

A G E N D A

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METRO

Agenda

MEETING: METRO COUNCIL WORK SESSION MEETING
DATE: August 17, 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, AUGUST 19, 2004 | |
| 1:15 PM | 2. | TUALATIN BASIN APPROACH IN COUNCIL
COMMUNICATION | Deffebach |
| 1:45 PM | 3. | PERFORMANCE MEASURES REVIEW | Uba |
| 2:15 PM | 4. | CORRIDOR/CENTERS TGM GRANT | O'Brien |
| 2:30 PM | 5. | DREDGE MATERIALS FEE SCHEDULE | Hoglund/
Matthews |
| 3:00 PM | 6. | ST JOHNS LANDFILL CONTRACT AMENDMENT | Biedermann |
| 3:15 PM | 7. | CITIZEN COMMUNICATION | |
| 3:25 PM | 8. | EXECUTIVE SESSION HELD PURSUANT TO ORS 192.660 (1) (d)
FOR THE PURPOSE OF DELIBERATING WITH PERSONS
DESIGNATED TO CONDUCT LABOR NEGOTIATIONS. | |
| 3:55 PM | 9. | CHIEF OPERATING OFFICER COMMUNICATION | |
| 4:05 PM | 10. | COUNCILOR COMMUNICATION | |

ADJOURN

COUNCIL WILL BE ON RECESS FROM AUGUST 23, 2004 THROUGH SEPTEMBER 6, 2004

TUALATIN BASIN APPROACH IN COUNCIL COMMUNICATION

Metro Council Work Session
Tuesday, August 17, 2004
Metro Council Chamber

METRO COUNCIL

Work Session Worksheet

Presentation Date: August 17, 2004

Time:

Length: 30 min

Presentation Title: Fish and Wildlife Habitat Program – Program Elements and Review Process

Presenters: Deffebach, Ketcham

ISSUE & BACKGROUND

Council has previously directed staff to develop a Regional Fish and Wildlife Habitat Program that includes regulatory and non-regulatory components. The program will raise many policy issues for consideration by Council. To facilitate Council consideration, staff has developed a schedule and process that:

- Divides the program elements into separate issues to bring to Council. This will allow Council to give direction as work on the program proceeds and spreads the workload for Council over several different work session times. Recent discussion of the Regional Educational and Medical Facilities is an example of this.
- Creates a Program Work Group that advises staff on the practicality of program implementation by bringing together professionals who have experience with existing environmental regulations, both from a local government and developer perspective.

At this Council Informal Work Session, staff is bringing forward a resolution that clarifies Council intent on the part of the regional program that affects existing single-family residential areas that are included in the fish and wildlife habitat inventory. The resolution and staff report are attached and are scheduled for Council consideration on August 19.

Staff is also bringing forward a charge for the Program Work Group and a Council resolution to appoint the Group. Because the members of the Work Group are still being finalized, staff will bring the list to the Council Informal next Tuesday. The resolution to establish the Program Work Group is scheduled for consideration at the Council meeting on August 19.

OPTIONS AVAILABLE

The Council Informal is an opportunity for the Council to review and discuss the implications of the Single Family Residential exemption resolution and the role of the Program Work Group.

IMPLICATIONS AND SUGGESTIONS

These issues have implications for the further development of the Fish and Wildlife Habitat Program.

QUESTION(S) PRESENTED FOR CONSIDERATION

Staff requests that Councilors consider the SFR resolution implications and the role of the Program Work Group.

LEGISLATION WOULD BE REQUIRED FOR COUNCIL ACTION ☒ Yes ☐

No

DRAFT IS ATTACHED ☒ Yes ☐ No

Department Director/Head Approval _____

Chief Operating Officer Approval _____

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CREATING AND
APPOINTING MEMBERS TO THE FISH AND
WILDLIFE HABITAT PROGRAM
IMPLEMENTATION WORK GROUP

) RESOLUTION NO. 04-3488
)
) Introduced by Council President Bragdon

WHEREAS, in Resolution No. 04-3440A, For the Purpose of Endorsing Metro's Draft Goal 5 Phase 2 ESEE Analysis, Making Preliminary Decisions to Allow, Limit, or Prohibit Conflicting Uses on Regionally Significant Fish and Wildlife Habitat and Directing Staff to Develop a Program to Protect and Restore Regionally Significant Fish and Wildlife Habitat, adopted on May 20, 2004, the Metro Council directed Metro staff to develop a program to protect and restore fish and wildlife habitat consistent with the Council's preliminary allow, limit, and prohibit decision and the economic, social, environmental, and energy consequences analysis; and

WHEREAS, as staff develops such a program it is critically important to review the program with local jurisdiction planners, developers, architects familiar with "green development," and non-profits working to protect habitat to develop a program that is effective in protecting habitat, workable for local jurisdictions to implement, and easy for citizens and developers to understand and use; and

WHEREAS, to ensure that staff has access to the knowledge, expertise, and input from such professionals, the Metro Council is hereby creating a temporary task force pursuant to Metro Code Section 2.19.060, which shall be known as the "Fish and Wildlife Habitat Program Implementation Work Group;" and

WHEREAS, the Fish and Wildlife Habitat Program Implementation Work Group shall have the responsibilities and charge described in Exhibit A to this resolution; and

WHEREAS, the Council President has appointed the members and designated a chair person as set forth in Exhibit A; and

WHEREAS, the Council desires to confirm the appointments; now, therefore,

BE IT RESOLVED,

That a Metro task force is hereby created as set forth in Exhibit A attached hereto, which task force shall be called the "Fish and Wildlife Habitat Program Implementation Work Group" and shall consist of the members and designated chair person as set forth in Exhibit A. The Fish and Wildlife

Habitat Program Implementation Work Group shall continue in existence until the earlier date of (a) the day that the Metro Council takes final action on an ordinance to approve a Fish and Wildlife Habitat Program , or (b) one year from the date this resolution is adopted.

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

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

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Resolution No. 04-3488
Exhibit A

CHARTER

of the

**METRO FISH AND WILDLIFE HABITAT
PROGRAM IMPLEMENTATION WORK GROUP**

ESTABLISHMENT AND PURPOSE. Metro has been at work developing a regional fish and wildlife habitat protection program for more than four years. Metro has undertaken this effort pursuant to Statewide Planning Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces and the Goal 5 administrative rule (OAR 660-023, hereinafter the "Goal 5 Rule") promulgated by the Oregon Land Conservation and Development Commission ("LCDC"). The Goal 5 Rule permits, but does not require, Metro to develop a Goal 5 program. Metro determined that a regional habitat protection program was appropriate after conducting an analysis of Goal 5 programs adopted by local governments within the Metro region and concluding that a regional habitat protection program was needed in order to provide a consistent level of habitat protection across the region. The Goal 5 Rule requires Metro to follow a three-step process to establish a habitat protection program: first, to complete a habitat inventory of significant resources; second, to identify uses that conflict with the protection of the inventoried significant resources, and to determine whether to allow, limit, or prohibit such conflicting uses (the "ALP Decision") based on an analysis of the economic, social, environmental, and energy consequences of allowing, limiting, or prohibiting them (the "ESEE Analysis"); and third, to develop a program consistent with the ALP Decision. Metro completed a draft habitat inventory in August 2003 and a draft ESEE Analysis and preliminary ALP Decision in May 2004.

Metro is now developing a program to implement the preliminary ALP Decision and the draft ESEE Analysis. Program development is an exceptionally complex task for several reasons. After the Metro Council adopts a program, it will have to be acknowledged by the LCDC, and then implemented by the local governments of the region, all of which have varying local habitat protection programs already in place. Thus, the program must be both consistent with the particular requirements of the Goal 5 Rule and flexible enough to be adapted to many different local jurisdictions. Mindful of these complexities, as part of the Metro Council's May 2004 decision, the Council directed Metro staff to develop a proposed program consistent with the preliminary ALP Decision and the draft ESEE Analysis, and provided additional direction in specific areas (See Exhibit C to Resolution No. 04-3440A).

As the Metro staff develops a proposed program for the Metro Council's review, it is in Metro's interest, and in the interest of the citizens and local governments of the region, to establish a mechanism for obtaining the views and advice of land use professionals with hands-on, practical experience and expertise in implementing and working with habitat protection requirements in order to ensure that Metro's habitat program is: (1) practical and easy for citizens and developers to understand and use, (2) workable for local jurisdictions to implement, and (3) effective in protecting regionally significant habitat. Accordingly, Metro establishes the Fish and Wildlife Habitat Program Implementation Work Group to provide advice to Metro staff on its development of a proposed habitat protection program.

