses, and some of the other interested persons lists, including Parks and Greenspaces lists. Computers will be provided at the workshops so that people can put in addresses and check via the internet property status relative to Goal 5.

### **3. REGIONAL TRAVEL OPTIONS 5 YEAR STRATEGIC PLAN**

Mr. Cotugno provided some background information for the Regional Travel Options (RTO) program. For more than 20 years, Metro has used Metropolitan Transportation Improvement Program (MTIP) funding to fund demand management programs, but the landscape has changed dramatically. This strategic plan represents some of that change. When it first started, TriMet ran the whole ride share demand management program. Since then, funds were given to transportation management associations (TMAs) and grants were given to other organizations to develop alternative transportation modes. As a result of that, there is a much bigger network of people in companies and TMAs dealing with these programs. A year ago when Metro did the previous (MTIP) allocation, the direction was sent back to develop a more strategic plan with a more organized, cohesive effort. So this plan represents the culmination of a comprehensive approach that has all these different actors working together. It also represents a milestone because it calls for some shifts in some responsibilities to Metro as an overall convener of these activities, rather than TriMet who has been the lead responsible organization. This sets the stage for implementing more changes that will be coming over time.

Bill Barber, Planning Department, said that this is the first five-year strategic plan and is set forth as part of the Regional Transportation Plan as regional transportation demand management policy, which looks at supporting the use of alternative modes, such as public transportation,

carpooling, tele-working, bicycling and walking options. One part of the resolution is asking that the name be changed to the Regional Travel Options subcommittee of the Transportation Policy Alternatives Committee (TPAC), since transportation options is a more appropriate identity for the program. The plan was a cooperative effort with several other regional agencies and a senior management team, which was a new first. This was a high-level advisory group.

They came up with a couple of funding scenarios. Two of them were financially constrained funding options, dealing with the amount that they knew they had allocated over a four-year period. They also looked at a preferred-funding scenario, which is finding other funding to implement all the programs proposed. The subcommittee made a recommendation to fund scenario A, which is funding allocated through the 2004-2007 MTIP. Through the most recent MTIP process we had \$500,000 that was put in a reserve account pending completion of the strategic plan, with some stiff competition for the scarce funds. They worked through that with TriMet and came up with a distribution such that \$100,000 would go to the Regional Travel Options and \$400,000 would go to TriMet's frequent bus program. They are also looking at a preferred budget, called scenario C, to look for funds other than the MTIP process. They will work with Oregon Department of Transportation (ODOT) staff to work on distribution of \$1.5 million transportation demand management (TDM) funding package that was recently adopted through the Oregon legislature.

The resolution asks to approve the mission, goals and strategies of the RTO strategic plan. They are asking for approval of the financially constrained program budget. They are seeking additional funding to implement scenario C, which is the preferred collaborative RTO program. They are working with ODOT to develop performance measures and a distribution plan for that particular funding. They are recommending that unspent RTO funds in any program category at the end of a fiscal year be carried over or re-allocated for the other RTO programs. That would be determined through the subcommittee and subject to the resolution process through TPAC, the Joint Policy Advisory Committee on Transportation (JPACT) and the Metro Council.

Mr. Barber referred to Exhibit A of the resolution that gives detail of how they would adjust the RTO funding and spoke about some local match issues and program administration issues.

Councilor Newman asked if the resolution supports option C. Mr. Barber explained that Option A is based on funding that is available now. When the Council votes on this resolution, they are agreeing to the direction and strategies given in Scenario C, if outside funding is secured. The staff would come back to the Council if they secure that additional funding to let them know what programs they are planning to fund with which funding sources.

Councilor Newman also asked about TriMet employees working on the program and whether they would be transferred to Metro. Kelley Webb, Planning Department, explained that TriMet is an implementation partner, rather than being responsible for the program. All the partners felt it was best to house this RTO program at Metro because we are interested in promoting all of the options. TriMet provides the transit pass and is a piece of it. Metro is also asking for more financial accountability from each of the partners to better show the impact of the program given the funds that have been spent. TriMet marketing people will still be going out and working with employees, but in a much more focused manner. No employees will be moved between agencies. Part of the impact of the plan is they are hoping to house two positions at Metro to complete the program. The two positions are a marketing position and an evaluation position. Those feed back to each other since every year they produce an annual report that helps feed the social-based marketing program, to refine the marketing approach. The report Metro produces is provided to

TriMet. This is funded through MTIP. They will likely apply for up to \$1 million of the \$1.5 million ODOT funds allocated for TDM programs.

Ms. Webb reviewed the program priorities detailed in the RTO 5-year Strategic Plan, including the connections to other regional land use and transportation goals. She mentioned the connection to Metro's Centers program. The new mission for this program is that we will all be working collaboratively to provide and actively market a range of travel options for all residents of the region.

