

A G E N D A

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1542 | FAX 503 797 1793



METRO

Agenda

MEETING: METRO COUNCIL WORK SESSION MEETING
DATE: March 30, 2004
DAY: Tuesday
TIME: 1:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

- 1:00 PM 1. **DISCUSSION OF AGENDA FOR COUNCIL
REGULAR MEETING, APRIL 1, 2004**
- 1:15 PM 2. **GOAL 5: REVIEW OF PUBLIC COMMENTS AND
FORMULATION OF RECOMMENDATIONS** Deffebach
- 2:15 PM 3. **CITIZEN COMMUNICATION**
- 2:25 PM 4. **CHIEF OPERATING OFFICER COMMUNICATION**
- 2:35 PM 5. **COUNCILOR COMMUNICATION**

ADJOURN

GOAL 5: REVIEW OF PUBLIC COMMENTS AND FORMULATION OF RECOMMENDATIONS

Metro Council Work Session
Tuesday, March 30, 2004
Metro Council Chamber

METRO COUNCIL

Work Session Worksheet

Presentation Date: 3/30/04 Time:

Length: 60 min

Presentation Title: Public Comments on Program Options and Issues for Consideration in a Program Direction Recommendation

Department: Planning

Presenters: Deffebach, Whitehill-Baziuk

ISSUE & BACKGROUND

The Fish and Wildlife Habitat Protection Program staff have completed a draft of the Economic, Social, Environmental and Energy (ESEE) consequences of applying different protection levels to the regionally significant fish and wildlife habitat. By May, Metro Council is scheduled to consider a preliminary recommendation for the extent of habitat area protection by specifying where development (or conflicting uses) should be allowed, limited or prohibited and giving direction for the development of the protection program.

Metro has conducted a public outreach effort to solicit comments on the habitat protection options prior to Council consideration of a recommendation. The effort included mailing almost 90,000 notices to owners of property with regionally significant resources and other interested parties. The effort included opportunities for the public to comment at six open houses, participate in an electronic survey, leave comment cards, visit the web site and write, call or visit Councilors and staff.

At this work session, staff will describe the preliminary summary of the public comments Metro has received to date. Staff will also describe, based on the public comments and the Second Phase ESEE report, some of the key issues for Council consideration in developing a recommendation. A preliminary list of these issues is attached. Council and the public will have the opportunity to comment on these issues at the public hearings scheduled for April and May as Council considers the staff recommendation.

OPTIONS AVAILABLE

Council may wish to add to the list of key issues for further discussion and consideration in the recommendation.

IMPLICATIONS AND SUGGESTIONS

Staff will take into account the public comment and key issues as they develop the staff recommendation. This work session presents an opportunity for the Council to discuss these issues.

QUESTION(S) PRESENTED FOR CONSIDERATION

Staff request that Councilors identify issues that they have questions about and would like staff to respond to as they prepare the recommendation and staff report.

LEGISLATION WOULD BE REQUIRED FOR COUNCIL ACTION Yes

No

DRAFT IS ATTACHED Yes No

SCHEDULE FOR WORK SESSION

Department Director/Head Approval _____

Chief Operating Officer Approval _____

Attachment to Work Session Form for 03/30/04

Key Issues for Consideration in Developing a Program Direction Recommendation

The following key issues represent areas where staff anticipates needing further discussion and direction in developing the Fish and Wildlife Habitat Protection Program. Some of these issues may be clarified in the ESEE phase recommendation and others will be clarified during the development of the program.

1. Regulatory Option

- The merits of the Habitat – values based options (1ABC) or the Habitat and Urban Development based options (2ABC) or a modification of one of these options.
- If one of the Habitat and Urban Development based options is selected, the appropriate degree of reduction in the areas with high and medium urban development values.
- Level of protection for Class 1 Riparian and Class A Wildlife – the areas with the highest ecological values and the greatest percentage (60%) of the habitat inventory land, including vacant, buildable land.
- Whether protection levels that “allow development subject to existing regulations” or “prohibit development subject to economic use tests” of habitat are appropriate
- Appropriate treatment for impact areas – these are mostly developed, do not have resource values, but are adjacent to the habitat areas and can affect conditions of the habitat.
- Relation to, compliance with or support for Endangered Species and Clean Water Acts.

2. Effect on existing development and redevelopment

- Clarification that regulatory program would apply only to land use permitted activities and not to other activities (such as gardening, pesticide use, undergrowth trimming)
- Redevelopment that requires permits could be subject to new regulations, which could depend on some redevelopment threshold determined in the program

3. Direction to Staff on Defining Limit in the Program Phase

- The definitions of limit that have been described generally in the ESEE phase will be defined in the program phase. Some of the key issues in the definition relate to expected capacity, disturbance area and mitigation, as illustrated below:
 - **Strictly Limit** – Strict avoidance of the habitat with maximum allowable disturbance areas and mitigation requirements. Allow trails, roads and other public access to meet the public good (e.g. access to and maintenance of public utilities such as water storage facilities). Expect some overall loss of development capacity.
 - **Moderately Limit** – Limit disturbance area, require mitigation and use design standards and other tools to protect habitat, especially habitats of concern, while achieving goals for employment and housing densities. Work to minimize loss of development capacity.