SCOPE AND CHARGE. The Work Group will review and comment on the implementation issues associated with the regulatory and non-regulatory program elements of the program as drafted by Metro staff. Metro intends to develop a standard approach that is specific enough that a local government could adopt it without additional work, in order to allow smaller localities without substantial resources to comply with the program without additional expense, and an alternative, flexible approach that allows jurisdictions to vary from the standard approach to meet local needs, if they can prove that their alternative approaches will achieve substantially the same results as the standard approach. Issues on which the Work Group members' experience and expertise will be essential to help Metro develop a clear, workable, effective program may include:

Standard Approach

- ***Clear and objective regulations.*** The adopted program must provide a set of clear and objective standards that are easy to understand and follow without having local jurisdictions use any discretion in reviewing development requests.
- ***Discretionary review alternative.*** Provided that the program provides a clear and objective alternative, then it can also provide a more discretionary alternative approach.
- ***Definition and application of "limit" designation.*** The preliminary ALP decision applied three levels of limit (lightly, moderately, and strictly) to habitat based on habitat quality and the urban development value of land. Development will be more restricted in habitat that received a strictly limit designation than a lightly limit designation.
- ***Capacity issues.*** At the site level, protecting fish and wildlife habitat may have an impact on whether a site may be developed to its full, zoned capacity. The Work Group may be asked to review tools such as density transfers and clustered development that could help maintain capacity, especially when used in specific places such as a concept planning area.
- ***Mitigation requirements.*** Development in habitat areas will have an impact on habitat quality, and mitigation may be required at a ratio determined by the limit designation. Specific components to be considered when developing mitigation standards include the effectiveness of mitigation, the location where mitigation must occur, and the level of mitigation required.
- ***Design standards.*** The impacts of development in habitat areas may be minimized by using habitat friendly development techniques such as low impact development (natural stormwater retention) and clustering to preserve open space and habitat areas. Design standards may be required in some areas and encouraged in others.
- ***Tree protection.*** Many jurisdictions in the region have some tree protection standards in place; however, the amount of protection varies. Standards for protecting tree groves and forests could be implemented as part of the habitat protection program.
- ***Vesting.*** Representatives of major institutional facilities and large, multi-phased development projects believe that their right to develop properties should be vested once they have committed significant financial resources to draft and get approval for multi-year master plans for their projects. Approval criteria for making such projects exempt from the habitat protection program could be developed.

Alternative Flexible Approach

- ***Performance standards.*** In order to give local jurisdictions the option to vary from Metro's standard approach, the program must include performance standards and evaluation methods to determine whether the alternative approaches will meet the substantial intent of the regional program. The Tualatin Basin program falls within

this category, as would a riparian or wildlife district plan for a specific watershed or stream reach.

Non-Regulatory Program Elements

- ***Incentives for habitat protection.*** Metro has committed to developing non-regulatory methods of habitat protection and restoration that include technical assistance, education, grants, and working with other jurisdictions to provide property tax credits. These incentives will be implemented along with a regulatory program.

METRO LEGAL RESPONSIBILITIES. Metro retains sole responsibility for the final development and approval of a fish and wildlife habitat protection program and for all decisions regarding matters under consideration by the Work Group.

CREATION AND TERM OF WORK GROUP. In accordance with Metro Code sections 2.19.060 and 2.19.070(c), the Work Group shall terminate on the earlier of one year from the date this charter is approved by resolution of the Metro Council, or on the day that the Metro Council takes final action on an ordinance to approve a fish and wildlife habitat protection program. A Work Group member that misses three consecutive meetings shall be considered to have resigned from the Work Group. Such vacancies may be filled by persons nominated by the Chair and with the concurrence of the Planning Director.

MEMBERSHIP. The Work Group shall consist of up to 16 members, including a member designated as Chair, appointed by the Metro Council President and confirmed by the Metro Council. All members of the Work Group shall be persons possessing demonstrated professional or personal qualifications relevant to achieving Metro's mission to develop a clear, workable, effective fish and wildlife habitat protection program. Metro shall ensure that the membership of the Work Group represents and includes a broad range of experts in the development field. Each member shall serve without compensation and shall not be considered an employee of Metro.

MEETINGS. The Work Group shall meet two to four times per month at the call of its Chair, with the concurrence of the Director of the Metro Planning Department ("Planning Director"). Eight members shall constitute a quorum for the conduct of business, and any recommendation by the Work Group to Metro shall require an affirmative vote of at least a majority of the total Work Group members present at a meeting. Each Work Group member shall be provided the opportunity to include minority or dissenting views to accompany formal recommendations made by the Work Group to Metro staff. The Chair shall appoint a substitute chair in the event that the Chair cannot attend a meeting.

Meetings will be conducted consistent with the requirements of the Oregon Public Meetings Law. ORS 192.610 through 192.710. Notice of each meeting shall be published ahead of time, and each meeting shall be open to the public. The Chair and the Planning Director shall agree on the proposed agenda for each meeting sufficiently in advance of the meeting so that the agenda can be included in the meeting notice. Interested members of the public may attend meetings and file statements with the Work Group and, if permitted by the Chair and in accordance with Work Group procedures, may speak at a meeting. Meetings may be adjourned at the Chair's discretion.

SUBJECTS TASK FORCE SHALL ADDRESS. The Planning Director, in coordination with the Work Group Chair, will submit current issues, such as the issues described above in this charter, for the Work Group's consideration and comment.

FUNDING AND SUPPORT SERVICES. Metro shall provide the Work Group with sufficient facilities in which to conduct its meetings and to provide a repository for its minutes and other records. Metro will also provide the Work Group with appropriate clerical support as needed. Metro shall provide such additional funding as reasonably necessary to achieve the purposes for which the Work Group was created and shall provide any further guidelines and management controls as may be necessary to further the objectives of the Work Group.

APPOINTMENT OF MEMBERS. The members of the Work Group shall be:

[insert final membership list]

M:\attorney\confidential\07 Land Use\04 2040 Growth Concept\03 UGMFP\02 Stream Protection (Title 3)\02Goal5\073004 Charter--G5 WorkGroup pgdraft.doc

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3488 FOR THE PURPOSE OF CREATING AND APPOINTING MEMBERS TO THE FISH AND WILDLIFE HABITAT PROGRAM IMPLEMENTATION WORK GROUP

Date: August 6, 2004

Prepared by: Chris Deffebach and Paul Ketcham

CONTEXT AND BACKGROUND

Metro Council has provided leadership in addressing growth management issues by working with citizens, elected officials and diverse interest groups to craft a vision of how the region will grow. Metro's 2040 Growth Concept and other policies identify the need to balance natural resource protection with urban development while the region grows. In 1998 the Metro Council adopted Title 3 of the Urban Growth Management Functional Plan to protect water quality and manage flood areas. Title 3 also included a commitment to conserve, protect, and enhance fish and wildlife habitat within "fish and wildlife habitat conservation areas."

In 2000, Metro Policy Committee created a Vision Statement to help guide the planning process for fish and wildlife habitat protection. The overall goal of the fish and wildlife habitat protection program is: "...to conserve, protect and restore a continuous ecologically viable streamside corridor... that is integrated with the surrounding urban landscape." The Vision Statement also refers to the importance that "...stream and river corridors maintain connections with adjacent upland habitats, form an interconnected mosaic of urban forest and other fish and wildlife habitat and contribute significantly to our region's livability." Metro is currently developing a regional fish and wildlife habitat program, following the 3-step process established by the State Land Use Planning Goal 5 administrative rule (OAR 660-023).

The Goal 5 rule calls for an inventory of regionally significant habitats, an analysis of economic, social, environmental and energy (ESEE) tradeoffs involved in protecting or not protecting habitats, and adoption of a program to carry out the decision of the ESEE tradeoff analysis. Metro completed the first step in August 2002 by conducting an inventory of regionally significant fish and wildlife habitat. Metro conducted the second step in two phases. In October 2003, Metro Council adopted Resolution #03-3376B, For the Purpose of Endorsing Metro's Draft Goal 5 Phase 1 Economic, Social, Environmental and Energy Analysis and Directing Staff to Conduct More Specific ESEE Analysis of Multiple Fish and Wildlife Habitat Protection and Restoration Program Options. On May 20, 2004 the Metro Council adopted Resolution #04-3440A, For the Purpose of Endorsing Metro's Draft Goal 5 Phase 2 ESEE Analysis, Making Preliminary Decisions to Allow, Limit, or Prohibit Conflicting Uses on Regionally Significant Fish and Wildlife Habitat and Directing Staff to Develop a Program to Protect and Restore Regionally Significant Fish and Wildlife Habitat, which represents a modified regulatory Option 2B. The Council directed staff to develop a program to protect and restore fish and wildlife

habitat consistent with the directives in Resolution 04-3440A, including regulatory and non-regulatory components.

Metro is now in the process of completing the third step of the Goal 5 planning process. This step involves developing a regional program to protect and restore regionally significant fish and wildlife habitat consistent with the Council's preliminary decisions in the ESEE tradeoff analysis. Metro Council will consider the habitat protection program as an amendment of the Urban Growth Management Functional Plan. After acknowledgment by the State Land Conservation and Development Commission, cities and counties within the Metro jurisdiction will be required to amend their comprehensive plans to be in compliance with the regional habitat protection program.

As Metro staff develops a proposed program for Metro Council's review, it is in Metro's interest, and the interest of the citizens and local governments of the region, to establish a Fish and Wildlife Program Working Group for the purpose of obtaining the views and advice of land use professionals with hands-on, practical experience and expertise in developing, implementing, and working with habitat protection requirements. It is Metro's intent to ensure that the regional habitat program is:

- Practical and clear for citizens and developers to understand and use;
- Workable for local jurisdictions to implement; and
- Effective in protecting regionally significant habitat.

A wide variety of existing local habitat protection programs are already in place, and it is Metro's intent to draw on the experience and knowledge of individuals who can identify what habitat protection approaches work well and those that do not. In addition, it is Metro's intent to develop a regional program that augments local programs already in place and complements them where possible to achieve a greater degree of consistency and effectiveness in habitat protection across the region.

As described in the Charter that is an Exhibit of this Resolution, the Fish and Wildlife Program Work Group, the charge will review and comment on the implementation issues associated with the regulatory and non-regulatory program elements of the program as drafted by Metro staff. The Work Group will provide comments to Metro staff.