They plan to coordinate strongly with the community Media Project to launch the RTO campaign. They are using some of the funds released by TriMet to develop an identity campaign. This will create a marketing position at Metro that can coordinate this campaign. The plan is to add 96 additional programs each year, starting from the existing base of 676 employer programs.

The Regional Rideshare Program combines vanpool and carpool programs. The Regional TMA Program will work to connect with the Centers Program. Part of that work will be developing the commute mode share targets that relate back to the population and employment forecasts. This also includes some trial programs.

Councilor McLain pointed out that many area community colleges and local universities have attendees who park in neighboring local streets. She has received some complaints about this lately. High schools are also another level of need. Mr. Barber talked about seeing the RTO program follow some of the same successes as the recycling program in the '60s and '70s in changing the behavior of people in how they get around. Part of the marketing campaign is to look at images that people latch onto.

Councilor Burkholder applauded staff for bringing all these regional programs together and said he feels Metro is the appropriate agency to house this program. He asked about addressing people's concern about feeling safe and how to integrate enforcement agencies as part of the programs. A future goal of the RTO program is to branch out into this area.

Councilor Monroe said that some universities and colleges that have a strong commuter base can build into their admissions fee structure enough money that they can negotiate with TriMet for transit passes. High schools that provide transportation for their students should charge students to park at the school. If students don't want to ride on the school bus, they should pay to park.

Councilor Newman asked about Goal 3 of the RTO plan and comparing performance measures across programs. Ms. Webb said that it is difficult to compare these programs to each other because they are so interconnected in how they affect people. The staff is working with the Transportation Research Board to find a valid and cost effective way to compare programs to each other. It takes extensive surveying to determine which programs are causing people to change. Councilor Newman hopes that the staff can find a way to measure what program is most effective and important, for determining where limited funds can go in the future. The eco survey is one tool that they do have to help.

Councilor Burkholder asked about vanpools in the private vs. public sector. He feels there are opportunities in the private sector. Ms. Webb referred to studies that they are doing showing that it is possible to make money or break even with vanpools. They will focus on how to get vanpools in the right markets.

Councilor Park would like the Council to look again at Business Energy Tax Credits, especially as it relates to Centers. Ms. Webb said they would be looking at that in the next month.

Councilor Park made reference to a "Cool to Carpool" letter.

#### **4. TRANSFER STATION REQUEST FOR PROPOSAL**

Mike Hoglund, Solid Waste and Recycling Director, and Jim Watkins, Solid Waste and Recycling Department, said this is the second of three work sessions on the transfer station contract proposal. In December there had been questions about the sustainability elements, about how they work, what the benefits were, what the effects might be on independence versus vertically integrated corporations, etc. That is the current focus of today's meeting, as well as to introduce some other components of the Request for Proposal (RFP) so we can know what the other criteria are. The current contractor, Browning-Ferris Industries (BFI), would like to extend the contract, and the staff wanted to introduce that topic today. The staff is exploring the advantages and disadvantages of that. The staff wants to get some direction from the Council on the sustainability elements today. The rest of the RFP and the contract extension will likely carry over to the third Work Session on January 27, 2004. The RFP would move forward to be introduced for public testimony on January 29, 2004, with action scheduled by the Council on February 5, 2004.

Mike Hoglund referred to the two questions in the Work Session Worksheet. Also, he has information on the health benefits to employees working at the transfer stations. He reviewed the sustainability elements, annual costs, cost per ton (on incoming tons) and the effects of the various sustainability elements outlined in the chart provided (page 1 of 2). They conclude that the \$0.37 increase in cost per incoming ton would not affect the impact on usage of the facilities. He cited Metro's own \$4 cost increase per incoming ton implemented in 2002, which was a 6% increase, and that it had no effect really on the tonnage that Metro received. It costs approximately \$80 per hour to operate a hauler's truck, so to divert a truck more than five minutes away would eat up any advantage of the diversion. Larger losses of tonnage would be caused by a new transfer station or raising caps on the existing transfer stations.

Jim Watkins, Solid Waste and Recycling Department, analyzed the economic incentives related to the recovery guarantee in the proposed transfer station RFP. The concern was that vertically integrated operators of Metro's transfer stations, given the bonuses and penalties to provide incentives for additional recovery, might try to manipulate loads delivered by affiliated haulers to influence the recovery rate at Metro's facility; however, it is unlikely that it would be in their best economic interests to do so. Mr. Watkins explained that it does not make economic sense for carriers to take loads to facilities other than their own. He referred to figures one and two in the documents provided to illustrate this point. In all cases it was an economic advantage for a company to take it to their own facility. There is no ability for a vertically integrated company to game the system. Therefore a non-vertically integrated company can compete and expect to receive the same number of loads.

Councilor McLain asked about how Metro keeps the system competitive. Councilor Newman said he appreciated the staff work done on this research, and asked if the staff had heard any complaints from small haulers. They had not, but Councilor McLain cautioned that it's too early to tell because worth has not been assigned to different parts of the RFP.