- **Lightly Limit** –Allow development with less restrictive limits on disturbance area and encourage other low impact design considerations and mitigation requirements. Assumes no loss of development capacity.

4. Transfer of Development rights

- Role of TDR program to compensate for loss of development capacity in strictly limit and, possibly moderately limit.

5. Mitigation and Mitigation banking

- Role of mitigation ratios and mitigation banking to facilitate efficient and effective use of mitigation to restore valuable habitat areas and how these efforts could be implemented or managed.

6. Program Specificity and Flexibility

- Clarification on how the program can serve as a general framework for local jurisdictions to implement and as a specific program that can be implemented without further local analysis.
- Clarification, through standards or other guidelines, to allow flexibility during implementation for consideration of regionally significant public facilities, riparian and wildlife district plans and other discretionary case-by-case decisions.

7. Map Corrections

- Reiterate commitment to processing map corrections by the adoption of final program and defining the on-going responsibilities for maintaining the resources maps.

8. Non-Regulatory Programs

- Develop a proposal for implementing the most promising non-regulatory programs to supplement and compliment the regulatory programs. Public comments along with staff analysis can provide a starting point for further consideration.

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METRO

Agenda

MEETING: METRO COUNCIL REGULAR MEETING
DATE: April 1, 2004
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. CONSENT AGENDA

3.1 Consideration of Minutes for the March 25, 2004 Metro Council Regular Meeting.

4. ORDINANCES – FIRST READING

4.1 **Ordinance No. 04-1044**, For the Purpose of Adopting the Annual Budget for Fiscal Year 2004-05, Making Appropriations, and Levying Ad Valorem Taxes, and Declaring an Emergency. (*Public Hearing*)

5. ORDINANCES - SECOND READING

5.1 **Ordinance No. 04-1042**, For the Purpose of Amending Metro Code Chapter 5.02 to Amend Disposal Charges and System Fees. McLain

5.2 **Ordinance No. 04-1043**, For the Purpose of Amending Metro Code Chapter 5.03 to Amend License and Franchise Fees; and Making related changes to Metro Code Chapter 5.01. McLain

6. CONTRACT REVIEW BOARD

6.1 **Resolution No. 04-3405**, For the Purpose of Authorizing an Exemption From Competitive Bidding Requirements and Authorizing Issuance of RFP #04R-XXXX-SWR For Transportation, Processing and Composting Services For Organic Wastes From the Metro Region. Monroe

6.2 **Resolution No. 04-3438**, For the Purpose of Modifying and Extending the Lease Agreement between Metro and Simex, Inc. Contract No. 924826.

Monroe

7. **CHIEF OPERATING OFFICER COMMUNICATION**

8. **COUNCILOR COMMUNICATION**

ADJOURN

Television schedule for April 1, 2004 Metro Council meeting

Clackamas, Multnomah and Washington counties, Vancouver, Wash. Channel 11 -- Community Access Network www.yourrtv.org -- (503) 629-8534 Thursday, April 1 at 2 p.m. (live)	Washington County Channel 30 -- TVTV www.yourrtv.org -- (503) 629-8534 Saturday, April 3 at 11 p.m. Sunday, April 4 at 11 p.m. Tuesday, April 6 at 6 a.m. Wednesday, April 7 at 4 p.m.
Oregon City, Gladstone Channel 28 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.	West Linn Channel 30 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.
Portland Channel 30 (CityNet 30) -- Portland Community Media www.pcatv.org -- (503) 288-1515 Call or visit website for program times.	

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

Agenda items may not be considered in the exact order. For questions about the agenda, call Clerk of the Council, Chris Billington, 797-1542. Public Hearings are held on all ordinances second read and on resolutions upon request of the public. Documents for the record must be submitted to the Clerk of the Council to be considered included in the decision record. Documents can be submitted by email, fax or mail or in person to the Clerk of the Council. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF CONSIDERING THE ASSIGNMENT AND MODIFICATION OF METRO CONTRACT NO. 924826 CONCERNING A LEASE AGREEMENT FOR A PORTABLE SIMULATION THEATRE AT THE OREGON ZOO,

RESOLUTION NO. 04-3438A

Introduced by Michael Jordan, Chief Operating Officer in concurrence with Council President David Bragdon

WHEREAS, the Oregon Zoo is dependent on enterprise income for over 60% of its operating budget; and

WHEREAS, in 2003, SimEx, Inc. and Metro, acting through the Oregon Zoo, entered into an equipment lease agreement by which SimEx leased a portable simulation theater for use at the Oregon Zoo; and

WHEREAS, simulator sales have increased enterprise income by over \$300,000 since 2003; and

WHEREAS, the parties desire to amend certain terms and payment provisions of the lease agreement and to incorporate other mutually-agreed provisions; and

WHEREAS, the parties desire to enter into a revenue share contract which will generate substantial revenue for the Oregon Zoo through April 2006; now therefore,

BE IT RESOLVED, THAT

That the Metro Council, acting as the Metro Contract Review Board authorizes the Chief Operating Officer to execute a Consent to Assignment and Modification of Lease Agreement in a form substantially similar to that attached hereto as Exhibit "A".