The Fish and Wildlife Work Group will be a Metro task force formed under Metro Code sections 2.19.060 and 2.19.070 and will consist of up to 16 members, including a member designated as Chair, appointed by the Metro Council President and confirmed by the Metro Council. The Work Group will advise Metro staff. The Metro Planning Director, in coordination with the Work Group Chair, will identify relevant agenda items for review and comment. All members of the Work Group will be individuals who have professional or personal qualifications relevant to Metro's objective to develop a clear, workable, and effective fish and wildlife habitat protection program. Although not required because the work group will be advising staff only, and not the Council, work group meetings will nevertheless be conducted consistent with the requirements of the Oregon Public Meetings Law (ORS 192.610 through 192.710).

The Work Group Charter lists the membership and provides additional information on the operation of the Work Group. Metro intends the work group to include a broad geographic representation and a diversity of viewpoints and interests, focusing on individuals who have professional or personal qualifications relevant to Metro's objective of developing a clear, workable, and effective fish and wildlife habitat protection program. To this end, the proposed membership includes developers or owners of industrial, commercial, institutional, suburban residential, and infill properties; local jurisdiction planners with experience implementing environmental codes for habitat protection; and individuals with expertise in principles of landscape architecture, green development practices, transportation planning and public facilities planning.

ANALYSIS/INFORMATION

1. Known Opposition:

There is no known opposition to the formation of a program work group.

2. Legal Antecedents:

The work group is being formed pursuant to Metro Code section 2.19.060, the provisions governing the creation of limited duration task forces.

The Metro Council has benefited greatly from the advice of a number of different policy, citizen and technical committees on matters related to development of a regional fish and wildlife habitat protection program, and it is expected that this work group will similarly assist the development of a practical, workable, and effective program. In particular, the Goal 5 Technical Advisory Committee (Goal 5 TAC) has played an essential advisory role on scientific and technical issues since its formation in 1999. The Goal 5 TAC is composed of more than 20 representatives from local jurisdictions, natural resource agencies such as Oregon Department of Fish and Wildlife, U.S. Fish and Wildlife Service, Oregon Department of Environmental Quality, and National Oceanic and Atmospheric Administration Fisheries, consulting firms, non-governmental organizations, and citizens. Other committees that have provided technical guidance to Metro in the fish and wildlife habitat protection planning process have included: the Water Resources Policy Advisory Committee (WRPAC), the Metro Technical Advisory Committee (MTAC), the Economic Technical Advisory Committee (ETAC), the Social Advisory Committee, the Governor's Independent Multidisciplinary Scientific Team (IMST) and the Northwest Power Planning Council's Independent Economic Advisory Board (IEAB). The latter two committees were external to Metro engaged for the purpose of peer review of technical documents and methods related to the inventory and ESEE analysis.

3. Anticipated Effects:

By approving Resolution No. 04-3488, the Metro Council can better serve the public by creating a work group to obtain the views and advice of land use practitioners and other knowledgeable individuals with hands-on experience and expertise in implementing and working with habitat protection programs both within and outside the region. This work group will help Metro

achieve its intent to craft a regional fish and wildlife habitat program that is practical, workable and effective.

4. Budget Impacts:

Budget impacts should be minimal as Work Group members will serve without compensation and will not be considered employees of Metro. Meeting facilities will be provided by Metro as well as clerical support as needed. Metro staff will prepare the draft work program products for review and comment.

5. Outstanding Questions: None.

RECOMMENDED ACTION

Staff recommends adoption of Resolution No.04-3488.

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BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CLARIFYING THAT METRO'S)
GOAL 5 FISH AND WILDLIFE HABITAT PROTECTION) RESOLUTION NO. 04-3489
PROGRAM SHALL NOT RESTRICT CURRENTLY) Introduced by David Bragdon, Metro
ALLOWED USES OF DEVELOPED RESIDENTIAL) Council President
PROPERTY AND SHALL FOCUS HOMEOWNER-)
RELATED EFFORTS ON EDUCATION AND)
STEWARDSHIP INCENTIVE PROGRAMS)

WHEREAS, Metro is developing a regional fish and wildlife habitat protection and restoration program consistent with the state planning Goal 5 administrative rule, OAR 660-023-0000 through OAR 660-023-0250; and

WHEREAS, on October 30, 2003, and May 20, 2004, respectively, the Metro Council adopted Resolutions No. 03-3376B, For the Purpose of Endorsing Metro's Draft Goal 5 Phase 1 Economic, Social, Environmental and Energy Analysis and Directing Staff to Conduct More Specific ESEE Analysis of Multiple Fish and Wildlife Habitat Protection and Restoration Program Options, and No. 04-3440A, For the Purpose of Endorsing Metro's Draft Goal 5 Phase 2 ESEE Analysis, Making Preliminary Decisions to Allow, Limit, or Prohibit Conflicting Uses on Regionally Significant Fish and Wildlife Habitat and Directing Staff to Develop a Program to Protect and Restore Regionally Significant Fish and Wildlife Habitat; and

WHEREAS, in Resolution No. 03-3376B the Metro Council concluded that the Goal 5 program "shall not require property owners to discontinue uses or remove structures on their properties, but may affect the expansion of existing structures into regionally significant resource sites," and in Resolution No. 04-3440A the Metro Council directed that the program was to "apply only to activities that require a land use permit and not to other activities (such as existing gardens, lawn care, routine property maintenance, and actions necessary to prevent natural hazards)," but that "[v]egetation clearing over a set threshold [could] be defined as a land use activity and [could] therefore require a permit;" and

WHEREAS, the Metro Council has further considered the ESEE analysis and the extensive input and comments received from the citizens of the region regarding Resolution No. 04-3440A regarding the potential impact of the program on homeowners, as balanced against the need to protect and enhance fish and wildlife habitat; now therefore

BE IT RESOLVED:

1. Program Shall Not Restrict Currently Allowed Uses of Developed Residential Property

That the Program to Achieve Goal 5 that will be adopted by the Metro Council will not restrict the owners and residents of existing, developed residential properties from engaging in any use of their developed residential properties that they may currently undertake without having to seek a land use permit from their local jurisdiction.

2. Focus of Program As It Applies to Homeowners Shall Be On Education and Stewardship Incentive Programs, Not on Regulatory Approaches

That staff is directed to develop a Program to Achieve Goal 5 that, as it pertains to residents and owners of existing, developed residential properties, shall be focused on education and incentive

programs to help the citizens of the region to become more mindful of the ecological value of fish and wildlife habitat and to become better stewards of that habitat.

3. This Resolution is Not a Final Action

The Metro Council's action in this resolution is not a final action on an ESEE analysis, a final action on whether and where to allow, limit, or prohibit conflicting uses on regionally significant habitat and impact areas, or a final action to protect regionally significant habitat through a Program to Achieve Goal 5. Pursuant to OAR 660-023-0080, when Metro takes final action to approve a Program to Achieve Goal 5 it will do so by adopting an ordinance that will include an amendment to the Urban Growth Management Functional Plan, approval of the final designation of significant fish and wildlife habitat areas, and approval of a final ESEE analysis (including final allow, limit, and prohibit decisions), and then Metro will submit such functional plan amendments to the Oregon Land Conservation and Development Commission for acknowledgement under the provisions of ORS 197.251 and ORS 197.274.

ADOPTED by the Metro Council this ____ day of _____ 2004.

David Bragdon, Council President

Approved as to Form:

Dan Cooper, Metro Attorney

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STAFF REPORT

RESOLUTION NO. 04-3489 FOR THE PURPOSE OF CLARIFYING THAT METRO'S GOAL 5 FISH AND WILDLIFE HABITAT PROTECTION PROGRAM SHALL NOT RESTRICT CURRENTLY ALLOWED USES OF DEVELOPED RESIDENTIAL PROPERTY AND SHALL FOCUS HOMEOWNER-RELATED EFFORTS ON EDUCATION AND STEWARDSHIP INCENTIVE PROGRAMS.

Date: August 12, 2004

Prepared by: Chris Deffebach and Malu Wilkinson

CONTEXT AND BACKGROUND

The region's 2040 Growth Concept and other policies call for protection of natural areas while managing housing and employment growth. In 1998 the Metro Council adopted Title 3 of the Urban Growth Management Functional Plan to protect water quality and for flood management. Title 3 also included a commitment to develop a regional fish and wildlife habitat protection plan. As defined in a Vision Statement that was developed in cooperation with local governments at MPAC in 2000, the overall goal of the protection program is: "...to conserve, protect and restore a continuous ecologically viable streamside corridor... that is integrated with the surrounding urban landscape." The Vision Statement also refers to the importance that "...stream and river corridors maintain connections with adjacent upland habitats, form an interconnected mosaic of urban forest and other fish and wildlife habitat..." Metro is currently developing this program, following the 3-step process established by the State Land Use Planning Goal 5 administrative rule (OAR 660-023).

In the first step, Metro identified regionally significant fish and wildlife habitat using the best available science, computer mapping, and fieldwork. In 2002, after review by independent committees, local governments and residents, Metro Council adopted the draft inventory of regionally significant fish and wildlife habitat lands. The inventory includes about 80,000 acres of habitat land inside Metro's jurisdictional boundary as well as approximately 16,000 acres of impact area. Residential land makes up a significant portion of the habitat inventory and impact areas (31 percent), and 58 percent of that residential land is developed (not including parks). Impact areas include lands on which conflicting uses affect the habitat; 43 percent of the impact areas are on developed residential land.