Mr. Hogle spoke about the health benefits of the clean diesel component. They focused on the diesel consumption at Metro transfer stations as detailed in "Comparison of Diesel Consumption at Metro Transfer Stations Between Metro's Contractor and Customers." Their analysis showed that approximately 89,000 gallons of diesel are consumed at the transfer stations each year by customers. This compares to Metro's 100,000 gallons of diesel consumed per year, representing a little over half what is consumed onsite. He said they found three things that could be done to clean up the diesel that they estimate will have a particular cost, ranging from 7.5% (using 20% biodiesel at \$20,000 cost) to 45% (using some sort of diesel particulate filter in using ultra low-sulfur diesel at a cost of \$100,000) improvement. The Oregon Department of Environmental Quality (DEQ) estimates that it is a pretty unhealthy situation where you have diesel particulate, particularly untreated off-road-type vehicles running this material. National studies show that roughly one dollar invested in cleaning up these particulates results in two dollars worth of benefits over the longer term in health costs.

Councilor Burkholder asked about Metro providing clean diesel. Mr. Hogle said that the issue is trying to get enough of the ultra low sulfur diesel into the Metro area. TriMet is going to use it on their busses and Metro was going to use it, hopefully, on some of the CSU [company name] trucks. If the Council desires it, the staff could investigate the possibility of providing the super low sulfur diesel for sale on Metro sites. The RFP will ask for proposals for what Metro can do with \$20,000 and \$100,000. Council President Bragdon said they seem like worthwhile expenditures and we should go ahead and do this.

Councilor Park asked if we have a measurable baseline for what is considered healthy or unhealthy, so that if we implement this, we have a way to measure the gains. The diesel particulate could be measured, or a urinary detection measure could be considered to determine exposure to diesel. The staff agreed that documentation is going to be critical to this program.

Councilor McLain said Metro needs to be a leader in this area, but that whenever we change what we make ourselves different from other facilities, we cause a situation that may change how much tonnage will come our way. Every change adds up and can affect the tonnage brought in.

Mr. Hogle spoke of the major features of the next transfer station RFP currently under consideration, as detailed in the document provided. The contract term is for five years beginning October 1, 2004. Cost is given 50 points, material recovery approach is given 25 points and operation and maintenance approach is also given 25 points. Councilor McLain asked how these points compared to previous RFPs. Mr. Watkins explained that in previous RFPs, cost was given 65%. In this proposal, cost is given 50 points and the remaining 15 points were redistributed to material recovery approach and operations and maintenance approach. Councilor McLain said she felt like the incentives for material recovery should be weighted even higher. She said we should be asking ourselves if we really want the services or not.

Councilor Park asked about the margin of error. Councilor McLain asked further about the material recovery rate allocation. She clarified that the additional five points allocated under the material recovery approach is more subjective and deals with reasonability, to determine if they can do what they can do.

Mike Hogle summarized the four areas of comments regarding the BFI contract extension (detailed in his memo distributed). He said it is a complicated question because you don't know what you might get through a procurement process through a competitive bidding process. It could be that you don't do better than the current contract or you might do significantly better

based on an approach that someone might come in with. The staff will be meeting with Councilors individually before they come back in two weeks. He talked about the timing and outcome of the Regional Solid Waste Management Plan (RSWMP) and when is the best year to have a contract end and move into a new era following the RSWMP. The staff was thinking that was 2009; BFI is saying that might be 2007.

Councilor Newman asked about the BFI contract extension two years ago, and why the contract was extended for two years. At the time, Metro was debating the caps, there was uncertainty about tonnage flow, Metro was contemplating the organics program, and BFI gave Metro the same price.

Mr. Hoglund said it would be more expensive to go through a procurement process, as compared to extending the BFI contract. The Office of Metro Attorney noted that it would be a likely assumption that this proposal could be appealed. That would add time and cost. Under an extension, that would not necessarily be the case. Total costs and benefits are not really known until Metro goes through a procurement process. He discussed the operational improvements and customer service standards at public facilities.

Councilor Monroe asked about an option in the contract extension for renegotiating and changing the criteria. Mr. Hoglund said yes, that the contract did include some possibilities for that.

Councilor Burkholder and Councilor Hosticka asked for clarification of the legal and ethical obligations are for a competitive bidding process at the January 27, 2004, Council meeting. Mr. Cooper can also address at that time the question of when renegotiating the extension becomes a new contract.

Councilor Park commented on the operating specifics. Council President Bragdon asked for a review at the January 27, 2004, Council meeting of the life of the contract, and what we can learn from that, including specifications under which they operate and how they match up with the warranties.

Mr. Hoglund will be making appointments to meet with individual Councilors.