ADOPTED by the Metro Council this _____ day of _____, 2004

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

CONSENT TO ASSIGNMENT AND MODIFICATION OF LEASE AGREEMENT

This Contract Amendment No. 1, dated as of the last signature date below, amends Metro Contract No. 924826, entitled Lease Agreement, dated March 24, 2003, and is made by, between and among Metro, an Oregon metropolitan service district ("Metro"), Simex, Inc., a Canadian corporation, and Iwerks Entertainment, Inc, a California corporation ("Iwerks").

RECITALS

1. In March 2003, SimEx, Inc. ("SimEx") and Metro, acting through the Oregon Zoo ("Zoo") entered into an equipment lease agreement, by which SimEx leased a portable simulation theater for use at the Oregon Zoo.
2. The parties desire to amend certain terms and payment provisions of the lease agreement and to incorporate other mutually agreed provisions. In addition, to facilitate these desired contract amendments, SimEx has requested the Zoo's consent under the lease agreement to the assignment of the agreement to Iwerks, a California corporation wholly owned by SimEx, and the Zoo is amenable to the request of Simex

Accordingly, in exchange for the promises and other considerations set forth in the lease agreement and in this Amendment No. 1, the parties hereby agree as follows:

CONSENT TO ASSIGNMENT OF LEASE

Zoo hereby provides its consent to the assignment by Simex to Iwerks of the obligations and duties of performance, without exception, owed to the Zoo under and pursuant to the lease agreement and this Amendment No. 1.

PROVISIONS OF CONTRACT AMENDMENT

1. Extension of Contract Term. The provisions of Lease Agreement, paragraph 1, Term, are amended to read as follows:

"Unless sooner terminated in accordance with Section 7 hereof, this Agreement shall continue until April 30, 2006, at which time Oregon Zoo agrees to return to Iwerks one portable simulation theater and related software."

2. The provisions of paragraph 2(C) are amended to read as follows:

“Iwerks shall provide the film software to be utilized in conjunction with the portable simulation theater from all titles that have been programmed for the portable simulation theater. The license fees for such titles shall be deemed to be \$30,000 per year, which sum shall further be deemed to be included in the consideration calculated under Paragraph 4 of this Contract Amendment.”

3. The provisions of paragraph 4, Upgrades and Retrofits, are amended to include the following:

“Metro shall bear one-half the cost of upgrading the portable simulation theater to provide three-dimensional display capability (“3D operation”) up to a maximum expenditure of \$25,000.”

4. The provisions of paragraph 6 of the Lease Agreement are amended to provide as follows:

“In consideration of the lease of the theater to be provided by Iwerks and the rights to be granted hereunder, the Oregon Zoo will pay to Iwerks 65% of the net revenue derived from the sale of admissions to the portable simulation theater. For the purposes of this paragraph, “net revenue” means the total amount of revenue derived from sales for admissions to the portable simulation theater, less the following expenses: the Metro Excise Tax; expenses associated with marketing the portable simulation theater as an attraction at the Oregon Zoo up to the amount of \$15,000 per year; operating facilities expenses, including utilities; and operations staff expenses. The consideration for the lease of the portable simulation theatre shall be payable within twenty one (21) calendar days following the close of each calendar month for sales during such period, beginning with the period in which the first sale or disposition of tickets occurs.

5. The following provisions are added to and made a part of the lease agreement:

- (a.) Zoo shall develop a ticketing strategy for groups of adults, children, seniors or schools with the intention of attracting more than 108,747 paying visitors per year and generating an average contribution of \$3.50 per visitor to the portable simulation theatre. Such ticketing strategy shall include sales of tickets for the portable simulation theatre alone or in combination with any admission to any or all of the Oregon Zoo, the Oregon Zoo Train or the Winged Wonders Butterfly Exhibit.

- (b.) The parties agree that in the event of the sale of any discounted combination admission tickets, the same discount percentage shall be applied both to the admission price to the portable simulation theatre and to any other admission price combined with the theatre admission. All ticket combinations shall be sold at various locations, which may include Zoo ticket booths and group sales locations.

- (c.) The parties agree that the Zoo shall make all ticket sales by use of Zoo staff and shall collect and account for all ticket revenues received on a periodic accounting basis.
 - (d.) Financial statements and any supporting documents such as, without limitation, ticket audits statements, invoices, timesheets, shall be prepared each period for review by the parties and included with payment to Iwerks.
6. Except as modified herein, all other terms and conditions of the original Lease Agreement shall remain in full force and effect. Any material conflict between the provisions of the original Lease Agreement and this Amendment No. 1 shall be resolved by reference to and reliance upon this Lease Agreement Amendment No. 1.

OREGON ZOO

SIMEX, INC.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

IWERKS ENTERTAINMENT, INC.

By: _____

Name: _____

Title: _____

Date: _____