The second step of the process is to evaluate the Economic, Social, Environmental and Energy (ESEE) consequences of a decision to allow, limit or prohibit conflicting uses on these regionally significant habitat lands and on impact areas adjacent to the habitat areas. The impact areas add about 16,000 acres to the inventory. Metro conducted the ESEE analysis in two phases. The first phase was to evaluate the ESEE consequences at a regional level. This work was completed and endorsed by the Metro Council on October 30, 2003 (Resolution #03-3376B, For the Purpose of Endorsing Metro's Draft Goal 5 Phase 1 Economic, Social, Environmental and Energy Analysis and Directing Staff to Conduct More Specific ESEE Analysis of Multiple Fish and Wildlife Habitat Protection and Restoration Program Options). The second phase evaluated the ESEE consequences of possible protection and restoration options that include a mix of

regulatory and non-regulatory components. The Metro Council endorsed the findings and applied a preliminary decision on where conflicting uses within the fish and wildlife habitat areas and impact areas should be allowed, limited, or prohibited, as required in the Goal 5 administrative rule on May 20, 2004 (Resolution #04-3440A, For the Purpose of Endorsing Metro's Draft Goal 5 Phase 2 ESEE Analysis, Making Preliminary Decisions to Allow, Limit, or Prohibit Conflicting Uses on Regionally Significant Fish and Wildlife Habitat and Directing Staff to Develop a Program to Protect and Restore Regionally Significant Fish and Wildlife Habitat).

The third and final step of the process is to develop a program that implements the habitat protection plan by ordinance through Metro's Urban Growth Management Functional Plan. After acknowledgment by the State Land Conservation and Development Commission, cities and counties within the Metro jurisdiction will be required to amend their comprehensive plans to be in compliance with the regional habitat protection program.

Cities and counties in the region currently have varying levels of protection for fish and wildlife habitat. As a result, similar quality streams or upland areas in different parts of the region currently receive inconsistent treatment. In addition, one ecological watershed can cross several different political jurisdictions – each with different approaches to habitat protection. The regional habitat protection program will establish a more consistent minimum level of habitat protection across the region.

In addition, in January 2002, Metro entered into an intergovernmental agreement with local governments and special districts in the Tualatin Basin setting forth a cooperative planning process to address regional fish and wildlife habitat within the basin. The Tualatin Basin recommendation will be forwarded to the Metro Council for final approval as part of the regional habitat protection plan.

1. PROGRAM SHALL NOT RESTRICT CURRENTLY ALLOWED USES OF DEVELOPED RESIDENTIAL PROPERTY

Metro's ESEE analysis considered the impacts of potential regulations to protect habitat on existing homeowners. An extensive discussion of the impacts of regulations on property owners is included in Phase I of the ESEE analysis. The property owners most affected by a decision to limit or prohibit conflicting uses are single-family residential. Eighteen percent of the land in Metro's habitat inventory and impact areas is on developed residential land, which translates to a substantial number of property owners and residents since many homes are on smaller lots. This percentage is based on Metro's definition of developed land for purposes of determining buildable lands, which excludes from the developed lands inventory portions of properties over half an acre in size that are undeveloped. Therefore, the implication under this resolution is that habitat on these lands that are now considered vacant would not receive regulatory protection until application for a land use permit.¹

Real property is one of the largest economic investments many people make and regulations affecting property are an important and sensitive social issue. For residential land in particular, a regulatory program could impact personal financial security or the expectation to maintain,

¹ However, local jurisdictions may have existing tree protection or vegetation removal regulations that would apply.

develop or redevelop land within the existing regulatory framework. Regulations that result in reductions to property value may affect people's ability to draw on the equity in their homes to fund retirement, education, and other activities. Thus, limiting or prohibiting conflicting uses, if it results in reduced property values, can have a negative social impact. On the other hand, local studies (Lutzenhiser and Netusil 2001, Bolitzer and Netusil 2000) have shown that proximity to some types of natural areas actually increase property values, thus preservation of these habitats could positively impact nearby property owners.

Minimizing the impact on property owners was one of the five social criteria used to evaluate the regulatory program options in Metro's Phase II ESEE Analysis. Property ownership and land use regulations are sensitive issues central to habitat protection. Landowners may be concerned about impacts to property rights, takings issues, and the distribution of the burden of protecting habitat. Other landowners may be supportive of protection programs despite being personally affected for several reasons including an appreciation of habitat and the wish to see it remain in addition to the increased property values that can result from trees and proximity to water.

In response to these factors, after Phase I of the ESEE analysis, the Metro Council resolved, in Resolution No. 3376B adopted on October 30, 2003, to "not require property owners to discontinue uses or remove structures on their properties," but allowed that the program "may affect the expansion of existing structures." Then, upon completion of Phase II of the ESEE analysis, the Council further resolved, in Resolution No. 04-3440A adopted on May 20, 2004, to direct staff to develop a program that applied "only to activities that require a land use permit and not to other activities (such as existing gardens, lawn care, routine property maintenance, and actions necessary to prevent natural hazards)," but allowed that "[v]egetation clearing over a set threshold [could] be defined as a land use activity and [could] therefore require a permit."

Based on the above mentioned points in the ESEE analysis and public comments to date, it has become evident that a clarification is necessary to address citizen concerns regarding the effect the program will have on existing, developed residential properties. If approved, this resolution will mean that the regulatory program would not have an effect on the residents and owners of existing residences unless they seek to engage in an activity for which a land use permit is required by their local jurisdiction. For example, Metro's regional Fish and Wildlife Habitat Protection Program, as implemented by local jurisdictions, would not include any additional restrictions on the rights of such owners or residents to plant and care for existing gardens, prune trees and shrubs, build fences and arbors, install playground equipment for children, take care of their yards and lawns, maintain and repair buildings and structures, or to take any actions necessary to prevent natural hazards, such as the pruning or removal of trees or shrubs that present a hazard to human life or property. However, the program might have an impact when such residents sought to redevelop their property, or if they sought to expand the developed area of their property. For example, a resident could build a deck or install a hot tub without further regulation if such a project would not currently require a land use permit from their local jurisdiction.

2. FOCUS ON PROGRAM AS IT APPLIES TO HOMEOWNERS SHALL BE ON EDUCATION AND STEWARDSHIP INCENTIVE PROGRAMS

Although this resolution clarifies that the program will not affect homeowners' use of their existing developed residential properties unless they decide to redevelop their properties, we know that activities on such properties short of such redevelopment can still have a significant impact on fish and wildlife habitat. For example, gardening and landscape practices can have significant effects on fish and wildlife such as the introduction of non-native plants and runoff from pesticides, herbicides, and fertilizers. Non-regulatory tools are therefore the key component of a strategy to protect fish and wildlife habitat on such properties. Incentives, education, and acquisition strategies are popular among landowners and can be used in conjunction with regulations and where regulations do not apply. Habitat protection and restoration activities on existing, developed residential properties will be focused on education and stewardship incentive programs unless the property owner applies for a local land use permit, at which time the regulatory protection for habitat would apply.

Moreover, many landowners would like to manage their land in a way that benefits fish and wildlife habitat. However, frequently people do not know if certain activities are detrimental (using herbicides and pesticides), if there are alternatives (natural gardening), what to do to improve habitat (plant native plants, remove invasive species like ivy), and how to connect to agencies and organizations that provide grants and/or volunteers to help improve habitat. A program would be developed to focus efforts to increase people's awareness of the connections between their activities and the health of streams and rivers, similar to fish stencil programs on stormwater drains. Landowners in regionally significant habitat areas would be targeted to raise awareness of how individual activities impact fish and wildlife habitat. Education activities are most effective when used in conjunction with a stewardship certification program, grant programs, and regulatory programs and these are also being considered as part of the non-regulatory toolbox.

Stewardship recognition programs publicly acknowledge landowners, businesses and other entities for conserving open space, protecting or restoring habitat areas, making financial contributions or carrying out good stewardship practices in general. Public agencies and nonprofit organizations can administer the programs, and the recognition could take the form of media publicity, awards ceremonies, or plaques and certificates. These programs, while not widely applied in the Metro region, have much potential for encouraging conservation behavior when combined with other programs. Staff is currently working to develop these components of a habitat protection program concurrently with a regulatory program.

ANALYSIS/INFORMATION

1. Known Opposition

No known opposition. Substantial public comment has been received to date expressing concern about the impact of a regional Fish and Wildlife Habitat Protection Program on existing residential development. Conversely, we have also consistently received public comments from

citizens seeking greater fish and wildlife habitat protection, although we have not received, and are not aware of, any specific opposition to this resolution.

2. Legal Antecedents

In Resolution No. 03-3376B the Metro Council concluded that the Goal 5 program “shall not require property owners to discontinue uses or remove structures on their properties, but may affect the expansion of existing structures into regionally significant resource sites,” and in Resolution No. 04-3440A the Metro Council directed that the program was to “apply only to activities that require a land use permit and not to other activities (such as existing gardens, lawn care, routine property maintenance, and actions necessary to prevent natural hazards),” but that “[v]egetation clearing over a set threshold [could] be defined as a land use activity and [could] therefore require a permit.” This resolution would further clarify these previous statements.