## **5. POLICY DRIVERS FOR INDUSTRIAL LAND DECISION TASK 3/TITLE 4**

Dick Benner, Metro Attorney's Office and Lydia Neill, Planning Department, presented. Mr. Benner reviewed some of the Council's application of state law and policies from the Regional framework Plan, particularly the 2002 decision to expand the urban growth boundary. He said that in similar fashion, the same Regional Framework policies apply to the decision they will have to make in June regarding industrial lands expansion of the UGB. He supplied a list of policies and criteria for UGB expansion. They are broken into two general categories: those that expressly apply and those that may apply. He referred to Metro Code that talks about criteria for legislative expansion of urban growth boundaries. That code section is almost all a repeat of the seven factors in Goal 14. When the Council adopted this part of the code, it was trying to reflect state law. That code has a couple of additions that are intended to implement the Regional Framework Plan policies, on a case-by-case basis. That code has two things that are also mentioned in the RFP policies: A clear transition between rural and urban land use and a new policy that the Council added in 2002 having to do with centers. The Council is telling itself with

that policy that when it considers a legislative expansion to the UGB, such as the one in June, that the Council wants to make sure that the lands that it expands contribute to the roles of centers.

He spoke to how Metro's RFP policies play into the Council's UGB decision and fit in with the context of state law. The principal sources of law that come from the state are the priority of lands that you would take into the boundary, and Goal 14 itself. Goal 14 came long before the priorities, which are in statute. When the Council began to consider the 80,000 acres for UGB expansion, it mapped them according to state priorities. So the Council could look at a map and see which of the 80,000 acres were exception land; and since the Council didn't have urban reserves at the time, exception land is the highest priority for taking into the boundary. The Council could also see the poor and higher quality farmland as second and third priorities. That map showed more of the land than Metro needed to meet the need that Metro said it had. If that's the situation, then after that, the Council can apply the locational factors of Goal 14 and policies from the RFP. Regional policies are applied when the Council is looking at more land in the state priority than is necessary to fulfill the need.

Councilor Hosticka asked about defining need, and in so doing, applying criteria and making decisions. He said we define need in ways that rule out lands, although they are discretionary definitions that they are applying. Mr. Benner explained that Metro didn't turn to RFP policies to define the need. Instead we looked at the facts in front of Metro to determine how much land is needed for which industry types. Councilor Hosticka pointed out that some "facts" are actually policy judgments applied about what is suitable. Mr. Benner continued that the estimate of 2,700 net acres does not say anything about the nature of the land needed. Then Metro did some research to find out the nature of the land that it needs. From that information, Metro developed three factors about slope, proximity to freeway interchange and proximity to existing industrial areas.

Michael Jordan, Chief Operating Officer, asked for clarification of the questions. Mr. Benner proposed the scenario that if we needed 2,700 acres of land that fit the criteria we've established and we have 4,000 acres of exception land, Metro would be making decisions within the exception land tier of the state hierarchy. The problem he heard anticipated is that say only 1,000 acres of that exception land meet the criteria Metro has established for the land. Can Metro go through the tiers based on the criteria, even though it may circumvent the actual number of acres? Mr. Benner answered that yes, the Council has already done it. Mr. Jordan wanted to address the legal issue involved.

Council President Bragdon spoke to another policy question regarding the number of jobs that are likely to be needed, and translating that into an acreage number based on characteristics of industry that leased historically. And now Metro has had a lot of testimony in the last six months that the jobs of the future really look different in the workplace of the future, even in the categories once considered industrial, are different.

Councilor McLain clarified that the questions are about how we assess need. Councilor Hosticka wondered if we are defining need in a way that automatically jumps us to the highest value farmland, even though law says you have to go through the hierarchy.

Mr. Jordan followed up on the legal perspective of that. His assumption is that in the formulation of the criteria of the type of land Metro needs, Metro is actually going to have to argue a case to circumvent state law, or rather, the state hierarchy, if in fact that's what Metro wants to do. So

Metro is going to have to construct a case that's based in findings about the type of land that's needed. Mr. Benner indicated that Mr. Jordan was correct.

Mr. Benner used the decision of December 2002 as an example: The Council said as a matter of policy, it wanted to encourage infill and redevelopment, so the Council was going to assume that 28% of residential development would happen as infill. That then influenced the need. So he said Metro used policy to define need. In this instance, the Council is saying 10%, which is a judgment. It's based upon what Metro learned in talking to people who develop industrial land. So it's not a pure policy creation, but it is a decision that the Council made. Mr. Benner agreed that we can create and adopt a policy and use it to shape the need. Councilor Hosticka asked if we are vulnerable if we do it that way, and then people could challenge our decisions, saying that Metro circumvented state hierarchy by the way we defined need.

Mr. Jordan took some exception with Mr. Benner's example regarding the infill rate. Because what the infill rate did by changing it, actually changed the volume of acres necessary. It was not a policy decision about the quality of those acres and circumventing—perhaps—the state hierarchy of land. Mr. Jordan wasn't sure it was an on-point example.