3. Anticipated Effects

Existing residential properties that could be subdivided and developed in the future may contain habitat areas. Some jurisdictions do not currently have mechanisms to prevent tree removal through tree protection ordinances or other measures. Metro’s regulatory program may contain mitigation measures or penalties if habitat is removed on existing residential lots in preparation for a change in use (e.g., subdivision, change in use). Such measures would be necessary to prevent the situation where a landowner attempted to avoid fish and wildlife habitat protection requirements by, first, clearing land identified as habitat under the guise of engaging in a use that does not require a land use permit, and then, second, later sought a land use permit but claimed that there was no longer any habitat left to be protected.

This resolution steps up Metro’s commitment to provide non-regulatory tools targeted towards owners and residents in existing residential areas to protect and restore habitat.

4. Budget Impacts

Implementing the policy stated in this resolution could have substantial budgetary impacts depending on the types of non-regulatory programs pursued. Metro’s Phase II ESEE Analysis included a preliminary description of possible non-regulatory programs focused on education and stewardship incentives. These tools were considered to be of low to medium cost depending on the level of commitment and program scope. Metro currently operates similar programs that could be enhanced to save on establishment costs.

RECOMMENDED ACTION

Thirteen percent of Metro’s habitat inventory and over half of the impact areas (58 percent) is land that includes existing residential development. The Metro Council has repeatedly stated that the fish and wildlife habitat protection program will not affect existing uses in residential

areas. This resolution clarifies the intent of the Metro Council that currently allowed uses on existing residential land would not be restricted, and education and incentive programs would support habitat protection and restoration activities in these areas.

I:\gm\long_range_planning\projects\Goal 5\Council Resolutions\Dev residential staff report v.2.doc

Agenda Item Number 3.0

PERFORMANCE MEASURES REVIEW

Metro Council Work Session
Tuesday, August 17, 2004
Metro Council Chamber

METRO COUNCIL

Work Session Worksheet

Presentation Date: 8/17/04 Time: Length: 15 minutes

Presentation Title: Draft Performance Measures Report

Department: Planning

Presenters: Gerry Uba and Chris Deffebach

ISSUE & BACKGROUND

Oregon State Law (ORS 197.301) established nine subjects for performance measures for Metro to compile and report to the Department of Land Conservation and Development at least every two years. Title 9 of the Functional Plan adopted by the Council in 1996 also established eight subjects for performance measures for monitoring the implementation and outcome of the plan.

The first performance measures report was completed and adopted by the Metro Council on March 27, 2003 (Ordinance No. 03-991A). The Chief Operating Officer submitted the report to the Oregon Department of Land Conservation and Development as directed by the Council (Resolution No. 03-3262). The 2040 Fundamentals were incorporated into Title 9 of the Functional Plan as was directed by the Council (Resolution No. 03-3262).

While adopting the first report, the Council also directed staff to prioritize the performance measures and update the report because the indicators in the 2003 report were defined very narrowly for individual policies adopted to implement the 2040 Growth Concept. The Council also directed staff to prepare for consideration a set of benchmarks or targets against which changes recorded through performance measures are evaluated. In September 2003, staff updated the Council on the new format for evaluating policies and the set of prioritized indicators that were developed with the assistance of MTAC and TPAC.

The draft 2004 performance measures report presents the analysis of the data collected for the prioritized indicators. Staff will review a few of the key findings from a selected number of the fundamentals. As work on the Performance Measures proceeds, Staff anticipate preparing the results in both an executive version suitable for wide public use and a full report.

OPTIONS AVAILABLE

The presentation will give Councilors the opportunity to preview the format in which the data is being presented and consider alternative presentation styles.

IMPLICATIONS AND SUGGESTIONS

Councilors will have the opportunity to see what data has been collected and analyzed and what is in the process of being analyzed. If there is additional information that Councilors are interested in, they can ask about it.

QUESTION(S) PRESENTED FOR CONSIDERATION

Do you have questions about the data and analysis that has been prepared to date?

LEGISLATION WOULD BE REQUIRED FOR COUNCIL ACTION __Yes __X_No
DRAFT IS ATTACHED __Yes __X_No

SCHEDULE FOR WORK SESSION

Department Director/Head Approval _____

Chief Operating Officer Approval _____

CORRIDOR/CENTERS TGM GRANT

Metro Council Work Session
Tuesday, August 17, 2004
Metro Council Chamber

METRO COUNCIL

Work Session Worksheet

Presentation Date: 08/17/04 Time: Length: 30 minutes

Presentation Title: TGM Grant: 2040 Corridors and Centers

Department: Planning

Presenters: Tim O'Brien and Mary Weber

ISSUE & BACKGROUND

Informational presentation on the Transportation Growth Management (TGM) Grant Metro received from ODOT. Purpose of the grant is to explore the relationships between 2040 Growth Concept designated corridors and centers, including how they complement and compete with each other and to develop policy and regulatory strategies to enhance the performance of both design types while providing efficient use of the transportation system.

OPTIONS AVAILABLE

No action required

IMPLICATIONS AND SUGGESTIONS

No action required

QUESTION(S) PRESENTED FOR CONSIDERATION

No request - informational

LEGISLATION WOULD BE REQUIRED FOR COUNCIL ACTION __ Yes X No
DRAFT IS ATTACHED __ Yes X No

SCHEDULE FOR WORK SESSION

Department Director/Head Approval _____

Chief Operating Officer Approval _____

Agenda Item Number 5.0

DREDGE MATERIALS FEE SCHEDULE

Metro Council Work Session
Tuesday, August 17, 2004
Metro Council Chamber

METRO COUNCIL

Work Session Worksheet

Presentation Date: August 17, 2004

Time:

Length: 30 minutes

Presentation Title: Dredge sediments fee schedule

Department: Solid Waste & Recycling

Presenters: Michael Hoglund and Janet Matthews

ISSUE & BACKGROUND

Whether to maintain, modify or eliminate the current Metro fee schedule on landfilled dredge sediments is the issue before Council at this work session.

Many government agencies have regulatory roles in dredging (see attachment). EPA, DEQ and the Division of State Lands are among the most involved. Metro's role in dredge sediments comes by way of its regulation of solid waste disposal.

With few exceptions, Metro applies fees and taxes to all waste from the region destined for landfill disposal. Historically dredge sediments have not been subject to Metro's fees and taxes because sediments were not being disposed in landfills. However, in recent years, many in-water and upland placement sites are no longer available for disposal *and* increasing amounts of sediments are contaminated enough to require disposal in a solid waste landfill, especially from the Willamette River.

Several years ago, Metro recognized (a) more dredge sediments would be landfilled and (b) full fees and taxes on this disposed material would be a large burden on public dredging projects and potentially delay projects. This led to a reduced fee schedule being applied, i.e., the "clean-up rate" of \$3.50/ton.*

Currently there are two exemptions from the clean-up rate:

- (1) Out-of-region treatment – Sediments taken out of region for treatment prior to disposal (usually de-watering and/or the addition of drying agents) are not subject to the \$3.50/ton charge. The "treatment exemption" is also applicable to other waste types (e.g., medical waste) that are processed out of region prior to disposal. Often time, dredge sediments, are treated at landfills by simply allowing the material to drain prior to disposal.
- (2) Useful material – Sediments accepted at a landfill for no charge to be used as a road base, for example, are also exempt from the \$3.50/ton Metro rate.

Thus far, dredge sediments landfilled have largely avoided Metro's fees and taxes by virtue of the two exemptions above. Consideration should be given to terminating these exemptions, however, for the following reasons:

* Metro Code 5.02.047(d) and 7.01.020(e), establishes regional system fee credits and excise tax for Clean-up Material Contaminated by Hazardous Substances. Largely applied to clean-ups of petroleum contaminated soil.

- Several inequities are created by the out-of-region treatment exemption:

First, only sediments destined for landfill disposal from the sole *in-region* treatment facility (owned by the Port of Portland), would be subject to Metro's fees and taxes;

Second, only two landfills are permitted to dispose of untreated (i.e., liquid) sediments – Roosevelt and Columbia Ridge – and only those facilities are required to pay Metro's fees and taxes. Those not permitted to take untreated sediments (Finley Buttes, Riverbend, Coffin Butte, and Wasco County) are exempt.

- The useful material designation is inapplicable in practice:

First, the oatmeal-like material properties of dredge sediments have few, if any, useful properties in the operation of a landfill;

Second, DEQ does not allow dredge sediments to be used as alternative daily cover at any landfills in the state.

Because Metro Code was not written for special categories of waste like dredge sediments, the types of unintentional outcomes above have been created.

OPTIONS AVAILABLE

- 1) Status quo. Maintain the current rate (\$3.50/ton) on landfilled dredge sediments as well as the out of region treatment exemption and the exemption for sediments beneficially reused.
- 2) Amend the Code to lower fee impact and to apply fee schedule more equitably. Reduce the current rate on dredge sediments to \$1.00/ton at all landfills. Eliminate exemptions for out of region treatment and beneficial use due to problems of inequity or inapplicability.
- 3) Amend the Code to eliminate sediments from the fee schedule. Exempt landfilled dredge sediments from Metro's fees and taxes.

IMPLICATIONS AND SUGGESTIONS

Maintaining a small fee still sends a price signal that disposal is the least preferred option and encourages landfill diversion.

Staff suggests that it is in the public interest for Metro to maintain a regulatory role in the landfill disposal of all waste types, including dredge sediments.

Metro solid waste fees and taxes on landfilled dredge sediments should be levied: 1) in an equitable fashion; 2) at a reduced fee level commensurate with the agency's regulatory responsibilities; and 3) to help minimize cost of dredge operations, most of which are supportive of agency economic and environmental objectives.

Staff recommends option #2 as the most equitable solution for all who generate, manage, and regulate sediments or the facilities in which they are managed.

QUESTION(S) PRESENTED FOR CONSIDERATION

Should staff proceed with the development of Code amendments to implement a new and more equitable fee schedule recommended in #2 above?

LEGISLATION WOULD BE REQUIRED FOR COUNCIL ACTION x Yes ___ No
DRAFT IS ATTACHED ___ Yes x No

SCHEDULE FOR WORK SESSION

Department Director Approval *David Hoyle*
Chief Operating Officer Approval _____

DREDGE REGULATORY ROLES

AGENCIES	REGULATORY ROLES		
	Dredging	Non-SW Disposal	SW Disposal
	If Superfund site	If Superfund site	If Superfund site
National Marine Fisheries Service 	Permit review		
 US Army Corps of Engineers®	Initiates permit/approves		
 Oregon Department of State Lands	Joint permit process w/ACE	Monitors/collects fees (if commercial)	
	Review/approval of permit	Approves	Review/approval of permit
 METRO PEOPLE PLACES • OPEN SPACES			Regulation of disposal/collection of fees/taxes
Local land use agency (i.e. county/city)  		Approves	

Agenda Item Number 6.0

ST JOHNS LANDFILL CONTRACT AMENDMENT

Metro Council Work Session
Tuesday, August 17, 2004
Metro Council Chamber

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF CONSIDERING AN)	RESOLUTION NO. 04-3485
AMENDMENT TO METRO CONTRACT NO.)	
925630, FOR THE DEMOLITION OF)	Introduced by Chief Operating Officer
STRUCTURES AT THE ST. JOHNS LANDFILL)	Michael J. Jordan, with the concurrence of
)	Council President David Bragdon

WHEREAS, On April 2, 2004, Metro and J. L. Arndt Construction entered into a public improvement contract for a maximum contract price not exceeding \$19,500 to demolish the scalehouse office and scales at the St. Johns Landfill; and

WHEREAS, Following execution of the agreement, the City of Portland required removal of certain concrete slabs from the property, which work had not been included in the Scope of Work for the project; and

WHEREAS, The cost of such additional unexpected work totals \$11,154.59; and

WHEREAS, Metro Code Section 2.04.058 requires the approval of the Metro Council for amendments to public contracts under one million dollars, when such amendments exceed 20% of the initial amount of the contract; and

WHEREAS, This Resolution was submitted to the Chief Operating Officer for consideration and was forwarded to the Metro Council for its approval; now, therefore,

BE IT RESOLVED that the Metro Contract Review Board, authorizes the Chief Operating Officer to execute Amendment No. 1 to Contract No. 925630, in a form substantially similar to that shown in the attached Exhibit A.

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

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

AMENDMENT NO. 1

This amendment, dated as of the last signature date below, hereby amends the Public Contract between Metro and J.L. Arndt Construction, "Contractor," dated April 2, 2004 (the "original agreement"). In exchange for the promises and other valuable consideration described in the original agreement, subsequent amendments, and this amendment, the parties agree as follows:

1. Contractor shall provide the following additional services.
 - a. Remove and dispose of the bottom slabs for the outbound and inbound scale pits.
 - b. Provide additional backfill, compaction, and testing as required.
2. Metro agrees to pay Contractor additional consideration for such services in an amount not to exceed TEN THOUSAND, ONE HUNDRED FIFTY-FOUR AND 59/100THS DOLLARS (\$10,154.59) beyond the agreed payment for service under the original agreement. No payment beyond this additional sum shall be authorized by Metro without specific written amendment to the original agreement. This amendment increases the maximum contract price to TWENTY-NINE THOUSAND, SIX HUNDRED FIFTY-FOUR AND 59/100THS DOLLARS (\$29,654.59).

All terms of the original agreement and any previous amendments shall remain in full force and effect, except as modified herein.

J.L. ARNDT CONSTRUCTION

METRO

Signature

Signature

Print Name and Title

Print Name and Title

Date

Date

STAFF REPORT

IN CONSIDERATION OF [RESOLUTION NO. 04-3485, FOR THE PURPOSE OF CONSIDERING AN AMENDMENT TO METRO CONTRACTS 925630, FOR THE DEMOLITION OF STRUCTURES AT THE ST. JOHNS LANDFILL.

Date: August 2, 2004

Prepared by: David Biedermann

BACKGROUND

Metro and J.L. Arndt Construction entered into a public improvement contract for a maximum contract price not exceeding \$19,500 to demolish the scale house office and scales at the St. Johns Landfill. The specifications were drawn up according to known requirements, including those of the City of Portland.

Following execution of the agreement and during the actual demolition, the City of Portland required the additional removal of large concrete slabs from the property. This work had not been included in the Scope of Work for the project as the Metro project manager was not aware of the requirement.

Based on the project manager's professional opinion and that of the contractor, it appeared it could be done within the Metro amendment limitation for a contract of this size, (20% of the initial amount, an additional \$3, 900). He directed the contractor to proceed with the concrete slab removal.

The removal proved to be far more difficult and lengthy than expected due to the construction techniques used in the slab design. The cost of the additional work totaled \$11, 154.59.

ANALYSIS/INFORMATION

1. **Known Opposition** None.
2. **Legal Antecedents** Metro Code Section 2.04.058 requires the approval of the Metro Council for amendments to public contracts under one million dollars, when such amendments exceed 20% of the initial amount of the contract.
3. **Anticipated Effects** Payment for the additional work.
4. **Budget Impacts** There are budgeted contingency funds in Solid Waste for this type of occurrence.

RECOMMENDED ACTION: The Chief Operating Officer recommends approval of Resolution 04-3485.

081704c-01

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 REGULAR MEETING
DATE: August 19, 2004
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. TRANSITION SAVINGS AND COSTS

Dow

4. CONSENT AGENDA

- 4.1 Consideration of Minutes for the August 5, 2004 Metro Council Regular Meeting.
- 4.2 **Resolution No. 04-3484**, For the Purpose of authorizing the Chief Operating Officer to issue a non-system license to Newberg Garbage Service, Inc., for delivery of solid waste to the Newberg Transfer Station.
- 4.3 **Resolution No. 04-3485**, For the Purpose of Considering an Amendment to Metro Contract No. 925630, for the Demolition of Structures at the St. Johns Landfill (*Contract Review Board*).
- 4.4 **Resolution No. 04-3486**, For the Purpose of Confirming the reappointment of James Allberg and Eric Johansen to the Investment Advisory Board.
- 4.5 **Resolution No. 04-3469**, For the Purpose of Approving Updated Bylaws for the Transportation Policy Alternatives Committee (TPAC) that formalize new Technical Subcommittees.

5. ORDINANCES – FIRST READING

- 5.1 **Ordinance No. 04-1057**, For the purpose of amending Metro Code Chapter 5.02 to authorize the Chief Operating Officer to designate certain recyclable materials that can be accepted without charge at Metro transfer stations and to delay repeal of certain payment exemptions for acceptance and collection of household hazardous wastes.
- 5.2 **Ordinance No. 04-1058**, For the Purpose of Amending the Putrescible Solid Waste Tonnage Acceptance Limit in Solid Waste Facility Franchise No. F-005-03 Issued to Willamette Resources, Inc.

6. ORDINANCES – SECOND READING

- 6.1 **Ordinance No. 04-1055**, For the Purpose of Amending the Regional Solid Waste Management Plan to impose a Moratorium until December 31, 2005, on applications for and authorizations of new solid waste transfer stations within the Metro Region; and Declaring an Emergency. Hosticka
- 6.2 **Ordinance No. 04-1056**, For the Purpose of Amending Metro Code Chapter 5.01 to impose a Moratorium until December 31, 2005, on applications for and authorizations of new solid waste transfer stations within the Metro Region; and Declaring an Emergency. Hosticka

7. RESOLUTIONS

- 7.1 **Resolution No. 04-3483**, For the purpose of authorizing the Chief Operating Officer to issue a non-system license to Portland International Airport (Port of Portland) for delivery of source separated food waste to the Nature's Needs facility for composting. Monroe
- 7.2 **Resolution No. 04-3488**, For the Purpose of Creating and Appointing To the Fish and Wildlife Habitat Program Implementation Work Group. Newman
- 7.3 **Resolution No. 04-3489**, For the Purpose of Clarifying that Metro's Goal 5 Fish and Wildlife Habitat Protection Program Shall not Restrict Currently Allowed Uses of Developed Residential Property and Shall Focus Homeowner-Related Efforts on Education and Stewardship Incentive Programs. Newman
- 7.4 **Resolution No. 04-3490**, For the Purpose of Obtaining the Approval of the Metro Council to End Pursuit of Certain Accounts Receivable in an Amount Exceeding \$10,000. McLain
- 7.5 **Resolution No. 04-3491**, For the Purpose of Confirming the appointments of Thanh Q. Vu and Jill Zanger to the Greenspaces Policy Advisory Committee (GPAC). McLain

8. CHIEF OPERATING OFFICER COMMUNICATION

9. COUNCILOR COMMUNICATION

ADJOURN

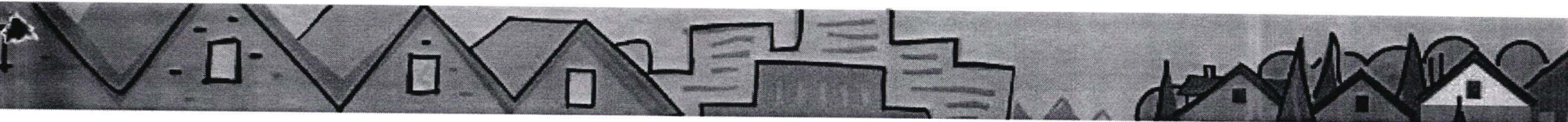
WILL BE ON RECESS FROM AUGUST 23, 2004 THROUGH SEPTEMBER 6, 2004

Television schedule for August 19, 2004 Metro Council meeting

Clackamas, Multnomah and Washington counties, and Vancouver, Wash. Channel 11 -- Community Access Network www.yourtvvtv.org -- (503) 629-8534 Thursday, August 19 at 2 p.m. (live)	Portland Channel 30 (CityNet 30) -- Portland Community Media www.pcatv.org -- (503) 288-1515 Sunday, August 22 at 8:30 p.m. Monday, August 23 at 2 p.m.
Gresham Channel 30 -- MCTV www.mctv.org -- (503) 491-7636 Monday, August 23 at 2 p.m.	Washington County Channel 30 -- TVTV www.yourtvvtv.org -- (503) 629-8534 Saturday, August 21 at 11 p.m. Sunday, August 22 at 11 p.m. Tuesday, August 24 at 6 a.m. Wednesday, August 25 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.