Ms. Neill clarified that, in regards to Mr. Jordan's reference to circumventing state hierarchy, she doesn't read Goal 14 that way. She said Goal 14 says "suitable land." It's a suitability argument that needs to be made. She thinks that is a policy judgment about what kind of land Metro feels is suitable for industrial purposes. So Metro is going to define that, going to make those decisions, and then going to run that through the hierarchy. That has a huge impact on whether we run out of land that is in the exception category up front or not. Mr. Jordan agreed that "circumventing" state hierarchy was not the best choice of words. Mr. Jordan said the scenario that he was trying to paint, was that the sideboards on the reasonability of the criteria you pick for the kind of land you are trying to get at, that reasonableness sideboard is the issue. That's because we are going to have to make an argument about suitability and that's vulnerable.

Mr. Cooper said it's a factual test that it is based on reasonableness and it's not something where one is allowed to be purely subjective. The Metro Council's record of what the facts are and the reasonableness of how it defines that is really going to be the ultimate test. The new [Land Conservation and Development] commission (LCDC) that's just been appointed is going to be applying it. The Metro Council is very sensitive to the fact that the more it walks into farm land, particularly the more it is into high quality soil farmland, the greater scrutiny it faces, and the more reasonableness it is going to have to show. He cited an example from the 2002 decision that involved Cooper Mountain. It is the suitability of the land for the need defined that is critical.

Councilor Burkholder shared that he has been attending the leadership forums at Portland State University (PSU) with local high-tech business leaders. He said that they said that land need is last decade's question for the high tech industry. The high tech industry has shifted from manufacturing to software. Now they said their top need is software development. Intel, the largest software company in Oregon, has one third of their work force in software development. Metro started looking at industrial land need, and now the discussion has come to what is "industrial" need. Is "industrial" software development? We shouldn't just say industrial land; we should look at each cluster and determine what we need for that. We can't lump them together as we have. Either we don't split them and just say jobs and do we need more land for jobs that we don't define, or do we split them into a totally different thing and start calling them a radial zone system, which is a 1970 zone system?

Councilor McLain said there are two levels of policy choices, at the need level and the category level, and we have to do both. She thought Metro was “done,” with looking at need. She was told Urban Growth Report (UGR), Metro passed it and that’s what Metro is using, and it is done. She said we have all backed away from that, and we have all said we have a new face on industry needs, such as more offices for software development or more distribution centers. Last time Metro didn’t have a couple of studies with that detail. So now Metro has more knowledge on specifics. She asked if Metro needs to look at the framework to see if the zoning and/or categories actually fit that new information. Councilor Burkholder pointed out that history does not help us, since the world and high tech business have changed.

Councilor Park pointed out that the regional calculations for the amount of land needed were based upon 4,700 jobs per percentage point of capture rate. Then that was translated through something on how that broke out to how many acres of land we needed. He asked if maybe that is a part that needs to be re-examined again, because the underlying assumption was within that “X” amount of industrial land necessary for high tech or large lot. Obviously there is question about that need in terms of whether it can go up vertically now versus horizontal. That original 1,900 acres was based on that.

Council President Bragdon agreed that that is a factor that needs to be re-examined. The implications of land consumption for particular sectors is a concern. The one sector Metro can be confident about is warehousing and distribution has certain characteristics and that’s probably always going to be the case (it’s not going to be done on the 10<sup>th</sup> floor of a building), but it seems that everything Metro has heard about the high tech industry leads to a different conclusion. Some articles have been written about vertical warehouses, that don’t necessarily need to be so spread out.

Councilor Burkholder said we could include Clark County in our calculations, when we look at the best location for warehousing and distribution.

Mr. Cotugno clarified that the Council is saying that we need to back ourselves up to some of the earlier steps in the process and revisit some policy choices that the Council did make, and ask ourselves if we want to reconsider the form of the building type that risk and need is going into, which is office versus industrial; and the capture rate, which we’ve assumed and now question if it is the right capture rate. Metro has the prerogative to reconsider. We have the same kind of risk case that would need to be made. We would have to get a new set of need calculations acknowledged. He doesn’t think, for example, that you can arbitrarily change the capture rate to recognize more of Clark County’s capturing the need. He thinks, however, you can say *they* changed the policy that *changed* the circumstances from where we were two years ago. How much have they changed it? How much does that justify changing the capture rate? If Metro adopts certain standards policy, we can reasonably justify moving the regional rate from 26% to 29%. You link the actions with making the case.

Ms. Neill said another way to reconsider the policy choices without going so far as to open all the factors in the urban growth report that have already been gone through and adopted this past year, is to look at the end assumptions that the Council made, and come back up from there. We have a certain need number that was predicated on Title 4 protection. Maybe if not all of that protection is necessary, it’s not going back and relooking at the capture rate and the refill rate, but saying we know that 70% of our land need was associated with a type of industrial development, like warehouse and distribution, and maybe focus the Metro’s efforts in that area, rather than re-doing the entire thing.

Councilor McLain said that both of those are tools that we can consider. We might need one for one scenario, and going back to the assumptions for another. Another element is in writing those findings. We know that it matters who reviews the findings. Timing is another factor. It's the timing on the tool, with a new LCDC commission. We're talking about a different level of staffing when we look at it now. It's a question of whether we can conclude the process in June or July, and have time to step back and decide what's the next step.

Mr. Benner said he thinks there are assumptions Metro could revisit that would not disturb what the commission acknowledged last July, and there are other things that if Metro disturbs them, Metro has to expect the agency to question what we did back in December. Forecast is one thing that would disturb everything. The capture rate is close. It may depend on how much the capture rate would be rejiggered one way or another. It is possible that we could revisit some of the assumptions in trying to convert the number of 35,000 new jobs into land demand, based on the new information that has come to us in the last year. In the UGR we talk about six building types. Metro made assumptions on what types of buildings industrial uses would be in. But recent testimony shows that those assumptions are not necessarily correct. We don't have reliable data to specify what percentage of industrial employment is going into office buildings at higher density. We can't say reliably that we don't need as much land.

Councilor Hosticka pointed out that people working in office buildings don't need flat land of less than 10% slope, in the same way that building a one-story industrial structure needs it. We might be able to go back to that exception land, build your software places on there, or even better, put them in our centers. That converts into not only how many acres, but what kind of acres and where those acres are located

Councilor Newman asked about what new findings or data we need to support a decision. Mr. Benner said that in the UGR, there is a connection between Standard Industrial Classification (SIC) code and building type. He said if they wanted to defend a decision to change how they calculate need, they could ask if there's new information about one or more of those industrial SIC codes that we thought were going to go into building type A, that are actually going into building B. He does not know if that information is obtainable.

Ms. Neill said she did not think she could get such information from Dennis Yee, Metro's economist. She noted that you can lump Intel in one category and lump someone else who makes a wafer kind of product in the same category, and they would have vastly different building types.

Mr. Jordan said that data is at the crux making findings that will hold up. He used the past decisions made on lumber mills as an example to demonstrate that you cannot base your decisions on the past. The problem is we don't have data to support that structural change in the economy. How do you make findings about the future? You can't!

Mr. Cooper asked if you had substantial evidence to believe something in the past? Now to predict the future, you need some evidence of what will happen. We have to find something else we do believe in. What do we know about what the future will be?

Councilor Burkholder asked if we could dump this in the commission's lap.

Mr. Benner said Metro is not so bound up as housing, based on state law. There's lots of new info available about high tech that supports a decision about what kind of building they will be

operating out of. That manufacturing is moving overseas. That may be enough to support a decision by the Council that it wants to rethink the assumption about what type of facilities high tech will be working out of. There are indications that it's going toward office and software work as opposed to actual manufacturing. He said you can take some policy measures to move it in the direction you think it's going, and then you can check it every five years.

Mr. Cotugno said he thinks we need to go back to the UGR and look at the assumptions. To look at the differences in assumptions based on the new info about high tech and new building type needs. That would put some orders of magnitude of what the different policy choices are and what they mean. You need a level of evidence to support a judgment.

Councilor Park said that it wasn't acres, but jobs, that were being calculated.

Ms. Neill asked for more clarification on direction. She said she heard two different things that are not necessarily coincident with each other. It seems like the Council is struggling over the 30%. Seventy percent of what we qualified our need was for warehouse and distribution. The other 30% is for other kinds of uses that may be able to be located in other places or accommodated in other building types, which means offices, which goes back to job densities and some of the assumptions we made in other categories, aside from the warehouse and distribution. She said she is also hearing discussion about the capture rate, which has implications of the residential side of thing, and opens the whole issue up. She wants to understand the magnitude of what you want the staff to analyze. It will create much more discussion if you focus on the capture rate and all those assumptions.

Councilor McLain said she thinks the legal staff needs to give some guidance on the capture rate and what that means, and how big a change it would make to the assumptions.

Councilor Burkholder talked about the difficulty for us to predict the future. He said we have a legal responsibility to provide land for jobs. He speculated that we might be getting too deep into the question of usage to the point of zoning, instead of just looking at the overall need for land for jobs.

Councilor McLain said that if you have too much inequity across the region in zoning applications etc., then the competition becomes unequal and unfair. She cited earlier work on the Functional Plan that looked at that balance. Ms. Neill noted that we've allowed more mixing of uses from the residential side, but from the employment side we've tended more toward wanting to have that more Euclidian view of zoning, and now Councilor Burkholder is questioning whether we really need to be doing that.