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, (503) 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 e-mail, fax or mail or in person to the Clerk of the Council. For additional information about testifying before the Metro Council please go to the Metro website www.metro-region.org and click on public comment opportunities. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).



Preview of the Draft 2004 Performance Measures Report: Selected Sections



METRO

People Places
Open Spaces

If you don't measure results, you can't tell success from failure.

If you can't see success, you can't reward it.

If you can't see failure, you can't correct it.

Osborne and Gaebler, Reinventing Government, 1992

08/10/04-02

Broad Regional Goals Measured
2040 Fundamentals

- *Encourage a strong local economy*
- *Encourage the efficient use of land within the UGB*
- *Protect and restore the natural environment*
- *Provide a balanced transportation system*
- *Maintain separation between Metro and neighboring cities*
- *Enable communities inside the Metro area to preserve their physical sense of place*
- *Ensure availability of diverse housing options*
- *Create a vibrant place to live and work*

Measuring Fundamental 1 Policies

Land Availability:

- ☐ Periodically assess (and amend if necessary) the UGB in order to maintain a supply of land for residential and employment uses, mixed use centers, and encourage investment in these areas in order to maximize the efficiency of existing infrastructure.
- ☐ Preserve the quality and quantity of the industrial land, and provide access.

Measuring Fundamental 1 Policies cont'd.

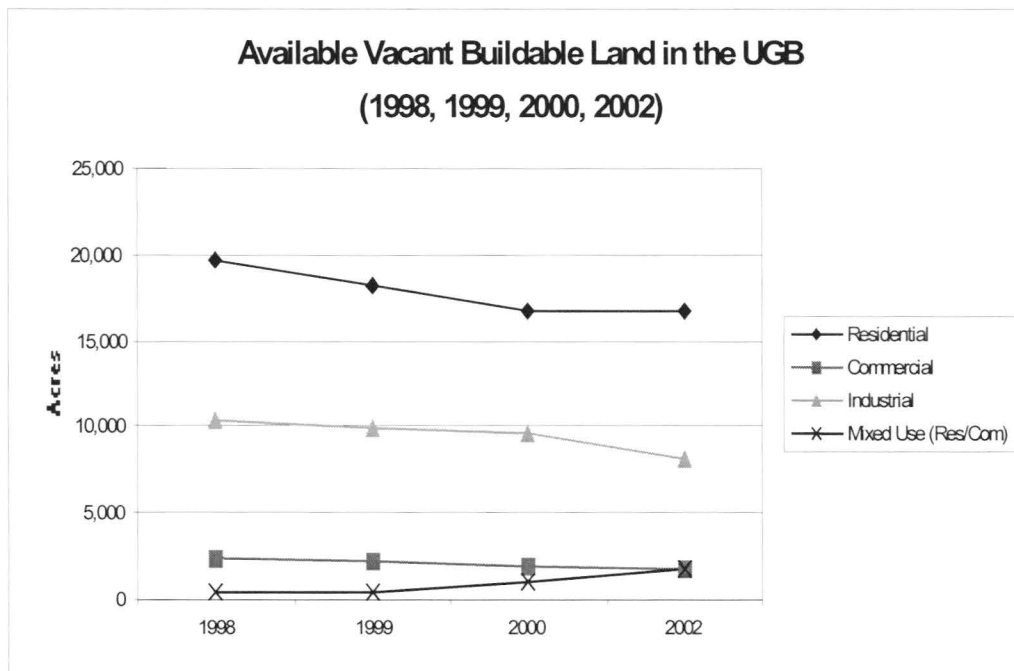
Dispersion of Development:

- ☐ Promote distribution of jobs, wages, population, housing, goods and services and economic development.
- ☐ Provide the opportunity for the entire region to share in the benefits and burdens of growth throughout the region.

Measuring Fundamental 1 Policies cont'd.

- Freight Movement:
- Encourage trade by increasing the efficient movement of all modes of freight.

Findings



---- Buildable land was about three-quarters (86%) of available vacant land zoned for development in 2002.

---- Residential zoned land = 58%

Industrial = 19%

Mixed use industrial/commercial = 10%

Commercial = 9%

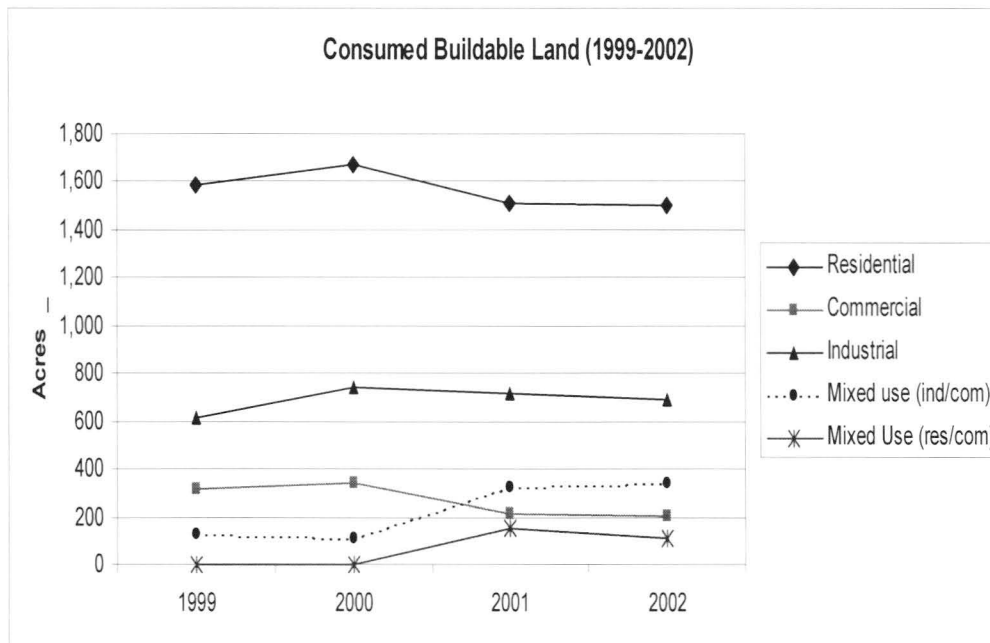
---- As expected, available land declined 1998 through 2000 due to consumption, until the Metro Council approved a major expansion of the UGB in 2002.

Available (Gross) Vacant Land Compared to Buildable Land and Consumed Land, 2002

	Available Vacant Land	Buildable Vacant Land	Buildable as % of Available Vacant Land	% of Total Vacant Buildable Land
Residential	26,310	23,218	88%	58%
Commercial	3,809	3,399	89%	9%
Mixed Use Res/Com	2,174	1,930	89%	5%
Industrial	8,809	7,374	84%	19%
Mixed Use Ind/Com	5,057	3,792	75%	10%
Total	46,159	39,713	86%	100%

Findings cont'd.

Consumption of Buildable Land



- Residential land consumption increased by 1% from 1999 (9%) to 2000 (10%), and decreased by 4% in 2002 (6%).
- Commercial land consumption increased by 3% from 1999 (15%) to 2000 (18%), and decreased by 12% in 2002 (6%).
- Industrial land consumption increased by 3% from 1999 (6%) through 2002 (9%).