Councilor Newman referred to page 29 of the Functional Plan about boundary features and sense of place and asked about how those policies have been applied. Mr. Benner said that the Council has been applying boundary features (1.7.1) in deciding where the boundary has been placed along a creek or property line. Mr. Cotugno said the only application of sense of place 1.7.2 has been with the performance measures and trying to define what constitutes a jurisdiction's sense of place and whether any of the Metro policies have added or subtracted from that sense of place. Councilor McLain cited another example of sense of place concept. Councilor Hosticka recalled that 1.7.1 concept was used in the Bethany decision for a natural boundary, about where a natural break point was. Mr. Cooper said that although these policies may seem a little vague, they are valid policies that the Council can apply as legitimate policies, and findings can be prepared to show how these policies are applied.

Council President Bragdon said that today's discussion has been a good jumping off point, but that more discussion is needed. He said he sees two tracks for discussion. One is the discussion of the landscaping of the need, not the sheer job number, but how they are rated across the landscape, and that issue related to the earlier findings as perhaps better informed by the testimony we've heard over the last year. The second discussion is about the criteria that already exists and how we would apply those criteria.

Mr. Benner said he thought the Council should be looking at these RFP policies and giving some direction to the staff about policies that could be applied. The Council should check to see if something that ought to be applied has been left off. Then the staff can help the Council's understanding and decision about how it wants to apply them by taking a class of land, such as Class 2 farmland, and help the Council through a sort of those lands on these policies and see how the Council wants to apply them. As an example, he referred to policy 1.12 on protecting agricultural land. It is rather vague, but refers to protecting agricultural land. The Council can interpret and apply it to this decision, without having to change the policy. It is possible for the Council to say we're not going in certain places on land in Class 2.

Councilor Newman asked what it would take to elevate one of the policies above the others. Mr. Benner said that the Council could adopt changes to the policies and apply them to this process. Councilor McLain noted that those changes would have to go through the Metro Policy Advisory Committee (MPAC). Mr. Cooper said those changes would be done as part of the whole decision. He said that secondary policies could be used as tiebreakers, without amending anything.

Mr. Benner said that this subject is before MPAC tomorrow as an informational item. The Council could ask MPAC what policies does MPAC recommend that be applied beyond the ones that seem clearly to apply on list one. They could look at list two and other policies in the RFP.

Ms. Neill said that of the 29,000 acres that we've brought forward for continued consideration that were on the map adopted in the last resolution, about half of that is exception land.

Councilor Park asked about Goal 14 and applying 1.1 policy on urban form. Mr. Benner cited examples of applying the urban form policy. He said that one of the policies that does bear on urban form is separation of communities, and the hierarchy of state priorities trump that if there is a conflict. It can be applied without a conflict. For example, if you need 1,000 acres and you have 5,000 acres in that category in front of you, you can choose area A rather than area B because you want to preserve the separation, but if it chooses you to pass over exception land and take in farm land because you're trying to preserve the separation, then you probably can't do that.

Councilor Monroe asked if we would ever get to farmland, given that we are studying 13,000 acres of exception land and we only need 2,700 acres. Mr. Benner explained that it depends on the suitability of the land for certain uses. He said that the Council has already taken a conservative cut last month when they eliminated a bunch of exception land because it is chopped into small parcels and has houses on it. Arguably, much more of that exception land is also not suitable for warehousing and distribution, because it is in relatively small parcels and has houses on it. This is going to be part of the analysis that comes at this stage. He said to remember that the Council made decisions to take land into the boundary by taking an exception to the priority. The Council took farmland in Bethany because it was able to make a finding that Metro really had to take some farmland in to maximize the use of the exception land that it took in. The Council took Shute-Evergreen in, even though it was farmland and there was exception land available, because

there was a special need that had to be satisfied and there was specialized services at the location, etc. So the Council went around the priorities there because of certain circumstances. Mr. Benner is sure that we will find those again as they analyze the exception lands and turn out not to be suitable.

Mr. Cooper said the question is how closely do you stick to your so far tentative preliminary decision that you're looking for warehouse and distribution land, and how much of that do you need that meets very narrow physical characteristics which may not be in existence in the exception land. If you're going to have a more generic land need definition because you're less certain as to how much warehouse and distribution land you actually need or how much land you need of that type, then you may end up staying in exception land.

Mr. Cotugno said that that is his biggest concern out of this discussion from a work flow perspective. Ms. Neill and her folks have been on a track for a long time now based on some criteria that the Council has given them, and the Council has actually made some decisions, and the clock is ticking. If the Council going to amend that criteria, the staff probably needs to know that pretty soon, because they will have to circle back and talk about some land we've taken off the shelf, perhaps.

Ms. Neill offered to map the areas that would meet the warehousing and distribution need. Councilor Monroe agreed that it would, and that that is the need of which we're most certain. He said that if we're studying a lot of land that is unsuitable for that, then maybe we ought to be talking about narrowing the criteria pretty quickly so that we're looking at land that would be suitable for warehousing and distribution only.