Population Accommodated Per Acre in the Metro UGB

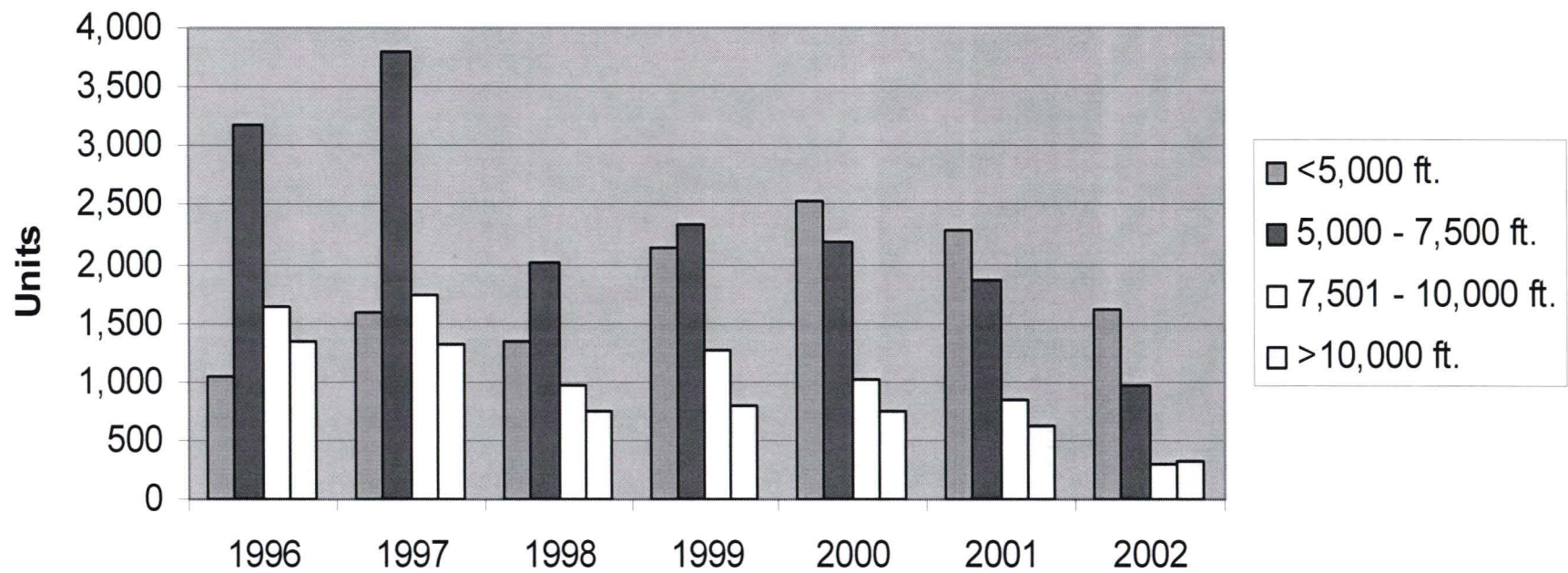
Year	Consumed Residential & Mixed Use (Res/Com) Acres	New Population	Persons Per Acre
1999- 2000	1,669	28,474	17
2001 - 2002	1,616	30,652	19

Jobs Accommodated Per Acre in the Metro UGB

Year	Consumed Commercial, Industrial & Mixed Use (ind/com) Acres	New Employment	Jobs Per Acre
1999- 2000	1,669		
2001 - 2002	1,616		

Can not calculate due to job loss in
2000 - 2002 that was -37,426

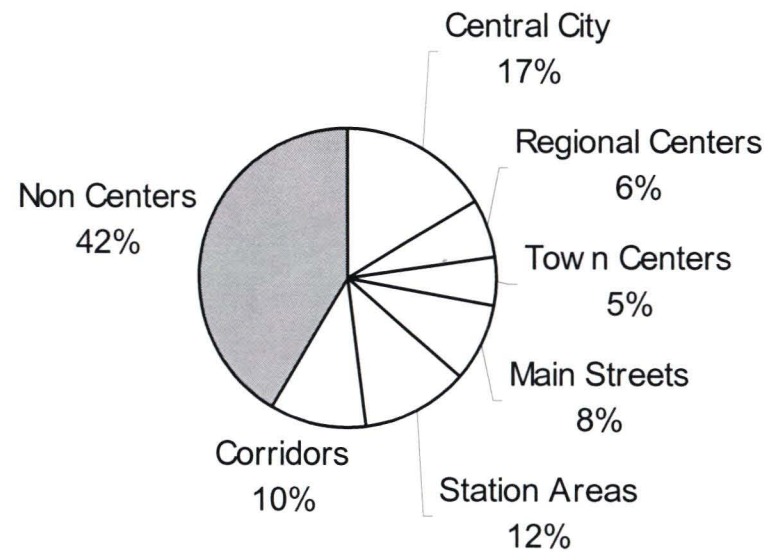
Lot Size of Single Family Residential (1996-2002)



Buildable Land and Open Space in Centers Compared to the UGB Total (2002)

Land use type	UGB	Centers	Centers as percent of region
Residential	23,218	443	2%
Commercial	3,399	347	10%
Mixed Use (Res/Com)	1,930	987	51%
Industrial	7,374	92	1%
Mixed Use (Ind/Com)	3,792	442	12%
Open Spaces	16,018	213	1%
Total	55,731	2,524	5%

Proportion of Tri-County Jobs in Centers (2002)



Real Property Tax Base Comparison: Measure of Benefits and Burdens of Growth

(Part 1)

	Total Taxable Real Property Value	Total Taxable Real Property Value Per Capita	Taxable Residential Value Per Capita	Taxable Non- Residential Value Per Capita	Most Evenly Split Residential to Non- Residential Taxable Value
1	Portland (\$32,705,405,489)	Lake Oswego (\$107,987)	Lake Oswego (\$96,509)	Wilsonville (\$42,664)	Wood Village (43% to 57%)
2	Hillsboro (\$5,402,285,960)	Wilsonville (\$92,901)	Happy Valley (\$86,993)	Tualatin (\$35,781)	Hillsboro (55% to 45%)
3	Beaverton (\$4,914,673,520)	Happy Valley (\$90,221)	Rivergrove (\$85,549)	Wood Village (\$32,888)	Wilsonville (56% to 44%)
4	Gresham (\$4,753,715,348)	Rivergrove (\$83,035)	West Linn (\$79,459)	Hillsboro (\$30,564)	Tualatin (58% to 42%)
5	Lake Oswego (\$4,011,395,332)	Tualatin (\$77,078)	King City (\$68,379)	Tigard (\$24,258)	Tigard (68% to 32%)

Real Property Tax Base Comparison cont'd.

	Total Taxable Real Property Value	Total Taxable Real Property Value Per Capita	Taxable Residential Value Per Capita	Taxable Non- Residential Value Per Capita	Least Evenly Split Residential to Non- Residential Taxable Value
20	King City (\$158,866,480)	Gladstone (\$46,355)	Fairview (\$31,643)	Happy Valley (\$6,046)	Rivergrove (93% to 7%)
21	Durham (\$105,900,980)	Forest Grove (\$41,202)	Forest Grove (\$30,515)	Gladstone (\$5,380)	Happy Valley (94% to 6%)
22	Maywood Park (\$42,014,310)	Fairview (\$39,165)	Cornelius (\$25,893)	West Linn (\$4,858)	West Linn (94% to 6%)
23	Rivergrove (\$29,464,327)	Cornelius (\$32,096)	Wood Village (\$24,932)	Maywood Park (\$133)	Maywood Park (100% to 0%)
24	Johnson City (\$5,437,557)	Johnson City (\$8,631)	Johnson City (\$8,631)	Johnson City (\$0)	Johnson City (100% to 0%)

High Quality Education: Measure of Benefits and Burdens of Growth (Part 2)

Elementary Schools

- Elementary schools rated “exceptional” increased from 4% in 1998/1999 to 16% in 2002/2003 (37 of 227).
- The largest number of elementary schools is rated “strong,” and the size of this group decreased from 51% in 1998/1999 (117 of 228) to 44% (99 of 227).
- The second largest group rated “satisfactory” also decreased from 37% in 1998/1999 to 33% in 2002/2003.

Middle Schools

- Middle schools rated “exceptional” increased from zero percent in 1998/1999 to 8% in 2002/2003 (5 of 62).
- The largest number of middle schools is rated “satisfactory,” and size of this group decreased from 65% in 1998/1999 to 60% in 2002/2003 (37 of 62).
- The second largest group rated “strong” increased 22% in 1998/1999 to 27% in 2002/2003

High Schools

- High schools rated “exceptional” increased from zero percent 1998/1999 to 8% in 2002/2003 (2 of 49).
- Those rated “strong” also increased from 10% in 1998/1999 to 22% in 2002/2003 (9 of 49), .
- Those rated “low” also increased 7% to 12% in 2002/2003 (6 of 49).
- The largest number of high schools is rated “satisfactory,” and the size of this group decreased from 64% in 1998/1999 to 41% in 2002/2003 (15 of 49).

Socioeconomic status and growth of schools

- Total student enrollment increased the most between the 2000/2001 and 2001/2002 school years in the Sherwood school district (7%) and Forest Grove school district (6%).
- In the same period, Students in the English as a Second Language program (ESL) increased the most in Hillsboro school district (32%) and North Clackamas school district (26%)
- Two districts with the greatest percentages of enrolled students living in poverty are Portland (19% in both 98/99 and 02/03) and David Douglas (18% in both 98/99 and 02/03).

Reduced and free school lunch program – as of October 2003

- More than half of the students in the David Douglas (58%), Raynolds (56%), Forest Grove (55%) and Parkrose (54%) school districts participated in reduced and free school lunch program during the 2003/2004 school year. Substantial number of Centennial (48%) and Portland (43%) students also participate in the reduced and free school lunch program.
- About 35% (73,668) of the 210,104 students in the region's school districts are participating in the reduced and free school lunch program.

More to Come on:

- 2040 Centers performance
- Job and population distribution
- Transportation system performance
- Housing diversity
- Parks and natural areas availability and accessibility
- Physical sense of place of communities
- Separation of between Metro UGB and neighboring cities

Reminder and Next Steps

- The 2004 report is an update to the first report that is based on fewer indicators and an improved format that links policies measured with performance indicators.
- Data availability is still a problem.
- No conclusions about the progress or lack of progress of policies in regional plans due to limited adopted targets, however ----- comparable data is important but would take more resources to collect.
- First draft will be completed and distributed in September.