Mr. Jordan pointed out two things. Your Title 4 discussion and the expansion and this prediction about 70%, if in fact you're going to stick with this 70% piece on the expansion area and you're not going to impose the kind of Title 4 restrictions inside the boundary that will preserve the available site for warehousing and distribution within the boundary, he sees a potential train wreck coming. Councilor McLain said the Council hasn't come to a decision and she doesn't think the Council is backing off of our regionally significant industrial lands. Councilor Park said he doesn't think they have eliminated any of the possibilities yet. If they had gone down to 13,000 acres, he thinks they would have. He said he thinks it's okay to change the focus slightly.

Councilor Hosticka said that if the regionally significant industrial areas are for the purpose of preserving land for warehousing and distribution, that's entirely different than all of the discussion he's heard up until now, but it might be a key to how you would define how you would preserve that land. Mr. Jordan said it's not the actual warehousing and distribution, it's the characteristics of the land that you're trying to preserve: Large lots, relatively flat, near access for transportation. Councilor Hosticka said we have not defined regionally significant industrial in those terms, or said that that was what we're trying to protect. He said we've talked about retail uses and types of buildings, etc.

Ms. Neill said that the staff will come back to the Council with three things: They are going to map the areas with the exception lands and the EFU land classes and show you the lands that need the warehouse and distribution type things. They are going to look at the way our forecast is arrayed and by building type. And they are going to tap into the issue of the capture rate and whether that is something that can be changed or modified. Councilor Newman added urban form and sense of place considerations.

**6. CITIZEN COMMUNICATION**

None.

**7. CHIEF OPERATING OFFICER COMMUNICATION**

None.

**8. COUNCILOR COMMUNICATION**

Council President Bragdon offered an invitation from the Associated General Contractors to go to the gorge to give a recycling award on Friday, January 16, 2004.

Council President Bragdon said he felt that the carpool letter seems fine.

Council President Bragdon said Metro will be getting a letter Friday from Grant Thornton with the outside audit that happens every year with a fairly strong paragraph about Metropolitan Exposition and Recreation Commission (MERC), according to Bill Stringer, Metro Chief Financial Officer. That letter is available for Councilors for their meetings about MERC.

Councilor Monroe said the Jay Waldron committee met on transportation funding and heard from Adam Davis of Hibbits and Davis on focus groups. They did three focus groups in Washington, Clackamas and Multnomah counties. He summarized that they liked the package, which includes transit and some street improvements, except Washington County took some exception. The package needs to include both highway and transit. You cannot separate it into two separate ballot measures. Property taxes will not sell as the local match for transit. They're going to come back in February and hear from TriMet once again on potential other options, and there aren't very many other options for funding the transit match portion of the package. Oregon limitations on our highway fund and no sales tax mean that we have very few options, compared to other jurisdictions across the country. A ballot measure in 2004 is looking less and less likely. Councilor Park added that Jay Waldron gave out some assignments to keep it alive and moving.

Councilor McLain commented on Major Street Transportation Improvement Program (MSTIP) as a permanent tax.

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 4:11 p.m.

Prepared by,

Linnea Nelson  
Council Support Specialist

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF JANUARY 13,  
2004**

Item	Topic	Doc Date	Document Description	Doc. Number
1.	Agenda	1/15/04	Metro Council Agenda for January 15, 2004	011304C-01
1.	List	1/15/04	LUFO Hearing Process Summary, January 15, 2004, Resolution No 03-3372	011304C-02
2.	Brochure	2/2004	Public Notice Fish and wildlife habitat protection analysis under way (Washington County version draft)	011304C-03
2.	Brochure	2/2004	Public Notice Fish and wildlife habitat protection analysis under way (Clackamas County version draft)	011304C-04
3.	Strategic Plan	12/2003	Regional Travel Options Program 5-Year Strategic Plan + Appendix A	011304C-05
3.	Strategic Plan	12/2003	Regional Travel Options Program 5-Year Strategic Plan Appendix B and C	011304C-06
3.	Report	1/12/2004	Oregon Department of Energy publication: Business Energy Tax Credit Pass-through Option, and accompanying documents	011304C-07
3.	Resolution, staff report and Attachment	1/9/2004	Resolution No. 04-3413 For the Purpose of supporting the <i>It's Cool to Carpool</i> campaign; staff report and Attachment A letter to Business Leader asking for support for Carpool Match NW	011304C-08
4.	List	N/A	Major Features of Next Transfer Station RFP Currently under Consideration and Attachment No. 1 Price Schedule for Option #3 – Metro South and Metro Central Station Operations	011304C-09
4.	Memo	1/13/2004	To: Metro Council, From: Michael Høglund, Director, Solid Waste & Recycling Department, Re: BFI Contract Extension	011304C-10